

1960

## Proceedings of the Nebraska State Bar Association House of Delegates Meeting, 1959

Joseph C. Tye

*Nebraska State Bar Association*

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PRESIDENT JOSEPH C. TYE

1959 OFFICERS OF THE  
NEBRASKA STATE BAR ASSOCIATION

*President*

JOSEPH C. TYE

Kearney

*Chairman of the House of Delegates*

RICHARD E. HUNTER

Hastings

*Secretary-Treasurer*

GEORGE H. TURNER

Lincoln

EXECUTIVE COUNCIL

Joseph C. Tye .....	Kearney
Paul H. Bek .....	Seward
Thomas F. Colfer .....	McCook
Alfred G. Ellick .....	Omaha
John R. Fike .....	Omaha
Clarence E. Haley .....	Hartington
Carl G. Humphrey .....	Mullen
Richard E. Hunter .....	Hastings
William H. Lamme .....	Fremont
Paul L. Martin .....	Sidney
C. Russell Mattson .....	Lincoln
Harry A. Spencer .....	Lincoln

HOUSE OF DELEGATES

EXECUTIVE COUNCIL MEMBERS

Richard E. Hunter .....	Hastings
Joseph C. Tye .....	Kearney
Paul H. Bek .....	Seward
Thomas F. Colfer .....	McCook
Alfred G. Ellick .....	Omaha
John R. Fike .....	Omaha
Clarence E. Haley .....	Hartington
Carl G. Humphrey .....	Mullen

William H. Lamme .....	Fremont
Paul L. Martin .....	Sidney
C. Russell Mattson .....	Lincoln
Harry A. Spencer .....	Lincoln

#### SECTION DELEGATES

John C. Mason .....	Lincoln
Fred H. Richards .....	Fremont
A. J. Luebs .....	Grand Island
Anne Pickett Carstens .....	Beatrice
David Dow .....	Lincoln
Edward A. Cook, III .....	Lexington

#### EX-OFFICIO MEMBER

John J. Wilson .....	Lincoln
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#### ELECTED DELEGATES

##### FIRST DISTRICT

Robert S. Finn .....	Tecumseh
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##### SECOND DISTRICT

Bernard M. Spencer .....	Nebraska City
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##### THIRD DISTRICT

James N. Ackerman .....	Lincoln
Chauncey E. Barney .....	Lincoln
Herman Ginsburg .....	Lincoln
C. M. Pierson .....	Lincoln

##### FOURTH DISTRICT

Milton R. Abrahams .....	Omaha
Robert K. Adams .....	Omaha
R. M. Crossman, Jr. ....	Omaha
Oscar T. Doerr .....	Omaha
Margaret Fischer .....	Omaha
James F. Green .....	Omaha
Edson Smith .....	Omaha
Ralph Svoboda .....	Omaha
Joseph J. Vinardi .....	Omaha

##### FIFTH DISTRICT

Phil B. Campbell .....	Osceola
Maynard Grosshans .....	York



SIXTH DISTRICT

William H. Lamme .....Fremont  
L. F. Otradovsky .....Schuyler

SEVENTH DISTRICT

Robert H. Downing .....Superior

EIGHTH DISTRICT

Mark J. Ryan .....So. Sioux City

NINTH DISTRICT

Eugene McFadden .....Norfolk  
P. M. Moodie .....West Point

TENTH DISTRICT

Howard S. Foe .....Red Cloud  
L. R. Stiner .....Hastings

ELEVENTH DISTRICT

Kenneth H. Elson .....Grand Island  
E. L. Vogeltanz .....Ord

TWELFTH DISTRICT

Ward W. Minor .....Kearney

THIRTEENTH DISTRICT

John J. Powers .....Ogallala  
Bernard B. Smith .....Lexington

FOURTEENTH DISTRICT

Daniel Owens .....Benkelman

FIFTEENTH DISTRICT

William L. Brennan .....Butte

SIXTEENTH DISTRICT

W. E. Mumby .....Harrison

SEVENTEENTH DISTRICT

Robert J. Bulger .....Bridgeport

EIGHTEENTH DISTRICT

Dean R. Sackett .....Beatrice

## NEBRASKA STATE BAR ASSOCIATION

### HOUSE OF DELEGATES

The first session of the House of Delegates of the Nebraska State Bar Association convening in the Ballroom of the Hotel Paxton, Omaha, Nebraska, was called to order at 9:45 o'clock by Chairman Richard E. Hunter of Hastings, Nebraska.

CHAIRMAN HUNTER: The 1959 session of the House of Delegates of the Nebraska State Bar Association will please come to order. Mr. Secretary, will you read the roll.

(Roll call by the Secretary.)

SECRETARY TURNER: There is a quorum present, Mr. Chairman.

CHAIRMAN HUNTER: At this time we have the report of the President of the Nebraska State Bar Association, Mr. Joseph C. Tye.

### REPORT OF THE PRESIDENT

Joseph C. Tye

Mr. Chairman and Gentlemen of the House of Delegates: I don't know just why this report is called for at this time by the President, since he is required to make a report tomorrow and I assume that most of you gentlemen will be present at that time, but I will make a very short statement about two or three things that seem to me to be of importance to all of us at this time.

Generally, permit me to say that the committee and the sections this year have been most accommodating and helpful. They have been hard-working, active groups, and I will have something further to say about that tomorrow.

I wonder if the House of Delegates or a committee appointed for such purpose might give some study to the composition of the sections. I have noticed this year particularly the Insurance Section, and because I have attended the Insurance Section previously, it seems now to be dealing principally with automobile law, if not wholly so, as the section conducts its meetings here at the annual meeting. This would appear to me, the title being "Insurance Law," to be a contract matter rather than a tort subject. At least it seems that it may be misleading.

I wonder whether we should have a section on Real Estate, Probate and Trust Law or whether it should be divided. During this year the section was extremely well organized with a number of subcommittees, and the work was actually more than one section should be expected to undertake.

I have been most interested during the year in observing the interest and activities of the law students. At the American Bar meeting there was a group of law students in attendance. I understand that they have a section of the American Bar, and I am wondering if it might not be to the advantage of all of us to have a section or some provision whereby the law student could feel actually a part of us. I realize he may have a membership, but I wonder if he would not appreciate the fact that he is a part of the working Bar, and if it would not be to our advantage later on as these young men enter the profession to have them familiar with the Association and actually have them working in the Association.

We have conducted three Institutes during the year with increased interest on the part of all of our members. We have had splendid cooperation from the Bench and from the law school faculties in connection with our Institutes. The Committee on Continuing Legal Education is making a study of future Institutes and the possible use of the law schools to a greater degree.

Nebraska at this time is a leader in the field of our type of Institute, which as you know is a traveling Institute. I believe the number of our Institutes should be increased and the number of places where the Institutes are held should also be increased. This is an expanding activity of all bar associations with intensive interest and attention being given the subject for the coming year by the American Bar Association.

Attendance at our annual meeting since integration of the Bar is most gratifying. We are now having nearly fifty per cent of our active practitioners attend our annual meeting. It has been most forcibly brought to my attention during my visits to several other states this year that they do not in any sense approach the attendance which we in Nebraska are having.

Up-to-date rules of Court and the suggested fee schedule have been printed in form to be inserted in your desk book. An index for the *Law Review* has been compiled and probably will be printed shortly, which will also be printed of a size to be inserted in your desk book.

Cooperating with the American Bar Association, we have this year appointed a faculty member to each of our undergraduate colleges as a special legal advisor. A local attorney in the city

where the college is located has been appointed as counselor to cooperate with the faculty advisor in consulting and advising students interested in law.

You know of course of the impact of science on the college student during the past few years. The American Bar Association has become very much concerned in the quality particularly of the young people entering law school. We have had excellent cooperation by our presidents of undergraduate colleges. Some of them wish to designate the attorney in the respective town to cooperate with the pre-law faculty advisor. That has all been set up, and they are receiving or will be receiving information from the American Bar Association, and we hope to be able to counsel with these young people who are interested in the study of law.

I challenge your attention to the World Peace Through Law movement being carried on by the American Bar Association and suggest that consideration be given to the cooperation of our State Bar Association with this movement. Our cooperation could probably be carried on by the appointment of a special committee. It is a grand opportunity for public relations with other groups and with the public at large.

I would challenge your thought and consideration to the activity of the Association with reference to the merit plan for selection of the judiciary. Apparently this subject will require a good deal of study and planning, and probably the appointment of committees in each county or judicial district in the State. The plan is meeting with great success where it is now in operation, and I am certain that a majority of our members are in favor of the plan. What should we do in order to bring this proposal before the voters? As you all know, we tried at the last session of the Legislature, and although the Committee on Judiciary a year ago had, we thought, the promise or agreement of sufficient legislators to pass the necessary legislation, we were dismayed this year when the bill was killed in committee. And I think many of you know why we were particularly dismayed—because the legal members on that committee killed the bill. I cannot understand why. No one has been able to explain it to me.

One learns more and more in contacting the other state bar associations that we are singularly fortunate in having a secretary who is Clerk of the Supreme Court, and of course more especially one George H. Turner. This reduces our expense very substantially. It would seem that our Secretary could use some assistance, although George says he doesn't need any assistance,

particularly in connection with expanded programs for Institutes and public relations. This might require a study of finances. Every other state with which we have had contact makes a charge for Institutes.

California, a big state on continuing legal education, has a program which spends \$250,000 a year on continuing legal education. They advise us that their Institutes finance and pay for this continuing legal education program. They make a charge for registration and a charge for their printed matter.

The Missouri Bar through a committee on Economics of the Bar employed a firm of experts to conduct a survey on this subject. The report was made to the Missouri Bar at its annual meeting just last week, which I was privileged to attend. It is most interesting and should result in substantial benefits to the lawyers of Missouri. The report indicates ways and means to set up a uniform accepted method for charging in the entire profession and an educational program to bring to the public at large an awareness of its need for its attorneys, both publicly and privately.

I recommend that a special committee be appointed to study, and that such committee in cooperation with the Committee on Continuing Legal Education conduct an Institute on this subject. It was most revealing, and the members of the Bar Association of Missouri good-naturedly took about as severe a spanking from a group of business experts as I have ever heard, and they certainly tore the legal profession apart when it comes to the matter of business. It is most revealing and I think is something that would do all of us a lot of good. .

I have brought back most of this material which George is going to have copied and I will of course give a copy of it to the incoming Committee on Continuing Legal Education, and I am going to give a copy of it to each of the deans of the law schools, suggesting that they work out some kind of course on this subject. It is one of the most revealing things that I have ever known, and I am sure you gentlemen have realized the same situation. None of us coming out of law school have any idea about money. I guess we are just supposed to work for free, and if the farmer brings in some eggs, etc., that is it. But today that system is certainly passé.

I urge each of you to attend the luncheon tomorrow noon and the banquet tomorrow evening. I do this sincerely, gentlemen, because tomorrow noon John D. Randall, the President of the American Bar Association, will speak. I had the privilege of hearing him last week at Kansas City. He does a very, very

fine job; he is a dedicated enthusiast in the American Bar activities and you will certainly enjoy him.

I recommend most highly the speaker for the banquet because he is a change. We have had some discussion among the members of the Bar about banquet speakers, and it has been suggested that we ought to endeavor to get a typical after-dinner speaker. Gentlemen, this year we have one, and I lay my reputation on the line that if you are not entertained, at least, by this banquet speaker, I will try to get somebody to help me to refund the cost of your ticket.

Mr. Chairman, I am indeed grateful to you and to the members of this House of Delegates for the splendid job you are doing. This is truly a bar association in action on a business basis. Many other states are contacting us relative to our form of organization and we have the opportunity to assist several of the states in organizing their associations similar to ours with the use of the House of Delegates. My thanks to each of you for your valuable service.

CHAIRMAN HUNTER: Thank you very much, President Tye.

There were, in your address, several specific suggestions about changes in the composition or name at least of some of the sections. Our rules, as I recall, require that any changes in the sections must be made a year in advance. I am wondering, with your approval, if it would be appropriate for the Chair to appoint a committee to report back to this House before we adjourn on Friday with some specific recommendations. It is probably too early to ask the House to consider them now without a committee giving some consideration to it.

PRESIDENT TYE: It was not my intention to do anything immediately, Dick, but I thought it was a subject that the House of Delegates might wish to consider now or in the future. Whatever the House does is entirely satisfactory to me.

CHAIRMAN HUNTER: Well, this is one of those things that takes a year at least before it can become effective. Certainly they have merit and ought to be considered. With that thought in mind I would like to appoint the following as members of a special committee to consider the specific proposals in regard to the change in sections which were made by the President.

Since these are your suggestions, Joe, and you know what happens to people who make suggestions, I would like to have you serve as chairman of that committee. I know you have noth-

ing else to do during the Bar convention, but if you would meet with this group at your convenience and at least submit to them your proposals so they can give us something before we adjourn, Joe Tye as chairman, with the following members: Mr. Flav Wright, Mr. Paul Martin, Mr. Ginsburg, and Mr. Dow. As soon as we adjourn for the noon recess, if that group would meet up here with Mr. Tye, you can arrange to meet sometime during today or tomorrow.

We will now have the report of the Secretary-Treasurer, George Turner.

### REPORT OF THE SECRETARY-TREASURER

George H. Turner

Mr. Chairman and Gentlemen of the House: The formal financial report will be made as usual to the Executive Council at its meeting either this afternoon or this evening, and a more detailed report than I am able to make here will be made at the opening session of the Assembly tomorrow.

I can tell you, however, that the books of the Association have been audited by the firm of Peat, Marwick, Mitchell & Company through their Lincoln office and found to be in good order. They found that this was probably the most expensive year we've had. Our receipts did not equal our expenditures. The principal reason for that is that we have had a very marked increase in the cost of publications. This year our *Law Review* cost was \$8,900. I think a good bit of that may be reduced during the next year, as I expect to edit the programs of several sections much closer than they have been. We have been publishing the discussions from the floor and things of of that kind which frequently have been of very little value. This year I have asked each section chairman to have his speakers submit a manuscript for publication. The remarks from the floor will of course be recorded and will go into the office record of the meeting, but I think most of you will agree that it very seldom merits full report in the proceedings, especially at the rate of \$10.50 a page.

Another item of expense which occurred this year and will not occur during the coming year is the cost of our Legislative Bill Digest service. The Executive Council felt that that service should be continued during the 1959 legislative session. I have heard reports both ways. Some lawyers say they don't use it at all and others say they couldn't practice without it. But some

consideration may be given to sending them only to those who request them. We send out roughly 2,000 each week and it is an expensive operation.

CHAIRMAN HUNTER: Usually we have some resolutions which are presented to the House of Delegates by members of the Association who are not members of the House. I don't know of any and the Secretary has none, but I understand there is at least one and possibly more in the hands of some of the delegates. In order to handle these properly, I will appoint a Resolutions Committee consisting of James Green as chairman, Kenneth Elson, and Robert Bulger. Usually that committee meets at lunch. Is that agreeable with you, Mr. Green?

MR. GREEN: Yes, sir.

CHAIRMAN HUNTER: Probably downstairs but you can get together with Jimmy Green.

That committee will report back to the House on any resolution which they may desire to have the House consider as the last item of business this afternoon.

I have been asked to call to your attention, particularly for those delegates who are attending their first session, that the House of Delegates actually has three sessions. We meet today all day and take care of the business at hand, which is largely the matter of these committee reports, and then we have a session on Friday afternoon at 4:00. That follows immediately after the Taxation Section in the same room. There are a number of matters just to keep this organization running that we have to handle at that time, so we do need a quorum and we would appreciate your being here. Normally that is not a very lengthy meeting. I said that last year and you may remember we had some minor skirmishes in regard to the Juvenile Court bill, but I trust that at least that particular matter will not come up again.

So if you will, please, all of you, plan to attend that session on Friday afternoon.

KENNETH H. ELSON, Grand Island: Mr. Chairman, I have a resolution. Do I submit it to the Secretary?

CHAIRMAN HUNTER: The resolution should be submitted to the Chairman of the Resolutions Committee, Mr. Green. He will be up here immediately at the recess of this morning's session, but if you want to get it to him now we could hand it to him. So if you have any resolutions hand them to him. This committee is expert in matters of draftsmanship, so they will also take care of that for you if you desire.



Going now to the committee reports, the first one is the report of the Committee on Administrative Agencies.

[The report of the Committee on Administrative Agencies follows.]

#### **Report of the Special Committee on Administrative Agencies**

A bill for an Administrative Procedures Act has had the approval of the Association for some time. When introduced in the 1957 Legislature, the bill which had been approved by the Association had added to it certain provisions for appellate review which the Committee had not considered. These were cited by the Governor as the reason for his veto of the bill.

Last year the Association approved a recommendation of this Committee "that a bill for an Administrative Procedures Act in the form of L.B. 133, omitting any provisions for review, be supported in the Legislature." Accordingly, such a bill, L.B. 362, was prepared and introduced by the Committee on Judiciary. It was supported by our Committee and by the Committee on Legislation and was passed and approved by the Governor.

One section of the bill was amended in certain respects not believed significant. The Workmen's Compensation Court is specifically excepted from the definition of "agencies." Some changes were made in the definition of "rule" to specifically exclude certain agency action not of general public concern. The Act has always been intended to use the term "rule" to refer only to action by an agency which has general rather than individual application, and it is believed that these changes have not materially affected the true meaning of the section involved.

It is thought desirable that the Committee be continued. Among subjects which might be worthy of study is the question of the adequacy of notice of proposed rule-making or other action by administrative agencies, and whether a publication analogous to the Federal Register would be feasible. These and other matters appear to be of sufficient consequence to warrant continued specific study by a committee of the Association.

*It is recommended that the Committee be continued for the consideration of such matters in the field of administrative law as the Committee may deem important.*

Tracy J. Peycke, *Chairman*  
J. Max Harding  
Barlow Nye  
Harry B. Otis

Ray C. Simmons  
Edson Smith  
Einar Viren

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: The next item of business is the report of the Committee on County Law Libraries.

[The report of the Committee on County Law Libraries follows.]

### **Report of the Committee on County Law Libraries**

Data accumulated from the various counties of the State by last year's Committee on County Law Libraries has been analyzed more completely and discloses the results shown below. Counties of over 100,000 population are able to meet their own needs without aid from the State Bar Association, but all other counties should be encouraged by every means available to the organized Bar to improve their law libraries.

A study of the reports from the counties leads to the following conclusions:

In even the smallest counties, both district and county courts are held, and the necessary minimum of law books should be available to these courts and to the attorneys practicing before them, if they are to perform their functions properly. As a basic minimum these counties should have available to these courts the Nebraska Statutes, the Nebraska Decisions, and up-to-date Digest and an up-to-date encyclopedia of the law.

There are no resident lawyers in some of the smallest counties. In many of the other counties, the county attorney does not maintain an office in the court house. But all of the counties have a County Court, which is always open. Unless a separate County Law Library is maintained in the county, the library in the office of the resident District Judge, if there is one, or in the office of the County Judge, should be regarded as the official County Law Library. In addition to the official County Law Library, the County should provide the County Attorney with such books as may be required for his work.

The basic County Law Library (listed above), should be expanded and maintained with funds provided from the County budget as rapidly as reasonably possible, with due regard to the population, the taxable valuation, and the tax burden of each county. The State Bar Association (in cooperation with local bar

associations) should continue its efforts to improve the local County Law Libraries, if the Bench and Bar are to perform their proper functions in our society. Some thought should be given to appropriate legislation to challenge the action of the County Boards which are reluctant to provide books needed by the courts in performing their public functions within their counties. Legislation similar to that requiring school boards to provide school libraries might be feasible.

The District Judge, the County Judge, the County Attorney and the County Bar should all have a part in the selection of books to be added to the basic County Law Library. The share of the budget for the library to be paid by the lawyers should be fixed by the County Bar Association. Contributions and loans of law books to such libraries should be encouraged.

The State Bar Association should solicit the assistance of the District Judges Association in the establishment and maintenance of County Law Libraries, and the District Judges should be given an important part (either by custom or by law) in the maintenance of the County Law Libraries within their districts. The District Judges could be requested (or required) to review County Law Libraries within their districts annually, and to make recommendations to the County Boards as to books which should be included in the libraries and the location and management thereof. Such recommendations would bear great weight with the County Boards.

The law books which some counties have already provided for their law libraries are a good guide as to what such libraries should contain. (See summary below.)

*We recommend that copies of this report be sent to the officers of the District Judges Association and to each District Judge, and to the County Attorney, County Judge and Chairman of the County Board of each of the counties in the State.*

*We further recommend that this committee should be continued; that requests for assistance in the establishment or maintenance of County Law Libraries received by the Secretary of the Association be referred to the chairman and the two nearest members of the committee, who shall arrange to meet with the persons requesting assistance, and, if necessary, with the County Board of the County involved, to consider the needs which may be disclosed.*

*We further recommend that this report be referred to the Committee on Legislation of the State Bar Association for consideration in proposing appropriate legislation relating to the es-*

*establishment and maintenance of County Law Libraries, to be sponsored by the Association in 1961.*

William H. Meier, *Chairman*  
H. D. Addison  
Robert L. Flory  
Daniel D. Jewell  
Russell E. Lovell  
George E. McNally  
Robert R. Moran  
Elmer M. Scheele

*Summary of Reports from the Counties*

*Counties under 4,000 population.* (Twelve of 17 counties reported.) Six reported no library. Six reported libraries, usually in the office of the County Judge. Amounts budgeted by the counties which maintained libraries ranged from \$200.00 to \$500.00 per year. In others the books were purchased through the budget allowed the County Judge and/or the County Attorney. The libraries ranged from 200 to 400 volumes. Selection of books is by the County Attorney, in consultation with the County Judge, the District Judge and the County Board. Encouragement from the State Bar Association is urged. Libraries include—Nebraska Statutes, Reports, an Encyclopedia of Law, Digest, A. L. R., Words & Phrases and U. S. Sup. Court Digest.

*Counties of 4,000 to 8,000 population.* (Nineteen of 23 counties reported.) Six reported no library. Thirteen reported libraries (some as separate libraries, some in County Judge's office, and some in County Attorney's office). Amounts budgeted by counties maintaining libraries ranged from \$100.00 to \$1,000.00 per year. Some libraries were supported through the County Judge's or County Attorney's budget. Largest library reported was 1700 volumes, supported by \$300.00 per year by the County plus \$50.00 per lawyer per year. Selection of books was made by County Judge with aid of local bar, or by County Attorneys and local bar. Several counties urged legislation requiring support of county law libraries annually from the County budget. Libraries included State Statutes and Reports, Digest, Encyclopedia set, Words & Phrases, Shepherd's Citator, Fisher's Inferior Court Practice, Whitford's Probate, U. S. Supreme Court Reports and U. S. Code, texts on negligence and personal injury.

*Counties of 8,000 to 10,000 population.* (Twelve out of 15 reported.) Three reported no libraries; 8 reported libraries. Many libraries in this group are apparently separate from the County Judge or County Attorney's libraries. Amounts budgeted by coun-

ties maintaining libraries range from \$100.00 to \$600.00 per year. Libraries range in size from 240 to 2300 volumes. Lawyers do not separately contribute to cost of maintenance. Several counties asked for help from the Association in setting up the libraries. In addition to books contained in libraries of smaller counties, these libraries also contain Nebraska Session Laws, State Tax Reporter, Restatement, Special Texts, including Belli and texts on automobile law, evidence, instructions to juries and A. L. R.

*Counties of 10,000 to 14,000 population.* (Twelve out of 16 reported.) Three reported no libraries. Eight reported libraries. Some of these libraries are still maintained in either the County Judge's or the County Attorney's office. Counties maintaining a library contribute \$400.00 to \$500.00 a year. The libraries contain from 700 to 1,000 volumes. (One county merely reported its library as "extensive.") Counties without libraries or with poor ones urge help from the State Bar to encourage County Boards to create and adequately maintain such libraries. These libraries contain, in addition to those listed from smaller counties, Am. Dec., A. S. R., Am. Repts., A. L. R., A. L. R. 2 and Eng. Dec. (The last mentioned are on loan from one of the local law offices.)

*Counties of 14,000 to 24,000 population.* (All of 13 counties reported.) Two have no county law libraries. Counties' annual budget allocations listed were from \$250.00 to \$750.00 per year. Lawyers in some counties are assessed \$10.00 to \$20.00 a year. In most counties the lawyers have voluntarily contributed books, and in one county lawyers have agreed to turn over all guardian ad litem fees in county tax and assistance foreclosures to the library fund. Size of libraries reported range from 750 to 3379 volumes and include, in addition to those listed for smaller counties, Attorney General's Opinions, Martindale Hubbel Directory, Lightner's Forms and Am. Jur. Legal Forms.

*Counties of 24,000 to 34,000 population.* (Five of 8 counties reported.) Only one had no county law library. These counties budgeted from \$400.00 to \$1,500.00 a year for law libraries. In addition, in some counties the lawyers are assessed as much as \$25.00 a year. In one county fees allowed for appointments by the court, up to \$50.00 per year, are assigned to the library fund. One library has 2500 volumes, one has 4300 volumes and one reports several thousand books. Some of these libraries contain U. S. Reports, U. S. Board of Tax Appeals Reports, criminal law and evidence texts, oil and gas texts and the entire West System in addition to those reported in smaller counties.

*Lancaster and Douglas Counties* have law libraries which are well known to the Bar generally, and information regarding them is not tabulated. The Bar of these counties apparently can handle their own problems without aid of the State Bar Association.

*Supplement to Committee Report*

At the request of President Tye, the Committee on County Law Libraries has endeavored to encourage participation by Nebraska lawyers in the "People-to-People Law Book Project" which has been undertaken as "a labor of love" by our own Chief Justice Simmons.

Several articles in the Bar Journal have explained the need for law books, particularly encyclopedias, texts and digests, for rebuilding law libraries destroyed by war and for creation of law libraries in the new nations of the world. Books contributed through the efforts of Justice Simmons have helped and will help to make secure "the rule of law" and stability where that is most needed in the world.

The Committee feels its first obligation is to bring about the establishment and maintenance of necessary and adequate law libraries in the several counties of Nebraska. Through the County Judges and Presidents of local bar associations the lawyers have been asked to report law books available as gifts to the Secretary of the Association. They will be used first to meet the needs of County Law Libraries which do not have the funds needed to purchase books, and all remaining books and complete or partial sets of books will be shipped overseas where they may be needed most.

Donors are asked to pack books for shipment, but arrangements will be made by the Committee or by Chief Justice Simmons for transportation.

The Committee believes this project to be worthy and recommends that it be continued in the future.

William H. Meier, *Chairman*

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: The next item of business is the report of the Committee on Medico-Legal Jurisprudence.

[The report of the Committee on Medico-Legal Jurisprudence follows.]

**Report of the Special Committee on Medico-Legal Jurisprudence**

Since the appointment of this Committee the members have held one meeting, and are engaged in a study of the legislation of other states dealing with this subject. No definite conclusions have as yet been reached by the Committee, but meetings are contemplated with a similar committee of the Nebraska State Medical Association, and it is expected that a comprehensive report may be made at the 1960 annual meeting.

*It is recommended that the special committee be continued.*

Earl M. Cline, *Chairman*  
George A. Healey  
Harold W. Kauffman  
F. M. Deutsch  
George L. DeLacy.

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: Going now to Item No. 8, the report of the Committee on Budget and Finance.

**Report of Committee on Budget and Finance**

This Committee has no published report. It is a committee that is constituted by the bylaws of the organization but otherwise has no portfolio or other assigned duties. It does have one function, and that is to determine that there has been an annual audit of the books of the Association, and that we already do know has been determined, as indicated by the Secretary's report, and a copy of that report has been made available to our Committee.

We find, as Mr. Turner has already indicated, that all the funds of the Association are duly accounted for in that audit report by Peat, Marwick, and Mitchell.

We have no recommendations, and if we did have it would be up to the Executive Council to spend the money anyway. So that shows what lack of portfolio we do have. As for the future, if prices do go up and dues don't go up, we may have some matters to consider.

CHAIRMAN HUNTER: Since the report of the Committee requires no action, it will be received and placed on file.

Item No. 9 is the report of the Committee on Cooperation with the American Law Institute.

[The report of the Committee on Cooperation with the American Law Institute follows.]

**Report of the Committee on Cooperation with the American  
Law Institute**

In accordance with the action of the House of Delegates, the Nebraska State Bar Association was represented at the annual meeting of the American Law Institute held in Washington, D. C., May 20 to 23, 1959, by the Chairman.

The extensive work of the Institute during the year and at the annual meeting does not permit a detailed report. The tort restatement in particular received major efforts during the past year. In addition, the model penal code received extensive consideration. The members of this Association are familiar with the handbooks published by the Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. This Committee was reorganized during the past year to permit better joint cooperation and action by equalizing the membership between the American Law Institute and the American Bar Association, and both groups are making real efforts to provide for continuity and extension of service in the field of continuing legal education. The contributions of the American Law Institute both in the field of jurisprudence and in the practical field of improvement and development of the law itself, as well as its contribution to continuing legal education of practicing attorneys, have been and continue to be of real service to the profession and the public. It is the opinion of your Committee that the work done by the American Law Institute justifies the continuing cooperation of the Nebraska State Bar Association and each of its individual members.

*Your Committee recommends that the Association be represented at the next annual meeting of the Institute and that the expenses of the delegates be paid by this Association.*

Hale McCown, *Chairman*  
Richard L. Berkheimer  
Lowell C. Davis  
Fred T. Hanson  
Daniel Stubbs

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: The next item is the report of the Committee on Crime and Delinquency Prevention.

[The report of the Committee on Crime and Delinquency Prevention follows.]



**Report of the Committee on Crime and Delinquency  
Prevention**

At its 57th annual meeting (1956) this Association adopted a report of the Committee on Crime and Delinquency Prevention which recommended that the Association go on record as favoring a state-wide probation system. As a result of the efforts of this Association, and other interested groups, the 1957 Legislature enacted L. B. 568, which establishes such a state-wide probation system.

This year your Committee decided to make a study of the functioning of this law. A form letter of inquiry was dispatched to each District Judge, County Judge and County Attorney in the State. These letters invited comment as to the working of the present system and suggestions as to desired changes. Replies were received from a goodly number of District Judges, County Judges and County Attorneys, which, we believe, represent a fair cross section of these groups, and their comments are, almost without exception, favorable.

A few County Attorneys and County Judges from the smaller counties state that their experience with the system has been so limited as to preclude intelligent comment. Three of the District Judges called attention to the fact that they had recently attended the annual meeting of their Association where the consensus of opinion had strongly favored the continuation of the present system. They point out that the rules have been revised to direct the furnishing of pre-sentence material from the Investigating Office to the Supervising Office when supervision is transferred from the Sentencing District to another district and, secondly, to provide for bank accounts, and corresponding bonding of the officer, where funds of those on supervision are handled by such officer.

In many cases the services of the probation officers have been extended to County Courts, and where this has not been done, several County Judges have earnestly requested this service. By agreement of the District Judges, the probation officers have been directed (Lancaster and Douglas Counties excepted) to serve as deputy parole officers for the supervision of institutional parolees.

It was suggested to the Committee that a uniform system of proceedings for the revocation of probation be established. This would seem to be well taken but is probably a project which could more properly be handled by the County Attorneys' Association. It was also suggested that there should be a closer liaison

with the State Employment Service in securing employment for probationers. One of the members of the Committee who has had experience in this matter reported that he had found the Employment Service very cooperative, at least in Omaha, and we feel that this is a matter which can be worked out by proper contact with the Employment Service.

In addition to the mail survey, certain members of the Committee made personal contact with a considerable number of County Sheriffs, Judges and District Probation Officers, and all expressed satisfaction with the working of the system. There was some expression that perhaps there was a tendency on the part of the new probation officers to be overly anxious to recommend probation. If true, this is a matter which will undoubtedly correct itself with experience and as case loads build up. It was also reported that no experienced probation officers were available for hiring and this will perhaps continue as long as the present salary scale remains in effect since, under the Nebraska system, starting pay is approximately \$4,000.00 per annum, while in the Federal system, the initial pay grade is in excess of \$5,900.00. While not recommended at this time for immediate action, it should be kept in mind that the problem of salary will have to be met within a relatively short time.

Considering the fact that this is an entirely new system, no doubt experience will establish the need of many desirable changes in the law, but present indications are that the enactment of a state-wide probation system was a progressive step, and the Nebraska State Bar Association may well take pride in the part which it played in securing the adoption of this legislation.

Consideration was also given to L. B. 127, enacted by the 1959 Legislature, which authorized separate juvenile courts in those counties with a population of 50,000 or more. The bill, as enacted, was prepared under the direction of the Judicial Council. This act permits the establishment of such courts only after the question is voted upon by the electors of the county. The question is placed upon the ballot by the petition method. The court may be abolished by the same procedure. As yet, no such courts have been established, so no estimate can be made as to their value. No further report is made at this time, but continuing study should be made as to the effect of this law upon the problem of juvenile delinquency. The advisability of making such courts available to less populous counties should also be considered.

Several other subjects were considered by the Committee, but due to lack of time to complete the study, no report is being

made thereon. The information obtained will, however, be made available to the Committee appointed for the succeeding year.

Robert A. Nelson, *Chairman*  
James F. Brogan  
Oscar L. Clarke, Jr.  
Walter G. Huber  
John H. Keriakedes  
Betty Peterson Sharp  
Gerald S. Vitamvas

[The report of the Committee was received and filed.]

CHAIRMAN HUNTER: The next item is the report of the Committee on Bar Examination Standards.

[The report of the Committee on Bar Examination Standards follows.]

**Report of the Special Committee on Bar Examination  
Standards**

This Committee was appointed to study the bar examination procedure in Nebraska and the method of selection of bar examiners in comparison with the standards adopted by the American Bar Association. This comparison has been made by the Committee and we report that such procedure and method of selection is in substantial compliance therewith.

*We recommend that the Committee be not continued.*

George A. Healey, *Chairman*  
E. D. Beech  
Harry Norval

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: The next item is the report of the Committee on American Citizenship.

[The report of the Committee on American Citizenship follows.]

**Report of the Committee on American Citizenship**

The Committee on American Citizenship functioned during the year 1958 to 1959 with an expanded membership which was established pursuant to recommendations made by the 1958 Committee. Its membership now reaches into each judicial district of the State and is so organized as to provide local guidance for the implementation of the recommended program to bring to high

school students throughout the State an accurate presentation of trial procedures as they are followed and carried out in our jurisdiction.

There is now in preparation for distribution a sample set of suggested fact statements, pleadings and other basic data for presentation of a full day's trial procedure program to high school students. When completed, this material will be placed in the hands of the Committee members from each judicial district who, with locally appointed sub-committeemen, will undertake to make the necessary arrangements for, and see to the presentation of, a simply presented "mock" trial in each district, with the thought and idea that the program will eventually be presented in each county of the State. The general procedure is to present these programs, through arrangement with local school officials, to members of high school senior classes, and possibly junior classes if facilities permit. The participation of local lawyers and judges as counsel, judicial officers and witnesses will lend authenticity to the presentation, and will provide a vehicle for acquainting our high school students with trial procedures, responsibility of witnesses, jurors and other officers of the court.

This material will be distributed in time to facilitate carrying out this program throughout most of the current school year, as opportunity presents itself, in the various judicial districts of the State.

Your Committee feels that its activities have been in furtherance of the report and recommendations of the 1958 Committee, and that the program should be continued along the same lines until it is firmly established throughout the State. *It therefore recommends that the 1960 Committee explore ways and means of expanding the program which has been commenced, and of assisting in its further establishment as an annual event throughout the State.*

*It is further recommended that the personnel of the 1960 Committee provide for some continuity in membership to facilitate the recommended continuation of the activities of the Committee.*

L. F. Otradovsky, *Chairman*  
Vance E. Leininger, *Vice-Chairman*  
Charles W. Baskins  
James T. Begley  
Robert H. Downing  
Leslie H. Noble  
Dewayne Wolf  
Frank A. Hebenstreit

T. Simpson Morton  
Robert C. Guenzel  
Edgar R. Geesaman  
Charles F. Adams  
Lawrence H. Yost  
Clarence C. Kunc  
Rodney R. Smith  
George H. Moyer  
Lawrence S. Dunmire  
James I. Shamberg  
E. W. Moehnert  
Frank J. Mattoon  
Charles E. McCarl  
W. L. Brennan  
W. E. Mumby  
Robert M. Harris  
Melvin Moss

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: Next will be the report of the Committee on Legislation.

[The report of the Committee on Legislation follows. The discussion which followed the formal report is also included in the Proceedings.]

#### **Report of the Committee on Legislation**

The Committee on Legislation is proud to report substantial success in connection with the legislative program of this Association at the last session of the State Legislature. With minor changes in verbiage in a few instances, every bill sponsored by this Association, save one, was enacted by the Legislature. The only proposal submitted by our Association which was rejected by the Legislature was the proposal for the Constitutional Amendment to be submitted to the electorate to adopt the Missouri plan for the selection of Judges. The Judiciary Committee of the Legislature refused to report out this measure. It was quite apparent from the hearing had on this bill that a very large portion of the membership of the State Bar Association itself was opposed to this proposal. It is quite evident that before this measure can be presented with any hope of success, it will be necessary to procure the approval and endorsement of a much large number of the Bar.

A listing of the legislation sponsored by this Association would serve no useful purpose. It suffices to say that in general

the Bar was circularized and request made for suggestions, which were in turn considered by the Committee, and those which the Committee felt to be meritorious were drafted as bills and sponsored. In addition, legislation proposed by the various sections and approved by the House of Delegates was likewise drafted as bills and sponsored by this Committee on behalf of the Association. The Committee must express its appreciation to the state senators individually and particularly to the members of the Judiciary Committee of the Legislature for the uniform courtesy with which the proposals of the Committee were received and for the interest shown in the legislation sponsored by this Association. The attitude displayed by the members of our State Legislature indicates clearly the high respect in which our Association is held.

Since the entire legislative program of the Association has been substantially adopted, there remains no unfinished business other than the issue relating to the manner of the selection of Judges. As to this, the Committee awaits further action on the part of the Association, and further instructions.

The Committee has also received a request from the appropriate committee of the American Bar Association, that we propose for enactment in the State of Nebraska the Uniform Commercial Code. This is a matter of great importance and covers many fields of the law. If there is felt to be any need in Nebraska for change in the commercial law field, it would be well for the appropriate sections and committees of the Association to begin an intensive study of this proposed act promptly. The period between now and the date of the next session of the Legislature would not be too long within which to make the study required for a full consideration of this Act and its applicability to the State of Nebraska.

In addition to the sponsorship of the legislative program of the Association, as above set forth, this Committee also, in many instances, entered an appearance opposing legislation sponsored by others and which was felt to be detrimental to the interests of the public. It must be admitted that our procedure in this respect is still not good. The legislative process is quite speedy; and the time elapsing between the date of notice of a bill and the date fixed for hearing thereon is usually quite short. In most instances less than a week elapsed between the time members of this Committee acquired notice of some proposed bill and the date of hearing thereon. Manifestly, this allowed an insufficient period of time within which to communicate with the proper officials of the Bar Association and obtain instructions thereon. The result has been that in the past some bills were adopted without this Association

making any recommendation, although the measures may have been objectionable; and in some few instances, individual members of the Committee, as individuals and not as representatives of the Committee, appeared and made presentation. It would be advisable for a proper procedure to be worked out in this regard.

The Committee must further observe that although the members of the Bar were circularized and requested to contact this Committee with suggestions as to proposed legislation, nevertheless in many instances lawyers who failed to communicate with the Committee, in turn induced individual Senators to sponsor various measures desired by such individuals. In many instances such measures had not been given any study and were not properly drafted. A good many of the proposals indicated that insufficient thought had been given thereto. In many instances these suggestions were made so late in the session that proper action could not be taken thereon. *We recommend that the members of this Association be again contacted and their particular attention challenged to the fact that if they have any proposals for remedial legislation, that the same should be referred to this Committee as promptly as possible.*

Finally, some comment must be made concerning the procedure of this Committee before the Legislature itself. Our efforts have for all practical purposes ended when the proposed legislation has been submitted to and heard by the appropriate committee of the Legislature. However, quite often that is not the end of the drafting process. In a great many instances questions arose on the floor after the bills had been reported by the committees, and amendments were offered from the floor by individual Senators. In some cases these amendments can quite drastically change the intent and effect of a bill. Once a proposal has been presented to the appropriate committee and taken under advisement by it, the effective work of this Committee ends. However, this should not be the case. The legislative program of this Association should be supported, sponsored and carried through to the final conclusion of the legislative process in the same manner as legislation sponsored by other interested parties is carried through. It is quite apparent that the sponsorship of legislation on behalf of this Association requires the professional assistance of those skilled in the legislative process and capable of devoting the necessary time to following through on proposed legislation. While the word "lobbyist" may have some undesirable connotations, the fact nevertheless remains that in many instances the services of a lobbyist are essential in the legislative process in order to advise individual Senators who may be unfamiliar with a bill, and in order to watch

the progress of the bill and guide it through its various stages toward enactment. Of course no member or members of the Committee are in position to do this. We believe that it would be well for the Association to consider the obtaining of a *Legislative Counsel* to serve under the Committee on Legislation in this capacity. Such a legislative counsel would not only be in a position to guide and follow through on particular legislation, but would also be in a position to promptly advise the Association of legislation which may be deemed inimical to the public welfare and which requires counteraction on the part of the Association. Since this would require the expenditure of funds, the Committee makes no definite recommendation thereon, but simply suggests the matter for consideration and such action as may be deemed appropriate.

*The Committee makes the following recommendations:*

- (a) That the Committee be continued.*
- (b) That the Committee be instructed to consider and report on proposed legislation to be sponsored by this Association before the next Legislature convenes.*
- (c) That all the members of this Association be requested to submit to this Committee suggestions for proposed legislation.*
- (d) That a study be made of the proposed Uniform Commercial Code with a view toward sponsoring the same for adoption by the next Legislature.*

Herman Ginsburg, *Chairman*  
James N. Ackerman  
Chauncey E. Barney  
Edwin Cassem  
Allen W. Field  
Bert Overcash  
R. Robert Perry  
Tracy J. Peycke  
L. R. Rickets  
David D. Tews

[The report of the Committee, with the amendments contained in the discussion which follows, was adopted.]

HERMAN GINSBURG: Mr. Chairman, Members of the House of Delegates: The report of the Committee on Legislation will be found on page 27 of the printed program, and of course I shall not repeat what is therein contained. However, I do think that you may be interested in some additional comments, which experience the Committee had in the past year indicates



may be enlightening to the membership of the House of Delegates.

In the first place I want to say that in this report we did not mention one item that was on the Committee's agenda and which the Committee and various members worked very diligently on, and that is the matter of judicial salaries. I did not know, or we did not know, just how much publicity might be inherent in these reports, and we therefore said nothing about it in the report. However, I do want the House to know that the Committee appeared in behalf of every bill that was up before the Legislature supporting increased salaries for the judiciary all the way from the municipal judges on up to the top, to the higher-ups, if I may use that phrase.

However, it leads me to another thing and that is this: Many of you are undoubtedly aware of the fact that there was a little hitch in the program. The Governor announced at one stage of the proceedings that he was going to veto all increased salary bills, and as a matter of fact did go so far, I believe, as to veto one. On behalf of the Committee we wrote a formal letter to the Governor asking him to please refrain from vetoing bills, and we set out reasons. Just how much effect that letter had I do not know, but I do know this, that the reason which the Governor gave later for revoking the position he had previously announced he would take set out the reasons that we had set forth in the letter, so we are going to take some credit for inducing the Governor to change his mind in connection with the stand he had taken on increased judicial salaries.

One additional subject that I started to mention was this: After we appeared before the committee, from then on the matter got out of our hands entirely. In other words, when the bill was presented before the committee, there were certain salary limitations set forth. The committee perhaps changed the amounts, and then when it got out of the committee and on the floor there were various bills and again there were questions of change. We had absolutely no way of contacting individual Senators and getting in touch with Senators, giving reasons why X dollars should be used instead of Y dollars, etc. In other words, our activities ended when the bills were presented to the appropriate committee and that was as far as we could go.

That is a subject that we refer to in our report. We feel that we are only doing half the job, and experience has demonstrated that that is all we can accomplish when we are limited to appearing before the legislative committees. Then we have no further way of going on, using the findings and lobbying.

With reference to the bill that there has been some reference to, the so-called Missouri Plan, I want to say this, and perhaps I should keep my nose out of it, but I did get reactions from members of the Bar and I want the House of Delegates to know that the membership of the Bar was far, far from being sold on the Missouri Plan itself, and that is the reason why it was not reported out. I know in my own Committee, and I am breaching no trust when I say this, in our own Committee there were members who said absolutely they would not be for it, that they would be opposed, and I have had numerous members of the Bar tell me the same thing, and that applies to the members of the Bar who are in the Legislature itself.

So a job of selling has got to be done, and may I say for the benefit of the people from Douglas County that the consensus of opinion around the State seems to be that we don't have any problem. It is only the metropolitan centers that have problems, so why should we get ourselves involved and blah, blah, blah! I just throw that out as free gratis information.

Another subject that I feel we should mention is this, and I don't know the answer: We have difficulty on occasions: bills were presented before the Legislature by pressure groups or by pressuring individuals that absolutely are contrary to the best interests of the State. Our procedure of reporting back to the Executive Committee, getting the Executive Committee to meet and getting authority for someone to appear in opposition just flops miserably. As a matter of fact, ordinarily the time that elapses between the date of the fixing of a hearing on a bill, or at least the date that we know of it, and the date that the bill is actually to be heard is anywhere from three to five days, and you can see how impossible it is to follow our procedure.

I might say this, and perhaps I should be chastised for it: I appeared on three or four occasions against various bills, one that would have changed our divorce procedure, for example, to adopt the Illinois or something similar to the Illinois code where you didn't even file a complaint or file a precipe—I won't go into all the details. I did, however, say I was appearing for myself. I challenge your attention to the fact and I still feel that something should be done with reference to our procedure on opposition to bills.

Another subject I want to call to your attention is perhaps some lack of coordination between our Committee and our Association and the Judicial Council. I don't know what the experience of the Judicial Council has been, but I receive calls

as Chairman of the Committee on Legislation of the Bar Association saying, "What are you going to do about bill so-and-so?"

I remember particularly the one dealing with fees to be paid for filing cases in the District Court. I said, "Well, I don't know anything about it."

Well, the Senators, at least some of them, or a considerable number of them, have the opinion that anything that was on file or anything presented that had anything to do with law or legal procedure was Bar Association. Now I don't for a minute mean to indicate that we should have any control or attempt to exercise any control over the Judicial Council and their programs, but I do think some procedure should be instituted whereby we will have some liaison with the Judicial Council. I would be willing to say that I would be just willing *carte blanche* to go up and say to the Legislature whenever a bill is introduced on behalf of the Judicial Council that we, too, would like to know something about it so we can cooperate on the thing and be able to answer when inquiries are made.

You will notice that in our report we said something about a legislative counsel. We used that phrase advisedly so that we wouldn't use the word "lobbyist," which seems to have some unjust connotation. I noticed in the Lincoln paper, however, recently that they did say we wanted a lobbyist. Frankly, I don't know how we can go about it; I am not familiar enough with our Constitution and Bylaws. I realize that it is a matter of expense. I do feel, as I said a moment ago, only one-half of our job is being done, and the other part will require professional service, something to be paid for. There are, I know, many men who are active during the legislative session appearing for various industries, etc., and perhaps some arrangements could be made.

I remember as an illustration that I got a call one noon, about 12:30 from a man who was representing some insurance people before the Legislature, telling me that some change was being made or was being contemplated being made from the floor on some bill that we were sponsoring. I forget what the particular bill was at this moment. I said, "What do I do?" I didn't know. It was impossible for the members of the Legislative Committee to get in touch with various Senators and get in touch with the people who were planning amendments, etc. In this particular instance I used the good graces of the man who called me and we got the job done.

There is one other recommendation in our report that I hope will not be passed on cursorily. Either vote it up or vote it down,

but vote it with full knowledge of what you are doing, and that is with reference to the Uniform Commercial Code. I want to say that it is sponsored by the National Conference of Commissioners of Uniform State Laws and it has been approved by the American Bar Association. Our own feeling is that it is a worthy subject, but I want you to know that it covers the field of sales, the field of securities transactions, bulk sales, chattel mortgages—it covers a vast field—and we shouldn't just say, "Yes, we are for it."

What I would like to suggest, if it could be done—and the reason I make this suggestion is that I notice they have done it in other states: five or six states have already adopted the Uniform Act and I think it is going to be presented or is being worked on in a dozen or fourteen more—I would like to see that we proceed with this in the same manner that we did with reference to our corporations, and that is to have a special committee on revision of corporation laws. I may not have the name exactly right. I would like to see, if we are in favor of the presentation of the subject for enactment in our Legislature, that a special committee be appointed to work during this next two years and go through the Uniform Law Act, see how it applies to Nebraska laws, how much change it makes, and what changes we think should be desirable, and then present a final draft to the Committee on Legislation for final sponsorship in the same manner as the corporation proposal was handled.

With those remarks, Mr. Chairman, I move the adoption of the report of the Committee on Legislation.

CHAIRMAN HUNTER: Is there a second? [The motion was seconded.]

JOHN J. WILSON, Lincoln: I would like to change the last line of the recommendation, instead of saying "adoption by the next Legislature," "adoption by some future Legislature."

The reason for that, Herman, in 1955 they came up with the Rules of the Road Bill and they thought they had it in some shape and it was physically impossible for a good job to be done and presented to the 1955 Legislature. If this is ready and they decide to pass it and it is ready to be done at the next Legislature, fine, but I think we might be tying ourselves down because I think it will take at least a year of some constant work to get this bill in shape with our laws because I have been working on some for ten years myself and I know a little what it is about. I would hate to tie us down to the next Legislature.

MR. GINSBURG: I agree with what Mr. Wilson is saying. The amendment is satisfactory to the Committee with one thought. One reason why we said "next" is that we didn't want the thing to get buried. If we said, "Well, sometime in the future," it would be just a matter that would be put away. It is a matter that will take some substantial amount of work. Therefore, I am perfectly willing to accept the amendment offered by Mr. Wilson.

CHAIRMAN HUNTER: There is an amendment to change subparagraph (d) of the recommendations on page 29 by striking the words in the last line "the next" and substituting the words "some future" so that subparagraph (d) reads: "That a study be made of the proposed Uniform Commercial Code with a view toward sponsoring the same for adoption by some future Legislature."

Is there a second to the amendment?

HARRY A. SPENCER, Lincoln: I second the amendment.

CHAIRMAN HUNTER: Any discussion on the amendment?

DAVID DOW, Lincoln: I am not sure what parliamentary procedure is with respect to this particular motion but it seems to me that it might be even wiser, in place of adopting the amendment just proposed by Mr. Wilson, that you strike the entire clause regarding sponsoring, etc., because it seems to me that this adopts a position that this particular body proposes the sponsoring of this particular legislation, and I am not sure that anyone here, certainly not I, is in a position to make such a recommendation to the Committee, to the Bar, or to the State of Nebraska.

I call your attention to the fact that Mr. Ginsburg is quite right that several states have adopted the Uniform Commercial Code, but they have adopted two different Uniform Commercial Codes, and that the State of New York after lengthy consideration of well over four years came to the conclusion that they would not adopt it.

Therefore I would like to propose that the words following "Code" be deleted, if I can do this in a parliamentary way.

CHAIRMAN HUNTER: Would you state that motion again so we can be certain that we get it. You are asking to delete what portion of it?

MR. DOW: I am asking to delete completely so that the recommendation will read: "That a study be made of the proposed Uniform Commercial Code" — period.

CHAIRMAN HUNTER: Is there a second to that substitute motion? [The motion was seconded.]

RALPH E. SVOBODA: Mr. Chairman, I think that the printed report is in opposition to what Mr. Ginsburg himself has recommended during his presentation. Am I right, Herman? Did you recommend that a *special* committee be appointed on this Uniform Code, as was done on the Model Corporation Law? We are going to have the parliamentary procedure all snarled up, but I will make a substitute motion that (d) be changed that a special committee on the Uniform Commercial Code be appointed to study and report back to the Association.

JAMES F. GREEN, Omaha: I second the motion.

CHAIRMAN HUNTER: There is a substitute motion that has been made to change subparagraph (d) of the recommendations to read that a special committee of the Bar Association be appointed to study the Uniform Commercial Code and report back to the Association. Is there any discussion on the substitute motion? As many as favor the substitute motion say "aye"; opposed "no." The substitute motion has been adopted.

MR. SVOBODA: I notice in Herman's recommendations he did not include two prime subjects, one of which is touched on at some length in the report proper but with no recommendation; and the other, which has always been of primary concern to me, where he says he would like to have his Committee's hands upheld or his powers enlarged somewhat because of these situations where things come up on twenty-four or forty-eight hours' notice. I think we ought to look into this subject of having a legislative counsel or lobbyist, if you will. I have been around the Legislature and I think Herman has done a magnificent job down there, but he always has to apologize to the committee and say, "I am not the Association; I am not the Judicial Council; I am appearing here for myself."

Well, actually, members of that Legislature expect that the Bar Association will have somebody who speaks with at least some authority to their committee. They need help, and they need it badly. I think that the recommendations should be expanded to include, first, some steps to be taken toward the appointment of a legislative counsel, somebody who will be able to function for the Association after the legislative committee has met; and, second, let's at least give the Committee on Legislation the power to speak for the *Committee on Legislation* in these crisis matters that come up in twenty-four or forty-eight hours without being able to consult the Judicial Council, without

being able to get in touch with the officers of the Association, but give them some vestige of authority so that it won't be like Mr. Ginsburg just standing there with his bare face hanging out.

MR. DOW: May I ask a question? Wasn't there a special committee of this House appointed at one of the recent meetings to consider this very problem?

HARRY A. SPENCER: That action was taken last year.

MR. DOW: I don't know the nature of that action at the moment. You say there was action taken?

MR. SPENCER: The House of Delegates approved it. I don't know whether any committee was ever appointed.

MR. GINSBURG: Mr. Chairman, I don't know how often I may be permitted to speak, but I would like to mention two things.

First, my understanding of the action that was taken last year was that we were to report to the Executive Council of the Association or the President and they, in turn, notify us. That just doesn't work. Experience has demonstrated it is impossible. I think Mr. Tye will recall that I got in touch with him several times and he wrote me back and said it just wasn't possible to get action. That is the case where experience has demonstrated that it doesn't work.

Secondly, with reference to matters where I have just been taken to task by Mr. Svoboda, I didn't include them as recommendations because I didn't know myself what to do. I was hopeful that somebody from the floor would take the bait and would make some motion in this regard. I didn't feel it was proper that they be included in the report of the Committee as a recommendation of the Committee.

CHAIRMAN HUNTER: For the information of the House, Article VI of the Bylaws of the Association provides as follows:

"Section 1. No member, committee, or section shall assume to represent the Association in any court or in any controverted procedure before any other tribunal unless authorized so to do by the Executive Council, or in the case of emergency, by the President."

I assume that it would take an amendment of the Bylaws to make any change, which can be done by this House.

We have an amendment proposed by Mr. Svoboda, if I got this correctly, that some steps be taken for the appointment of legislative counsel to represent the Association in continuing matters before the Nebraska Legislature and that some further steps

be taken to give this Legislative Committee power to speak for the Association before the Legislature in emergency situations.

MR. DOW: For the Association or for the Committee?

MR. SVOBODA: For the Committee.

CHAIRMAN HUNTER: For the Committee.

As I interpret the motion, Mr. Svoboda, it would require an amendment of the Bylaws to make it effective. The Bylaws do not specifically speak of representation before the Legislature. It talks of "before any court or other tribunal." I think it has always been interpreted, however, and I think Mr. Ginsburg called this to our attention before, that he feels at least that that has bound the Committee in the past.

MR. SVOBODA: I had in mind, Mr. Chairman, that this Association will meet once more before the next legislative session. I thought that in the intervening time some study should be made, No. 1, whether or not we should try to get a legislative counsel for the Legislature; I think the need is vital and very apparent; and then also this other topic of whether or not we should uphold the arms of the Committee on Legislation so that the chairman or committeemen of that Committee could at least speak with the authority of the Committee on Legislation without necessarily binding the Association or the Judicial Council or the Executive Council in these emergency situations that arise before the Legislature. My motion was merely to expand the recommendations of the Committee in those two respects.

CHAIRMAN HUNTER: Without presuming to change the content at all, I am wondering if it might be proper that your motion as to the appointment of legislative counsel be in the form of a recommendation to the Executive Council of the Association, since they are the only ones that have power to spend money or actually to hire a counsel.

MR. SVOBODA: I will adopt that suggestion.

CHAIRMAN HUNTER: We have a motion that a recommendation of the House of Delegates be made to the Executive Council of the Bar Association concerning the appointment of legislative counsel to represent the Association in matters before the Legislature. Is there a second?

HARRY A. SPENCER: I rise to a point of order. As I understand it, Mr. Svoboda's recommendation was that a committee be appointed to study the advisability. Am I right on that?

MR. SVOBODA: I adopted the Chairman's suggestion. He said it might be better to refer it to the Executive Council.



CHAIRMAN HUNTER: I am separating this and considering only for a moment the question of legislative counsel, since that requires an expenditure by the Executive Council.

MR. GINSBURG: I'll second that motion.

CHAIRMAN HUNTER: As many as favor the recommendation to the Executive Council say "aye"; opposed "no." The motion is adopted.

That is in the form of an amendment to the Committee report.

Now, Mr. Svoboda, do you care to restate the second portion of that amendment?

MR. SVOBODA: Let me restate it this way, Mr. Chairman: that the recommendation of the Committee on Legislation be expanded to include a recommendation that the Committee on Legislation be armed with more authority in emergency situations arising within the Legislature whereby that Committee would at least have the authority to speak as a Committee on Legislation of the Bar Association in emergency situations which cannot be met by convening the Executive Council or the officers of the Association or the Association itself or the House of Delegates.

MILTON R. ABRAHAMS, Omaha: Mr. Chairman, before we give further consideration to that motion it might be very helpful to some of us more ignorant members of the House of Delegates to know precisely what the authority of the Committee is in that direction. I had the impression that the Committee did have the authority which Mr. Svoboda is seeking to obtain for it.

CHAIRMAN HUNTER: The only authority that I know of is contained in the Bylaws which I read a moment ago, relating to the fact that no member or committee or section shall assume to represent the Association except by the Executive Council, or in the case of emergency, by the President of the Association.

I think this is the thing that they are objecting to.

MR. ABRAHAMS: What is the status of the Committee when it does appear before the Legislature and what rights or authority does it have to speak?

CHAIRMAN HUNTER: Mr. Ginsburg, will you answer that?

MR. GINSBURG: I think Mr. Abrahams has touched on a matter that perhaps should be a little more elucidated. Our Committee appears only when authorized by this House, and we present legislation that has been approved by this House, or which has been cleared. For example, the last session of this House said that we could circularize the Bar and then get recom-

mendations for legislation. Then we reported that back to the President, etc.

In other words, we have been so far appearing only in an affirmative position when we present bills that are recommended by the House or by any of the sections, which go through the House, of course.

The problem comes up in the negative aspect. Somebody, as I mentioned earlier, gets up and presents a bill before the Legislature to change our code of procedure. That actually happened. We got notice of that I think two days or so before the bill was set for hearing, not to exceed three days before the bill was set for hearing. I had no authority, no member of our Committee had any authority, to get up and say to the Legislature, "We are opposed to this."

The only thing we could do, the way I understand it and the way we acted, was that I would write Mr. Tye a letter and say "Mr. Tye, here is a matter which I think deserves some consideration." I remember in one or two instances he wrote back and said he couldn't get the Executive Council together within the time and that was all there was to it, to use my own discretion, and I went up and appeared as an *individual*.

Now does that answer your question?

MR. ABRAHAMS: Partly, yes, partly.

JOSEPH J. VINARDI, Omaha: If I understand the Bylaws, you could get authority to speak for the Association from the President by telephone. Am I wrong?

MR. GINSBURG: I hadn't read that Bylaw before. I understand there is something in there about authority from the President. I don't know if the President would choose—you see the point was, I assumed that we had to get it from the Executive Council. I think Mr. Tye may have, too, I don't know, because in the instance where it came up that was referred to. Whether the President and I or the Committee fell down on the job in that regard, I do not know. All I know is that my understanding of what was done a year ago was that we had to get the approval of the Executive Council or the House of Delegates, and then act that way. It may have been that the matter could have been handled by Mr. Tye, the President, if he wanted to do so and maybe that would have been sufficient, I don't know.

MR. VINARDI: I agree with Mr. Abrahams that perhaps this is much ado about nothing. The Bylaws as they now stand give the President authority to authorize the Committee to speak

for the Bar Association, and it doesn't say in writing. I think the chairman of this Committee, Mr. Ginsburg, could call the President and say, "This is coming up in two days. What is your recommendation?" and abide by it and be in accordance with the Bylaws now in existence. The safeguard is there that it be cleared through the President of the Association.

CHAIRMAN HUNTER: There is no question in my mind but what any change such as is now before the House does contemplate a change in the Bylaws.

MR. VINARDI: That last motion would be out of order for that reason.

CHAIRMAN HUNTER: I think there is a question about the interpretation of this Section 1 in Article VI as to whether or not it relates to matters of this kind. What I am thinking of is this: You have the situation where any member or committee represents or assumes to represent the Association in a court, and also you have the further question of policy considerations in representation before the Legislature, which may or may not have been contemplated by the framers of this Bylaw. However, in other sections of the Bylaws and the rules of the Association it does provide that no section or committee can take any action by resolution or otherwise which is binding on the Association until it has been approved by the House of Delegates, which may be a more stringent rule than the rule I just read in Section 6.

There is, as I recall, no second to your motion, Mr. Svoboda. Again it is not the office of the Chair to be suggesting a number of these motions, but since this question has come up about the interpretation of the Bylaws, I am wondering if it would be appropriate to appoint a special committee to consider a revision of the Bylaws to correct this situation if it needs correcting.

MR. SVOBODA: I assent, Mr. Chairman, to that suggestion. I think we at least ought to accomplish this: that we should not leave our President in any doubt as to his powers under that Bylaw. If this House did no more than to formally move and adopt a motion to the effect that it is the sense of this House of Delegates that the President has such powers, I think we would be making progress and would be helping Mr. Ginsburg's committee.

I move that such a special committee be appointed.

CHAIRMAN HUNTER: There is a motion that the Chair appoint a special committee to consider a revision of the Bylaws. Is there a second to that motion? [The motion was seconded.]

All in favor of the motion signify by saying "aye"; opposed, the same sign. Before we recess I will appoint such a committee.

Now frankly I think I have lost track of just where we are with all these substitute motions and amendments, but to clear up as best I can, and I may have left a few amendments dangling out there some place, but there is a motion to adopt the report of the Committee on Legislation as it has been amended by the motion to appoint a special committee of the Bar Association to make a study of the Uniform Commercial Code and as amended by the motion to refer to the Executive Council the matter of employment of legislative counsel.

Are you ready for the question? Is there any discussion on the main motion as amended?

QUESTION: How about this last motion? Was that an amendment also to the report?

CHAIRMAN HUNTER: You are correct. It is as amended in three ways, then, the third which you have just stated is the appointment of a special committee by the Chairman to consider revision of the Bylaws.

MR. DOW: May I ask a question? I am in doubt as to the intent of the second recommendation (b), "That the Committee be instructed to consider and report on proposed legislation to be sponsored by this Association before the next Legislature convenes." Report to whom?

CHAIRMAN HUNTER: Mr. Ginsburg, will you comment on that?

MR. GINSBURG: Report to this House. That is the way we are supposed to do. That is my understanding of the way we operate. We get these suggestions, we work them over, then we report to the House and get its approval.

MR. DOW: Thank you.

CHAIRMAN HUNTER: Do you all understand the main motion as it has been amended and substituted? Assuming that you do, all in favor of the motion as amended say "aye"; opposed, "no." The motion is adopted.

C. M. PIERSON, Lincoln: Mr. Chairman, I don't know how to get this subject before the House of Delegates but I am sure that it must be discussed. I would like to open it up, and that is the question of our Session Laws, whether we are to go ahead and do something about it as a House of Delegates, make recommendations with reference to subsidies or what have you. I think

there are many of these people that are sure that we have to have this job done. I would like in some manner to get it open. Maybe this is the time inasmuch as we have the time.

CHAIRMAN HUNTER: There is a suggestion that the House of Delegates consider the problem of procuring the Session Laws this year or in the future, I assume. It is open to discussion if any of the members have anything specific to propose.

MR. SVOBODA: Did I understand Mr. Turner to say that we will get the Session Laws of this session?

SECRETARY TURNER: Possibly by the end of this month.

MR. SVOBODA: There probably is nothing much we can do about that problem.

SECRETARY TURNER: I think I am correct in this, and Jack Wilson can correct me if I am not, but I believe that the Legislative Council, during the interim between now and the '61 session, is to give particular study to the method of expediting the distribution of Session Laws. Is that right, Jack?

MR. WILSON: I think that is correct.

SECRETARY TURNER: And they were going to ask this Association through its Executive Council to meet with them. Am I right on that?

MR. WILSON: Yes.

SECRETARY TURNER: You get into a terrific problem there. As I told you earlier, I have had all kinds of suggestions. Somebody suggested that my office mimeograph all the laws and send them out, without realizing that there are bills 60 and 70 pages long, 2,000 copies.

Then you have to bear in mind that not all the members of the Bar want them. Those who are seriously practicing law, of course they do. But as I told you, the printer made me a proposition to turn out 500 copies at \$12.00 a copy. Of course I couldn't feel justified in spending \$6,000 of the Association's money without knowing that 500 members of the Bar wanted them.

Then you have the further problem to consider: Is it the job of a Bar Association to provide a lawyer with his library?—which is about what it amounts to.

But I think in the interim study by the Legislative Council they are going to try to devise some quick way of getting the laws into the hands of those lawyers who want them rapidly. It wasn't generally known by the lawyers that these slip law

volumes are available. I carried a notice of it in one of the weekly Bill Digests, but there again they didn't all read that.

The Legislature itself can furnish them to you I think much cheaper than you can get any private printer to do it because those slip laws are set and printed from the same type that is later used in the Session Laws.

MR. SVOBODA: What is the charge?

SECRETARY TURNER: \$10.00.

MR. SVOBODA: The only difficulty I find with that is there is no index.

SECRETARY TURNER: There is an index now available, Ralph, by bill number, not by page, and the finished, laced-up group of slip laws carries that index at the beginning and the bills are arranged in that volume in numerical order, so it is better than nothing. It isn't perfect.

I think in the next year and a half, between now and the next session, somebody is going to come up with a way to help solve the problem. I don't think you will ever get a private printer again to undertake an unofficial publication. The size of the Session Laws is growing every session—as I told you, 2,000 pages this year. If he were to charge you what he would have to have to come out on it, I think the number of orders would diminish to the point where it would again be a losing venture.

CHAIRMAN HUNTER: I will appoint the following as the special committee to consider the revision of the Bylaws: Ralph Svoboda, Chauncey Barney, and Milton Abrahams.

If at all possible we would like to have that Committee report back to the House of Delegates at its session on Friday so if there are any proposed revisions they can be made so they are effective next year. Since the Legislature is two years away we have got some time on that.

Rather than get into any more of these reports at this time, will the various special committees, the Committee on Resolutions, President Tye's committee to consider the change in the Sections and the Special Committee on Bylaw Revisions meet up here so you can make your arrangements as to your meetings.

JAMES F. GREEN, Omaha: I would like some information, Mr. Chairman, if you please, in the form of a parliamentary inquiry. If you will turn to your rules on page 184 of the "Directory of Attorneys," while searching out Mr. Ginsburg's question a few moments ago I ran into this Section 4 on that page which

I now read to you, and I quote: "Every resolution presented to the Association shall be in writing. Unless a resolution presented to the Association is of a formal character, or presented by a committee, such resolution shall be referred by the Chair on presentation, without debate, to the Executive Council for consideration and report."

My question is: Is there a function for a Resolutions Committee to perform?

CHAIRMAN HUNTER: I had the same question this morning, Mr. Green, but I turned to another page, page 186, which says: "The Chairman of the House of Delegates shall, prior to the annual meeting, appoint a hearing committee, to hear resolutions of members of the Association who are not members of the House of Delegates. The committee shall then report to the House of Delegates at its annual meeting."

I think there is a conflict again in the Bylaws on this. We may have to adopt a procedure at the end of our meeting that we just amend the Bylaws to conform to the proceedings, but at least that is the way we have run in the past.

If there is nothing further, we are adjourned until 1:30 in this same room.

**WEDNESDAY AFTERNOON SESSION**

**October 7, 1959**

The Wednesday afternoon session of the House of Delegates was called to order by Chairman Hunter at 1:45 o'clock.

CHAIRMAN HUNTER: We omitted No. 12 on the reports this morning, which is the report of the Committee on Atomic Energy Law. Mr. William W. Spear, Chairman.

**Report of Committee on Atomic Energy Law**

Gentlemen, your Committee on Atomic Energy Law met with Dr. Maurice Fraser of Lincoln, Chairman of a Committee of Radiology, and discussed L.B. 365, which was the bill based on the 1958 Nebraska Bar Association Committee Report. Briefly, this bill provided that it was the policy of the State to cooperate with the Federal Government in the field of atomic energy, and called for the appointment of a Coordinator of Atomic Development Activities who would be an officer of one of the State agencies.

It was the conclusion of your Committee, after meeting with Dr. Fraser's group, that the bill should be amended to provide that the coordinator should be the State Director of Health, since the regulation of atomic energy seemed to be primarily a public health problem.

The bill was accordingly amended in the legislative committee. However, the Governor indicated that he preferred the bill in its original form, and an amendment from the floor was adopted providing that the Governor shall designate an officer of one of the departments or agencies of the State to serve as advisor to the Governor with respect to atomic energy developments, and as coordinator of the development and regulatory activities of the State relating to atomic energy. The bill was enacted into law in substantially its original form.

Since the development of atomic energy is proceeding rapidly and should be followed carefully, it is recommended that the Committee be continued for the purpose of following such development and making appropriate recommendations to the Nebraska State Bar Association as the need may appear.

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: Next is the report of the Committee on Legal Aid.

[The report of the Committee on Legal Aid follows.]



**Report of the Committee on Legal Aid**

Your Committee has continued its investigation of the status of legal aid services in Nebraska, and respectfully submits the following report:

Legal aid clinics in Omaha, Lincoln, Sidney and Scottsbluff continued to function during the past year in Nebraska.

Creighton University College of Law, the Omaha Bar Association and the Omaha Barrister's Club jointly sponsored the Omaha Legal Aid Clinic.

The Lincoln Legal Aid Clinic is jointly sponsored by the Nebraska University College of Law, the Lincoln Bar Association and the Lincoln Barrister's Club. During the past year the Lincoln Legal Aid Clinic has been accepted as a Community Chest agency, and a part of the expenses of the operation of this Clinic has been provided for in the 1960 budget of the Chest. Consideration is being given to the advisability of revising and bringing up to date the by-laws of this organization.

The Legal Aid Clinic in Sidney, Nebraska, continued to operate in affiliation with the County Bar Association. The work of this clinic is handled by members of the County Bar on a volunteer basis.

The Scottsbluff Bar Association Legal Aid Clinic has handled 35 cases from April 1, 1958, to May 1, 1959. At the present time this legal aid clinic is not active. However, consideration is being given to its reorganization.

Your committee is of the opinion that the above legal aid clinics are operating satisfactorily. Local bar associations are urged to establish local legal aid services so that no one in Nebraska may go without the needed services of an attorney.

William D. Blue, *Chairman*  
Winsor C. Moore  
Marvin L. Holscher  
Virgil Haggart, Jr.  
John E. Wenstrand  
Jack Knicely

[The report of the Committee was received and filed.]

CHAIRMAN HUNTER: The next item is the report of the Committee on Unauthorized Practice.

[The report of the Committee follows.]

**Report of the Committee on the Unauthorized Practice of Law**

Practice of law by unauthorized persons and corporations continues unabated in many parts of Nebraska. In many cases lawyers unwittingly permit their knowledge, ability and services to be promoted and exploited by lay agencies. Failure to recognize unauthorized practice, or, upon recognizing its existence, to investigate and report the facts constantly hampers the efforts of this Committee.

The primary function of this Committee is to protect the public against the dangers of unauthorized practice. When the public witnesses lawyers lending their services to lay agencies to fulfill the schemes and publicized services of those agencies, it forms doubts as to the true purpose of restrictions upon practice of law.

To protect against extensive damage to the public by continued law activities of unauthorized practitioners requires constant vigilance of all the bar. Prompt reporting with names, facts, dates and specific instances, is essential to this Committee's success. Further protection of the public against dangers of unauthorized practice requires an informed public—each member of the Bar must scrupulously avoid aiding and abetting unauthorized agencies; each lawyer must seize upon every opportunity to alert the public to the dangers of unauthorized practice and to explain the services of the Bar, and the necessity of seeking legal services only from lawyers.

Too often the Committee receives only general complaints, i.e.: What are you doing about adjusters, realtors, accountants, life underwriters and many other groups? The Committee's answer must always be that we can do nothing without citation of specific instances of unauthorized practice by identified persons.

Finally, your Committee is convinced the most effective force against unauthorized practice is an able, alert, intelligent, informed Bar, performing services promptly and well, at reasonable fees. The admissions and continuing education committees perform admirable services to sustain the quality of membership and availability of current information. The balance depends upon the individual members of the Bar.

*Simulated Process.* Simulated process again has constituted the major sphere of activity of the Committee. Recommended legislation expressly outlawing its use was not introduced in the 1959 Nebraska Legislature. Such legislation should be sponsored through passage and enforcement at the next legislative session.

The Association Executive Council suggested the Committee notify each agency reported using simulated process of the dangers of its use. Although some belligerence and grudging acceptance were noted, on the whole response has been favorable. Several agencies advised they had eliminated objectionable forms, and some submitted forms for comment. The Committee noted the Nebraska Collectors Association cooperated enthusiastically, and no member of that Association was reported for any flagrant use of simulated process.

Despite apparent progress in this field, continued watchfulness is required. Simulated process constitutes one of the most insidious devices to frighten the uninformed, and is a flagrant affront to the dignity and authority of the courts and the Bar.

*Realtors.* Outstate lawyers continue to find realtors the most common source of complaint. The Committee knows of no action to implement the recommendation to the 1958 House of Delegates that the Bar form a joint commission with realtors to explore the respective areas of responsibility of the two groups, and to define the principles of lawyers and realtors within the scope of the National Conference report.

The rural and small-city lawyer notes the realtor frequently leads his principals into legal traps, and realtor activities encroach upon the lawyer's "bread-and-butter" practice. Metropolitan lawyers apparently experience less frequent instances of legal entanglement through inept realtors, and also depend less upon real estate practice. These two circumstances contribute to disagreement within the Bar as to necessity of action in this field.

Further contributing to confusion is conflict in definition of practice of law among courts of various states. The Colorado Supreme Court gave its Bar little sympathy in attempted action against realtors; the Arkansas Supreme Court meanwhile recently held preparing (including completing printed forms) any instruments involving real estate property rights for others, either with or without pay, constitutes the practice of law.

Whichever viewpoint prevails, all must guard constantly against those acts which clearly constitute unauthorized practice of law. In few fields of law can apparently simple misguided and uninformed acts do such great damage to the unsuspecting as in the preparation of title instruments.

*Municipal Bond Firms.* Apparently many Nebraska bond firms use fiscal agent agreements which commit them to supervise certain legal forms, as preparation of ordinances. Perhaps there is no intent to violate unauthorized practice regulations in

these agreements; nevertheless, their scope appears too great. Your Committee believes these contracts and services performed under them can be reviewed with bond houses with fair and amicable results to both the Bar and the municipal bond firms and their clients.

*Estate Planning.* Perhaps no field has presented such attractive temptations to the lay "expert" in recent years as that of estate planning. Through unrestrained enthusiasm, undoubtedly many life underwriters, accountants and others have unwittingly invaded the domain of the lawyer in this field in the past.

In many states lay firms offering "estate-planning" services have mushroomed in recent years. These firms now are reported to be active in Nebraska. In some cases lawyers appear to be serving as tools to fulfill their objectives.

The lawyer must recognize that most recommendations and decisions in estate planning constitute practice of law. He must be informed to make appropriate recommendations and then promptly prepare necessary documents to accomplish the plan. He must be prepared to cooperate with accountants, life underwriters, trust officers and other members of the estate-planning team. At all times, however, he must remain in control of the legal elements of the plan.

At no time should a lawyer permit his name to be used or exploited by a lay firm of estate planning "experts." Neither should a lawyer permit himself to be used solely as an amanuensis or scrivener. To permit either is to prostitute the profession and the services of the lawyer.

*Insurance Adjusters.* The Committee constantly fields complaints that lay insurance adjusters are determining questions of legal liability in accident and compensation cases and negotiating settlements. These and other services apparently performed by lay adjusters appear to constitute practice of law and to violate the statement of principles between lawyers and insurance adjusters. Yet no specific instances justifying further investigation have been referred to your Committee.

These activities of adjusters not only encroach upon the practice of law; they also impair the lawyer's ability to represent his client fully and properly when a case is referred to him at a late date. The insurance company, the insured and the lawyer all suffer, along with the public generally. This field requires attention of all lawyers, with prompt reporting, with supporting, of all instances of unauthorized practice.

*Conclusion.* Increased attention to the problem of unauthorized practice of law is required of all lawyers. Increased awareness of what constitutes unauthorized practice of law and the necessity of having a lawyer perform legal services is required of the public. Public-service pamphlets, radio, television and personal appearances by lawyers are helpful. But active cooperation and participation of each lawyer in Nebraska in the campaign against practice of law by unauthorized persons is essential to success of the work of this committee.

*In conclusion, your Committee recommends:*

1. *Continued re-education of lawyers and education of the public generally on the services of and the need for a lawyer.*
2. *Prompt and full reports of any activities, with specific instances, which may constitute unauthorized practice of law.*
3. *Continued efforts to eliminate present use of simulated process.*
4. *Legislation expressly outlawing simulated process.*
5. *Carrying out the previous recommendations of a joint commission of lawyers and realtors to review the statement of principles adopted by the National Conference of Realtors and Lawyers, and to define a set of principles for use within Nebraska.*
6. *Review with municipal bond firms of fiscal agent contracts to eliminate any possible suggestion or exercise of unauthorized practice of law.*
7. *Constant alertness to and assertion of the appropriate position of the lawyer in estate planning.*
8. *Recognition that each instance of practice of law by an unauthorized firm or person jeopardizes the public welfare, subjects some person to risk of serious damage through acts of the uninformed nonprofessional and impairs the integrity of the Bar and the courts of the nation.*

Albert T. Reddish, *Chairman*  
Raymond M. Crossman, Jr.  
Charles E. McCarl  
Clarence A. H. Meyer  
John W. Newman  
Kenneth M. Olds

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: Next is the report of the Advisory Committee, which will be given by Raymond G. Young.

### Report of Advisory Committee

The data for the preparation of the annual report must be assembled from a large number of sources. Because of this and because it is important that we submit a report that is up-to-date at the time of the annual meeting, it is not possible to complete preparation of the report so as to reach the printing deadline of the advance program.

The report is as brief as the subject matter will permit, and if you will indulge me I will read the report.

The year has been one of unusual activity.

In December, 1958 the Committee reviewed a record from the Third District and sustained the action of the Committee on Inquiry in dismissing the charges for lack of merit.

The Committee met in Omaha on March 14, 1959, reviewed a record from the Sixteenth District, found probable cause and filed the Complaint. Trial was had last week before a Referee.

In a matter arising in the Sixteenth District, all members of the Committee on Inquiry and alternates were disqualified. The Advisory Committee took jurisdiction. Following an extensive inquiry and report by an investigator, hearing was had on July 11 and resulted in dismissal.

Upon review of a record from the Thirteenth District in which the charges were that respondent pleaded nolo contendere to an indictment in the Federal Court, the Committee sustained the findings and conclusion of the Committee on Inquiry that the offense charged was a misdemeanor not involving moral turpitude and the proceedings were dismissed.

In a case arising in the Ninth District, the Committee, after reviewing the record and conducting a hearing, found probable cause and, as authorized by the Rules, Article XI (8), prepared and filed an amended Complaint. The matter is pending on motion for judgment on the pleadings.

From the Twelfth District came a case in which respondent pleaded nolo contendere to a charge of commission of a felony involving moral turpitude. Complaint was filed. The matter is pending on motion for judgment on the pleadings.

The work of the Advisory Committee is up to date. There are no pending cases.

### *Supreme Court*

Our Committee report submitted at the 1958 annual meeting showed that complaints in three cases were pending in the Su-

preme Court. One of those cases resulted in disbarment (167 Neb. 192), one in suspension for one year (167 Neb. 247). The third has been tried before a referee whose report has not yet been made.

During the year two attorneys have been disbarred upon their written admissions and waivers of the usual disciplinary procedures. Reinstatement was ordered in one case and denied in one.

Two cases have been tried before referees whose reports have not been filed. Two cases are pending on motions for judgment on the pleadings.

### *Advisory Opinions*

During the year many advisory opinions were rendered. Most of them dealt with special situations. Those which may be of general interest and the policy of the Advisory Committee relating to them may be summarized as follows:

1. The Advisory Committee should not be requested to give an advisory opinion in a matter which is likely to come before it for review.
2. It is not the policy of the Advisory Committee to render opinions in the exercise of its original jurisdiction in respect of matters which have already transpired.
3. The function of advisory opinions is not to displace the appropriate disciplinary procedures, but is, generally, to advise an inquiring lawyer upon questions of ethics involved in a course of action which he proposes or desires to follow.
4. Advertising in a newspaper for income-tax work is a violation of Canon 27.
5. One who is directly interested in a guardianship proceeding who believes that he is being adversely affected by unreasonable delay in filing reports should, in the first instance, apply to the County Court for relief. Charges should not be filed against the guardian's attorney because of such delay until the matter has been called to the attention of the Court.
6. Neither a County Attorney nor his partner may properly represent a defendant in a criminal case in any court anywhere.
7. A firm, one of whose partners is County Attorney of a County in which such official is permitted by law to en-

gage in private practice, may properly handle civil actions in which another County is involved, provided that the State has no direct or indirect interest, and that there is no violation of State or Federal criminal statutes.

8. A County Attorney-elect may properly continue to be a member of his firm which is handling civil matters against the County, provided he sees to it that counsel to represent the County is employed at County expense.
9. A County Attorney and his partners may handle probate matters in County Court to determine inheritance taxes, provided the County is represented by a special County Attorney appointed by the Court with his appointment noted on the record of the case; or if the County Board appoint special counsel on petition of ten freeholders (165 Neb. 80, 84 N.W. 2d 136; R.S. 23-1205; R.S. 23-1203).
10. It is improper for a City Attorney to represent a defendant in a criminal matter for an offense charged to have been committed within the City or within the County in which the City is located.
11. A lawyer is not guilty of unethical conduct merely because he drafts a will naming him as executor, if the client insists that he do so.
12. A lawyer is not guilty of unethical conduct merely because he drafts a will which makes him a beneficiary if the client insists that he do so. In such case, the better practice is to have the will drawn by some other lawyer. But if a client insists on having his or her attorney draft a will containing such a provision, there is no reason why the attorney should refuse to do so and thereby defeat the client's wishes (165 Neb. 80, at 94).
13. A plea of nolo contendere to charges not involving moral turpitude is not of itself sufficient cause for discipline.

Recent opinions believed to be of general interest are being edited for publication.

#### *Committees on Inquiry*

In Districts Nos. 1, 2, 7, 8, 14 and 17, no matters have arisen requiring attention and no charges are pending.

In District 3 (Lincoln), three matters are pending before the Committee.

In District 4 (Omaha), hearings have been had in five cases, all of which have been disposed of. Charges are pending in two cases.



In District 5, Mr. Paul H. Bek, Chairman of the Committee, died in August, 1959. He was an able lawyer, a man of high principle, devoted to the best traditions of the profession. The Vice-Chairman reports that at the beginning of the year three matters were under consideration. One has been disposed of; two are pending. No charges were filed during the year.

No charges were filed in District 6. One matter, held over from last year, was heard and dismissed.

One case is pending in District 9.

In Districts 10 and 18, informal investigations by the Committee resulted in dismissals.

Charges are pending in one case in District 11. After informal investigations, charges were dismissed in two matters.

In District 12 a formal hearing was had and complaint was filed.

In District 13 the Committee held hearings in three cases. In one of them the determination was that the nature of the differences between the parties was such as to require either adjustment by agreement or adjudication in a civil action but did not involve unprofessional conduct. In another it was held—and the Advisory Committee concurred—that a plea of nolo contendere to a charge not involving moral turpitude did not of itself call for disciplinary action. The third resulted in a determination in favor of respondent.

Two small matters were disposed of by adjustment in District 15.

In District 16, in one matter the members of the Committee on Inquiry were disqualified and the case was referred to the Advisory Committee. Hearings on charges filed in a prior year were concluded, and the matter is now pending in the Supreme Court. Charges in one case are pending.

The Advisory Committee is gratified by the excellent cooperation of the Committees on Inquiry. The local Committees have been uniformly vigilant, prompt and thorough. The result is that the disciplinary machinery is functioning smoothly and we believe to the satisfaction of the profession.

[The report of the Committee was received and filed.]

CHAIRMAN HUNTER: Next is the report of the Committee on Legal Education and Continuing Legal Education.

[The report of the Committee follows.]

**Report of the Committee on Legal Education  
and Continuing Legal Education**

During the past year the Committee has concentrated its attention on the problems of continuing legal education for practicing lawyers and did not study the status of the legal education of law students in the two law colleges in Nebraska. This was a year in which special attention was given nationally to the problems of continuing legal education to maintain and improve the competence of the members of our profession. The Arden House conference held December 16 to 19, 1958, under the sponsorship of the joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association was attended by the President of our State Bar Association, Joseph C. Tye, and the results of this conference have been communicated to and considered by our State Committee.

Subsequent to the preparation of this report but prior to the annual meeting, our Committee members will meet with the director of the joint committee which sponsored the Arden House conference, Mr. John E. Mulder of Philadelphia, who has offered to advise with the Committee on improving this area of our Bar Association service to its members.

Our Committee has pursued the objectives recommended by the Committee last year by encouraging the coordination and cooperation of the Bar Association with the two law colleges in the State in connection with the presentation of clinics and institutes. The subject matter of the various clinics presented throughout the year has been coordinated through this Committee. The clinics which have become established on an annual basis are the institute on taxation under the sponsorship of the Section on Taxation, presented in the early part of December, the clinic sponsored by the Creighton University Law School and the clinic sponsored by the University of Nebraska Law School in September, co-sponsored by the Junior Bar Section. At the end of each legislative session, a Legislative Institute is held to inform the lawyers of the new legislation. This clinic was held in August, 1959, and this Committee participated in its sponsorship.

*The Committee has inaugurated studies with the following objectives in mind, which it recommends be continued in the future:*

(a) *An analysis of the areas of the law in which continuing legal education is needed. In this connection, the Committee proposes to survey the Nebraska Bar Association to determine the particular interest of the members, to work with the law colleges and to work with the various sections*

of the Bar Association. The Committee expects to reach its own conclusions and make recommendations on those subject matters which should be presented through clinics or institutes.

(b) Believing that there is a real need to improve the professional learning and skill of the members of the Bar through a program of continuing legal education, the Committee proposes to encourage and develop additional continuing legal education aids, including clinics, institutes and other educational materials and devices.

(c) The Committee is studying the possibility of the development of clinics on both a basic and advanced level in order to serve all interests of the Bar Association, both the younger lawyers who are first becoming acquainted with particular areas of the practice, and the older lawyers who have developed more experience in the field and desire to have additional training in the particular areas of their interest.

(d) The Committee is studying the present system of presenting separate section meetings at the annual Bar Association meeting, and considering the possibility of a coordinated educational program to be presented at the time of the annual meeting by cooperation and coordination with the various sections. The Iowa Bar Association, in cooperation with the faculty of the Iowa University Law College, follows the latter practice, and many Nebraska lawyers who have attended these meetings have commented favorably upon them.

(e) The Committee is considering methods of demonstrating to and convincing more of the members of the Bar Association of the desirability of taking advantage of the opportunities available to them for obtaining continuing legal education which will help them in the development and improvement of their individual practices. The Committee strongly urges greater attendance at the various educational clinics and institutes which will be held from time to time.

The Committee has undertaken a study which is designed to provide guidance in the field of continuing legal education for our Bar Association for a period of several years into the future, and it recommends that this study and the implementing of the programs which are determined to be desirable be continued.

John C. Mason, Chairman  
David Dow  
A. Lee Bloomingdale

Keith Miller  
Roger V. Dickeson

[The report of the Committee was received and filed.]

CHAIRMAN HUNTER: The next item is the report of the Joint Conference of Lawyers and Accountants.

[The report of the Conference follows.]

#### **Report of the Joint Conference of Lawyers and Accountants**

The members of the Joint Conference of Lawyers and Accountants appointed from the Nebraska State Bar Association and the Nebraska Society of Accountants report as follows:

This year, the usual annual meeting was held in Omaha on August 25. The lawyers were guests of the accountants, and were most suitably provided for.

It was brought to the attention of the conference that the proposed code relating to the relationship between lawyers and accountants which is being prepared by a joint committee of the American Bar Association and the American Institute of Certified Public Accountants has been returned to the committee for revision. Upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that it be recommended to the Nebraska Society of Accountants and to the Nebraska Bar Association that neither of these organizations take any action upon a proposed code until the revision has been completed and is promulgated by the joint committee of the American Bar Association and the American Institute of Certified Public Accountants; and that upon its promulgation both the Nebraska Bar Association and the Nebraska Society of Accountants give serious consideration to the adoption of the revised code as promulgated by the Joint Conference of the American Bar Association and the American Institute of Certified Public Accountants.

An extended discussion by the members of the Joint Conference of Lawyers and Accountants was carried on. The problems presented during this discussion were not sufficiently serious to require action at this time.

It may well be noted that the members of the joint conference from the Bar Association will have responsibility for arranging for, and paying for, the meeting in 1960.

Harry B. Cohen, Omaha, *Chairman*  
James W. R. Brown, Omaha  
Warren K. Dalton, Lincoln  
Thomas M. Davies, Lincoln  
Barton H. Kuhns, Omaha  
John E. North, Omaha  
Barlow Nye, Kearney  
Flavel A. Wright, Lincoln

[The report of the Committee was approved.]

CHAIRMAN HUNTER: The next item is the report of the Committee on the Revision of Corporation Laws.

[The report of the Committee follows.]

**Report of the Special Committee on Revision of  
Corporation Laws**

This Committee is pleased to report that the current legislative program, discussed and suggested in our previous report, has been enacted by the Legislature. The bills thus passed include:

- L. B. 349, a comprehensive nonprofit corporation act (including technical amendments in L. B. 351 and L. B. 352);
- L. B. 350, amendments to existing private corporation act.

The enactment of a complete nonprofit corporation act will enable the Committee to proceed further with its program of simplification of corporation laws, including repeal of numerous special acts in this field now contained in Chapter 21 of the statutes. Section 90 of L. B. 349 permits all existing nonprofit corporations to voluntarily become subject to the new act by adopting and filing amended articles with the Secretary of State. It is the hope of this Committee that attorneys will recommend that various existing nonprofit corporations such as churches, lodges and charitable and fraternal societies take advantage of the opportunity to place themselves under this modern comprehensive act. As shown by the prior report of this Committee, a very unsatisfactory situation has heretofore existed concerning the status of these corporations under the incomplete statutes applicable thereto.

In addition to the foregoing legislation, this Committee has been engaged during this year in further studies as to the advisability of recommending a general revision of our business corporation act patterned after the Modern Business Corporation Act prepared by the Committee on Corporate Laws of the American Bar Association. The Committee has not completed its studies in this

regard and is not able at this time to make any recommendations in this regard.

The Committee is cooperating with the editorial staff of the *Nebraska Law Review* with a view to a series of articles in the spring issue concerning various phases of corporation law.

*It is recommended that this Association continue a Special Committee on Revision of Corporation Laws until the program outlined herein can be completed.*

Bert L. Overcash, *Chairman*  
Edmund O. Belsheim  
George L. DeLacy  
Roland A. Luedtke  
David W. Swarr

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: Next we will have the report of the Committee on Public Service.

[The report of the Committee follows.]

#### **Report of the Committee on Public Service**

Two meetings of the Committee on Public Service were held during 1958-1959, and the Committee members have corresponded repeatedly about Committee functions and problems.

The Committee members have felt that their function could best be performed by solidifying existing programs and adding a small amount to it rather than taking a "shotgun" approach. As a result, the principal activities of the Committee have been:

##### *Law Day, U. S. A.*

The second annual Law Day, U. S. A. was observed on May 1, 1959. By co-ordinating the Nebraska Bar Association with the American Bar Association and our local bar associations, the Committee was able to expand the program extensively. Under the leadership of Mr. Patrick Healey of Lincoln, Nebraska, the cooperation of all active local bar associations was obtained and programs were presented in schools, churches and civic clubs throughout the entire State. Inspired lawyers in Omaha did an outstanding job in putting this program across.

Governor Ralph G. Brooks signed a Governor's Proclamation of Law Day, and through the cooperation of the University of Nebraska, television and radio tapes were prepared and distributed to all commercial radio and TV stations in the State. In addition,

photos and news stories were distributed to newspapers throughout the State and prominent space was given by all papers contacted.

Your Committee believes this to be an important and worthwhile project with excellent potentialities deserving further development in the years to come.

#### *Law School Participation*

In cooperation with Mr. E. O. Belsheim, Dean of the University of Nebraska College of Law, and Mr. J. A. Doyle, Dean of the Creighton University College of Law, classroom appearances were made by members of the Bar to discuss and consider with the senior students the function of the Nebraska Bar Association, its public service committee, the responsibilities of a practicing lawyer and related subjects.

Your Committee believes this project to be extremely important and deserving of further expansion.

#### *Pamphlets*

Distribution of pamphlets continued throughout the year. Study is now being given to a series of pamphlets for laymen who find themselves serving as guardians, executors, administrators and trustees. As the Jurors Manual is designed to assist the layman in serving as a juror, it is hoped that similar assistance can be given to the person serving in a fiduciary capacity.

Study should be continued in this area, as well as the development of pamphlets on other subjects.

#### *Newspapers*

Every two weeks an article on some legal subject has been mailed to each of 245 newspapers across the State. Though all do not use the articles and though some use articles only occasionally, state-wide coverage is obtained.

Arrangements are currently being completed by the Committee for the publication of articles as a permanent feature of a weekly Nebraska farm paper. This program will have state-wide rural circulation and is being designed to touch upon all subjects of law, including legislation.

#### *Television and Radio Programs*

The bi-monthly program over KMTV in Omaha has continued throughout the year. Scripts for their interview type program are supplied by the Nebraska Bar Association, with eastern Nebraska lawyers appearing on the program.

A similar program was begun this year over an Alliance TV station and in North Platte. Further participation in this area should be encouraged across the State.

Final arrangements in connection with the Lincoln Bar Association are being made for a weekly live radio program in the Lincoln area. Tapes of this program will be available for use by radio stations throughout the State. The program is being designed to present informative matter on the law, the courts, the lawyer and on our form of government.

Your Committee believes that this program may open up an entirely new approach to the public.

Your Committee is of the opinion that its present program is minimal, that many and varied opportunities are at hand to expand its program but that the greatest service can be done by your Committee if the existing and proposed programs are first developed and solidified before many new programs are added. *We recommend that our successors follow through on the above-mentioned programs and that they be given primary consideration.*

Edward F. Carter, Jr., *Chairman*  
Auburn H. Atkins  
Tyler B. Gaines  
Patrick W. Healey  
Richard A. Knudsen  
C. Russell Mattson  
Pliny M. Moodie  
Donald R. Sampson

[The report of the Committee was approved.]

CHAIRMAN HUNTER: Next we will have the report of the Committee on Oil and Gas Law.

[The report of the Committee follows.]

#### **Report of the Special Committee on Oil and Gas Law**

Your Special Committee on Oil and Gas Law submits the following report:

The year of 1959 begins a new era of oil and gas law in Nebraska. In 1949 oil was discovered in Cheyenne County, Nebraska, and in the period since that date, production of oil and gas has become one of the major industries of the State. While there has been considerable effort in the past to have the Legislature pass an Oil and Gas Conservation measure, it was not



until the session of 1959 that the Legislature felt the industry had become so stabilized that a conservation bill should be passed. The members of our Committee took an active part in the support of the bill, and an Act has been passed which will be the basis for a much more orderly and conservative development of the oil and gas industry in the State, resulting in the proper conservation of our natural resources to the benefit of the entire State.

When this report was prepared, the Governor had not appointed the members of the Oil and Gas Commission, but the members of the Committee and the other members of the Bar in the oil-producing part of the State are ready to render all possible assistance to the Commission in setting up satisfactory rules of procedure to make the Commission effective.

In addition to the Act providing for an Oil and Gas Commission, several other bills recommended by the Bar were passed by the Legislature. The time for filing mechanic's, laborer, and materialman's liens was extended to four months. The term granted for foreclosure was extended until two years after the filing of such lien.

Provision was also made for ratification of prior unauthorized or defective leases executed by any executor, administrator, guardian or trustee.

The Committee attempted to carry out the recommendations of the prior Committee and to a large extent was successful. The Legislature does not meet again until 1961, and it is too early to make definite recommendations or to prepare suggested legislation for the 1961 session.

However, we recommend that the Special Committee on Oil and Gas Law be continued and that the Committee for the next year make a thorough study of oil and gas problems requiring legislation to correct inequities or abuses so that suggested legislation can be prepared prior to the convening of the 1961 Legislature.

*We recommend, among other matters, that study be given to the following subjects:*

1. *Legislation providing for personal service upon the Secretary of State as Agent of nonresident persons acquiring ownership of any interest in minerals, or performing any service or work for exploration for development purposes of oil wells on land in Nebraska.*

2. *Legislation permitting oil companies who are operating in the County, and who owe or have credits for certain debtor in-*

dividuals to be permitted to be garnished in the County where the cause of action arises.

3. A requirement that all mechanic's liens should be posted on the numerical index. Under the present law these liens are simply copied one after another in a special book, and it is very difficult to make an adequate check of the records when filing a lien or considering an attachment or execution levy on producing wells or the equipment on an abandoned well.

4. A provision permitting oil and gas liens to reach overriding royalties. In many instances, small operators will dispose of all their working interest while retaining overriding royalties, leaving unpaid creditors.

5. A specific procedure permitting receivers to be appointed where equipment on a well is hopelessly encumbered and perhaps abandoned, in order to prevent equipment from being removed or stolen without any specific way for creditors to be protected.

6. A provision providing that every operator of a well be required to record his name and address of record in the Court House of the County where the well is located, giving the names of the owners of the well.

7. A provision providing that where the ownership of oil and gas interests appears in a name where it cannot be determined whether it is a corporation, a partnership or an individual, that action could be commenced against such a name without alleging whether it is a partnership or corporation, and to have the interest divested from the owners if they do not defend themselves where notice has been mailed to the address furnished of record.

8. Also the matter of taxes on the valuation of mineral rights. The procedure involved for foreclosure and enforcement of these rights as real estate is so cumbersome that by the time the necessary procedures can be followed, an operator can have withdrawn all the mineral value from the land and departed from the State.

9. A general study should be made of mineral reservations and mineral rights held separately from the ownership of the surface, providing that where the mineral interests have no time limit, that it will be presumed that any reservation is for a period of certain years only unless within that time the owner filed of record an instrument, indicating that he is actually holding, and is in possession, of the mineral interest, and has taken steps to develop said area and take the minerals in his possession. The period of time should be rather long, but in such a situation it would eventually clear all titles where there is no mineral development.

*We would also request that all of the members of the Bar interested in oil and gas legislation submit their problems to the Committee for study and recommendation.*

Paul L. Martin, *Chairman*  
Robert J. Bulger  
J. H. McNish  
Robert G. Simmons, Jr.  
R. L. Smith  
Ivan Van Steenberg  
Archibald J. Weaver

[The report of the Committee was adopted.]

CHAIRMAN HUNTER: At this time I would like to call for a report of the Committee on Resolutions, Chairman Jim Green.

#### **Report of Committee on Resolutions**

Mr. Chairman, Gentlemen: The Committee on Resolutions met harmoniously at lunch to consider the one weighted resolution which had been given to them for their consideration. The only discordant note to the otherwise prevailing harmony was the obnoxious dietary habits imposed upon the Chairman by a conscienceless physician. With that preliminary we will get to the resolution.

The one resolution submitted was submitted to us by Eugene McFadden of the Ninth Judicial District and has to do with support of the proposed constitutional amendment increasing the salaries of State legislators.

You might think, as we first thought, that this matter is not properly germane to our considerations here. We resolved it against ourselves on the principles that good law and good legislating are certainly of overwhelming importance to lawyers generally and to their associations, and therefore with some modest changes to the resolution, we submit to you the following resolution:

WHEREAS, The enlarging burdens of the duties and responsibilities of service in the Nebraska Legislature and the increasing cost-of-living expenses during legislative sessions are making it impossible for many competent men to continue or to seek service as elected members of the Legislature, and it is in the best interest of the whole people of the State that adequate salaries be paid to public officials; be it therefore

RESOLVED: That it be recommended that the Nebraska Bar Association approve the proposed constitutional amend-

ment to increase the salaries to be paid to members of the Nebraska Legislature and actively support its adoption.

Mr. Chairman, we move the adoption of the report and the transmission of the resolution with our favorable recommendation to the Executive Committee of the Nebraska Bar Association.

[The motion was seconded.]

CHAIRMAN HUNTER: You have heard the report of the Resolutions Committee in regard to the favorable support by this Association of the constitutional amendment regarding pay of legislators. Is there any discussion?

MR. SVOBODA: Mr. Chairman, may I inquire if the Legislature at the last session passed a bill for submission of that?

MR. GREEN: I refer the question to Mr. McFadden.

MR. McFADDEN: It is in the form of a constitutional amendment adopted by the Legislature for submission to the electorate at the next general election.

CHAIRMAN HUNTER: This brings up the problem that we had this morning about these Bylaws. Section 4 provides that every resolution presented to the Association shall be in writing, etc., and the gist of it is that the resolution shall be referred by the Chair on presentation without debate to the Executive Council for consideration and report. So presumably any debate on it is out of order.

However, in order to guide the action of the Executive Council, there has been a motion that this be approved, and it has been seconded. Without any debate we will call for the question. As many as favor reporting this to the Executive Council say "aye"; opposed, "no." The motion carried.

This morning you will recall we appointed a Special Committee on Revision of the Bylaws with regard to the particular matter raised by Mr. Ginsburg. They are now ready with a report, and I will call on Mr. Ralph Svoboda, Chairman of that Special Committee.

#### **Report of Special Committee on Revision of the Bylaws**

Mr. Chairman, your Special Committee on Amendment of the Bylaws to conform to action taken by the House of Delegates at its session on October 7, 1959, recommends that there be added a new Section 3 of Article VI of the Bylaws of the Association, reading as follows:

"Section 3. The Committee on Legislation shall have authority, unless countermanded by the President of the Association, to

represent the Association before the Nebraska Legislature, or any committee thereof, on any pending legislation of direct concern to the Association, and to take a position favorable or opposed to such legislation in its discretion, absent any prior action on such proposed legislation by the House of Delegates or the Executive Council."

The report is signed by Mr. Milton R. Abrahams, Mr. Chauncey Barney, and myself as Chairman.

I move the adoption of the report and the amendment accordingly.

CHAIRMAN HUNTER: Is there a second? [The motion was seconded.]

Any discussion? It should be understood that the Committee is adding a new section in addition to those two which we read this morning in Article VI regarding representation by members or committees of the Association in courts or other tribunals.

Are you ready for the question? As many as favor the adoption of the report and the amendment of the Bylaws to provide for representation by the Committee on Legislation, say "aye"; opposed, "no." The motion carried.

Just as a matter of inquiry—we hope we have this matter straightened out, Mr. Ginsburg—does this do what you had hoped that the House might do?

MR. GINSBURG: To the best of my knowledge it does, Mr. Chairman. If I may take a moment, we discussed it with the Committee this noon, and the point was brought up that we think it adequately protects the Association and also at the same time it facilitates the work of the Committee. There is a question on these bills. The Legislature operates pretty fast. As a matter of fact, as I told some of the members, I spoke to the Speaker of the House of the Legislature about extending the time that goes by on the hearing on bills and he shut me off very peremptorily and said, "Nothing doing!"

Experience has demonstrated we can't handle it through going back and forth, and I think that we have the situation under this new rule whereby the Committee can act and yet at the same time I want everybody to know that I feel the Association can be adequately protected against any wild action on the part of a Committee because all that needs to be done is for anybody to call the President and say that the Committee is off on a tangent and the President could put in a call and put a stop to it. So I think it takes care of the problem to the best of my understanding.

CHAIRMAN HUNTER: Thank you, Mr. Ginsburg.

MR. MATTSON: Mr. Chairman, this perhaps is not in parliamentary order, but I discussed with Mr. Ginsburg this morning this suggestion which I am throwing out for consideration of the House and will also propose to the Executive Council, and that is that when we move into a legislative session that after the twentieth day there will be a joint meeting of the Executive Council and the Legislative Committee to sort of screen those matters which may be of concern to the Association so that early in the session we can take a position and more or less instruct the Committee of the standing of the Executive Council on some of these matters which might give them a position to either oppose or support legislation that we at that time may know about.

CHAIRMAN HUNTER: This has brought up another problem, too. We have been battling all day with some of these Bylaws. As someone reported this morning, these Bylaws were adopted back at the time there was no House of Delegates and they are inconsistent in many respects. Again I am probably overstepping the limits of my authority, but I would entertain a motion that the House of Delegates suggest to the President the appointment of members of a special committee on general revision of the Bylaws, just to get some of these matters straightened out.

MR. GINSBURG: Mr. Chairman, I so move. And may I speak in favor of that motion. I had intended to rise and make that motion. Heretofore I have been a sort of ex-officio member of the House and didn't feel I had the authority to speak. Now that I am a duly elected member I really resent the Bylaws in their present form, and I speak frankly and candidly.

It seems to me we have taken from the membership generally the business of the Association and have vested it in the House, and then we turn around and find that the House can't do anything, we can't make a resolution, we can't do this, we can't spend any money, we can't do that. I am not opposed to all those things, but I think we should have a complete study and see just where we come out.

For example, I wanted to get on the floor this morning and ask about making certain suggestions, but I didn't dare. I didn't know whether that had to be in the form of a written resolution which first had to go to the Resolutions Committee, and so on and so forth. It does seem to me in all candor that our Bylaws are entirely too restrictive, that this House is just more or less a

nonentity as the Bylaws now stand, and I firmly urge that the members support my motion. [The motion was seconded.]

CHAIRMAN HUNTER: Is there any further discussion? All those in favor of the motion to appoint a special committee on general revision of the Bylaws of this Association say "aye"; opposed, "no." The motion is carried.

Mr. Ginsburg, I hope you nor anyone else will refrain from suggesting anything because it might be against the Bylaws because in truth, no one knows whether it is [laughter]. So if you have anything for the good of the order, don't worry about the Bylaws.

We have one more report left on the agenda, and that is Squire Cassem's. That is the report of the Committee on Judiciary. The report is signed only by the Chairman, and I can't tell from what I have before me whether there are other members of that Committee here who may want to sponsor that report or not. If there are, will you please let me know. The report is on page 39.

Because there is a matter here that probably ought to be considered, I want you to have a chance to go through this. I won't read it, but I hope you will all become familiar with it since there is no one here who can give the substance of it.

The recommendation of the Committee is that the Nebraska State Bar Association should not abandon its efforts in this connection—this is in regard to L.B. 354—and should submit the substance of L.B. 354 to the next Legislature.

JOSEPH J. VINARDI, Omaha: Point of information, Mr. Chairman. Isn't there a mandate from this Association of long standing to that effect now?

CHAIRMAN HUNTER: I think that is a fair statement, although I think it has been renewed, as a matter of practice, in each session of the House of Delegates because this has been a standing committee.

MR. VINARDI: Would you entertain a motion to adopt the report?

CHAIRMAN HUNTER: There is a motion that the report of the Committee on Judiciary be adopted. [The motion was seconded.]

Any discussion?

MR. GINSBURG: I hate to monopolize the floor so much, but since I did have considerable contact with this L.B. 354, maybe I would be justified in what I am about to say. It is going to do us no good whatsoever to pass this resolution that we again

submit the substance of L.B. 354 to the Legislature. We submitted it this last session, we submitted it in good faith, we had everybody there that we could get to present it. I think we spent a couple of hours at it. The point was that our own membership was not for it, and a good share of the Judiciary was not for it.

Now it seems to me that we are just going to be wasting a lot of time and expressing pious platitudes if we pass this recommendation. It seems to me that what we should do first is educate ourselves, educate the Bar on the necessity of this thing, and then go ahead with sponsoring it before the Legislature. We are definitely going to get nowhere as things are now.

I don't know who will be your Committee on Legislation the next session of the Legislature—I hope I am not on it—but be that as it may I can assure you that that Committee is going to accomplish nothing unless there is a dramatic change in the attitude of our own Bar and the Judiciary.

HARRY A. SPENCER, Lincoln: Just a point of information. It is my recollection this is the result of a vote taken out of the Bar so that there is a record as to how the Bar stands. Am I wrong on that?

SECRETARY TURNER: You are correct. There was a referendum four years ago.

JUDGE SPENCER: It was voted overwhelmingly to do this, and that is the reason it has been a mandate.

MR. GINSBURG: George, do you remember approximately how that vote ran?

SECRETARY TURNER: I don't have the figure here but it was overwhelmingly in favor of the so-called Missouri or American Bar plan.

ALFRED G. ELLICK, Omaha: How long ago was that?

SECRETARY TURNER: I believe that was taken four years ago.

MR. ELLICK: I wonder if it would be in order to take another vote during this coming year before we meet at our next annual meeting to see if there has been a change of attitude. It might lend some strength to a similar report or recommendation at our next year's meeting if we had the result of a poll. I wonder what Mr. Ginsburg's thought would be on that.

KENNETH H. ELSON, Grand Island: Mr. Chairman, in support of the suggestion made by the gentleman, I would like to report that the Hall County Bar Association at our regular monthly



meeting took up these reports and reviewed them and when we came to this particular report we found there had been a very definite change in the attitude of the attorneys in our Bar Association from what it was four years ago. In fact a vote of intention or attitude toward this matter came up and the vote was 7 to 4 out of 16 or so members attending the meeting yesterday against acceptance of this report. Four or five years ago the attitude was almost unanimous in favor of the American plan.

Somehow we need further study of this problem or a change of attitude toward the plan. The Hall County Bar Association has completely changed its attitude. If I am not out of order, I would move that instead of accepting the recommendation of this Committee, the House of Delegates recommend to the Executive Council that another referendum be taken or a straw vote taken to get the sentiment of the members of this organization as a whole.

MR. VINARDI: We do have a mandate, it seems to me, from this Association regardless of what the Hall County Association might feel at this time to do our utmost to adopt the Missouri Plan. I feel that the action the gentleman from Hall County has spoken about points up the need for more and continued education along this line. Then the adoption of this particular report would add some fuel to the fire of the need for such continued education. I very respectfully would like to amend the statement made by Mr. Ginsburg to the effect that perhaps a program of education should be first instituted and then this report acted upon. I think just the opposite would be more in keeping with that mandate from the Association to all of us as members.

WILLIAM H. LAMME, Fremont: Mr. Simmons of our office is a member of the Judiciary Committee of the State Legislature and I have had occasion to visit with him just recently concerning this report and concerning the plan generally.

I think the quarrel here between the Committee report and the Judiciary Committee of the Legislature is one perhaps of form rather than substance. Mr. Simmons — and I am not here to defend that committee or Mr. Simmons — but Mr. Simmons tells me that the difficulty is in the form of the polls, that the bill submitted by our Bar Association in itself was so detailed, so complex, and went into such great detail that it was one and one-half times longer than the entire constitutional provision now concerning the judiciary. In other words, we tried to spell out in every detail the whole plan. If you will look at the report, and I am rather against the report because I think it is too critical of the Legis-

lature. Perhaps we didn't do too good a job in submitting the right kind of a bill, too, but Senator Vosoba said, "I am opposed to legislating in the Constitution. I feel a constitutional amendment to authorize the Missouri Plan has merit, but I feel it should be a broad, enabling measure, with the specifics left to be done by the Legislature instead of the voters in an inflexible Constitution."

I am inclined to agree with that. I think perhaps this Judiciary Committee might have gone along except that we were legislating in the Constitution things that should be left to the Legislature. Perhaps the Committee itself wasn't opposed to the Missouri Plan but they were opposed to the form in which we submitted it to them. I think we should give consideration perhaps to a revision of our proposal of the bill.

CHAIRMAN HUNTER: There is an amendment to the motion to adopt the report which, as I recall, has not received a second. [The motion was seconded.]

There is a motion to amend the report of the Committee by substituting a recommendation that this matter be submitted to the members of the Association by referendum. That amendment has been moved and seconded. Is there any discussion?

KENNETH H. ELSON, Grand Island: I would like to say that personally I am in favor of the plan, as I know this Association will eventually work it out and submit it, but I feel certainly from my district that the sentiment expressed yesterday by members of my own Bar that before we do submit this report of the Judiciary Committee we should first study the plan again, and I believe that by so doing and getting the attitude of all members of this Association we will cause the members to study the plan and get the real reasons why it should be adopted. I think we will have more strength behind the Association's support of the plan if we first get an indication from the members of what their attitude is on it before we try to submit it.

MR. ELLICK: Mr. Chairman, I would like to ask Mr. Ginsburg whether he thinks it would give strength to the position of the Legislative Committee before the Legislature if you had a more up-to-date referendum or vote of the Association on this, or don't you think it would make any difference? Will you give us the benefit of your views on that?

MR. GINSBURG: Mr. Chairman, for whatever it may be worth, I don't think another poll is the answer. I personally think that the answer is to get our own members committed.

Going back to what Mr. Lamme said, I attended that thing and it went on for hours. For example, to point out the difference between ourselves and the Legislative Committee, one of the problems is nominating the men to run. As I recall, the provision is that there is to be a list of three names presented to the Governor and then the Governor makes the nomination from one of those three. The Committee said, "No, we don't want to limit the Governor to that list. If he doesn't like anybody on that list it has to go back and they keep on adding names until they get to somebody that the Governor is willing to appoint."

Well, that is an exact negation of the Missouri Plan. I know that the members of the Judiciary Committee were absolutely sincere and well-meaning, but they were not sold on taking it away from the Governor and the Legislature. They complained about all the language that we had in there. As a matter of fact, what we had in was a copy of the Constitutional amendment that we had proposed four years ago that we went out and got signatures for. It was a copy of that, and you have to have all that in there to set out all the procedure. It was suggested that we change it and make it read, "Judges may be appointed in such manner as the Legislature may determine." Well, that again is a complete negation of what we are trying to accomplish.

I could be one hundred per cent wrong and I hope nobody pays any particular attention to me [laughter]; I am just telling you my own experience, and that is that you are not going to get any place until the Bar generally, and through the Bar the members of the Legislature, are educated as to what the whole thing is about. It seems to me that the clew is the point that I pointed out to you where they insist that the Governor shouldn't be limited on whom he is going to appoint. If he doesn't like the men who are nominated on the slate, he can send it back and make them give new names until they get somebody he wants to appoint. There is the clew to the whole thing. The public doesn't understand and the Legislature didn't understand what we are driving at.

CHAIRMAN HUNTER: Is there any further discussion on the amendment to the main motion? Are you ready for the question? The question is on the amendment, which was that the House of Delegates recommend to the Executive Council that it conduct a referendum of the members of the Association on the merit plan for . . .

JUDGE SPENCER: Was there a second to that motion? I don't think there was. He was seconding the motion that Vinardi

made. I doubt if there was a second to the motion that was made by Elson.

CHAIRMAN HUNTER: Well, I stated it as an amendment and I heard a second. So I think it is properly before the House.

If there is no further discussion, again we are voting on the amendment to the main motion. The amendment is that this House recommend to the Executive Council that a referendum be conducted.

MR. VINARDI: I understood the substitute motion was that the amendment as you have stated it be inserted in place or substituted for the last paragraph of the report. Is that correct?

CHAIRMAN HUNTER: Yes. That is correct.

MR. VINARDI: In other words the substitute motion asks that we abandon our efforts to submit the substance of this Missouri Plan to the Legislature. I just wanted that understood.

CHAIRMAN HUNTER: If you can separate this out, this then probably is a substitute motion for the last paragraph of the report which appears on page 40.

MR. VINARDI: That is contrary to the mandate we have been given by the Association.

CHAIRMAN HUNTER: If there is no further discussion, as many as favor the amendment say "aye"; opposed, "no." The amendment is lost.

Now we have the main motion which is to approve the report of the Committee on Judiciary. That specific recommendation is as follows: "The Nebraska State Bar Association should not abandon its efforts in this connection and should submit the substance of L. B. 354 to the next Legislature."

Is there any further discussion?

ROBERT K. ADAMS, Omaha: Mr. Chairman, just to get Mr. Ginsburg's thought in here that a resubmission of this to the next Legislative Committee would apparently accomplish nothing without a further educational attempt. I would like to move an amendment to the report to add that the House of Delegates recommends to the Executive Committee that the Executive Committee and the Judiciary Committee conduct an educational campaign in the meantime before the next annual meeting to educate the Bar and the public generally on the Missouri Plan. [The motion was seconded.]

CHAIRMAN HUNTER: Is there any discussion on the amendment of Mr. Adams, which is to amend the recommendation of

the Judiciary Committee by adding that the House of Delegates recommends to the Executive Council and the Judiciary Committee that a program of education of the Bar and public be undertaken before this is submitted to the next Legislature? Then we will call for the question on the amendment.

MR. SVOBODA: May I ask for a point of inquiry? As to submitting the substance of L. B. 354, if we are to follow Mr. Ginsburg's suggestion, would that permit the revision of the bill to meet the objections that Mr. Lamme voiced, for instance? We are talking about the substance of L. B. 354.

CHAIRMAN HUNTER: Well, I am certainly not going to rule on what the matter of substance within the definition of this recommendation is. Certainly the way it is stated it would seem to me there is a considerable amount of leeway as to the form of the bill. How much you change the form . . .

MR. SVOBODA: Would the Judiciary Committee have the right to rewrite 354 to meet some of these suggestions made by these various members?

CHAIRMAN HUNTER: May I inquire of Mr. Ginsburg whether 354 in its form as submitted to the Legislature was approved by the House of Delegates, or were there some changes made?

MR. GINSBURG: My understanding is that it was the bill as approved by the House of Delegates. I would say, however, for whatever it may be worth, there is no reason why 354 couldn't be worked around so as to eliminate some language and perhaps make it less complex than it is, etc. I think that the words used by Mr. Cassem "in substance" takes care of the matter. That gives us the leeway we need.

CHAIRMAN HUNTER: Any further discussion on the amendment? If not, as many as favor the amendment, which again concerns the recommendation of the Executive Council and the Judiciary Committee about an educational program, say "aye"; opposed, "no." The motion carried.

Now the main motion as amended, which is that the Nebraska State Bar Association should not abandon its efforts in this connection and should submit the substance of L. B. 354 to the next Legislature and that the House of Delegates recommends to the Executive Council and the Judiciary Committee that a program to educate the Bar and public be undertaken. If that correctly states the motion as amended, is there any discussion?

JOHN J. WILSON, Lincoln: As long as we are having an educational program this year, we are going to be in another annual meeting before the Legislature, I move that that part of submitting it to the next Legislature be tabled until the next annual meeting of the House of Delegates.

[The motion was seconded.]

CHAIRMAN HUNTER: This actually is an amendment which strikes the first part of this recommendation, is it not, Mr. Wilson? I would so interpret it as an amendment to strike the words "should not abandon its efforts in this connection and should submit the substance of L. B. 354 to the next Legislature," so that the motion actually reads, "The House of Delegates of the Nebraska State Bar Association recommends to the Executive Council . . .," the educational part of it.

Was there a second to that amendment to strike?

JAMES F. GREEN, Omaha: Yes, I seconded it.

CHAIRMAN HUNTER: It has been moved and seconded that the main motion be amended to strike the reference to the Association not abandoning its effort and submitting the substance of L. B. 354 to the next Legislature. Is there any discussion on this amendment?

EDSON SMITH, Omaha: To what purpose will the educational campaign be directed if we withdraw the recommendation that this be submitted to the Legislature?

CHAIRMAN HUNTER: Mr. Wilson, you made the amendment to the amended main motion; would you care to answer Mr. Smith?

MR. WILSON: My thinking is that if you can't educate the Bar and the public sufficiently by the annual meeting a year from now, you may not want to adopt that part of the report that it be submitted to the Legislature. A year from now we will be a lot better educated and would have much more knowledge of it and we are still not taking away the privilege of recommending it to the Legislature.

MR. VINARDI: I think that is true if we could change it next year. What we are actually doing here is turning down this Committee's recommendation and saying, "Let's educate the Bar and public to something we don't care about." Now that is just what we are doing if we adopt this amendment.

MR. SMITH: It seems to me that the press and the public would draw a very strong implication from this amendment if

it were adopted that the Bar Association is abandoning its backing of the Missouri Plan. For that reason I am very much opposed to the proposed amendment.

MR. GINSBURG: If Jack will forgive me, I think our trouble here is that the amendment inadvertently strikes out some words. Jack, you correct me if I am wrong, but I think the whole problem could be answered if we left it this way: "The Nebraska State Bar Association should not abandon its efforts in this connection . . ." and then strike out the rest. Now if we leave it that we do not abandon our efforts and couple that with the educational campaign, isn't that what everybody has in mind?

CHAIRMAN HUNTER: Mr. Wilson, will you restate your amendment in the light of that change?

MR. WILSON: I move that the recommendation read as follows: "That the Nebraska State Bar Association should not abandon its efforts in this connection," and omit "and should submit the substance of L. B. 354 to the next Legislature."

CHAIRMAN HUNTER: The amendment is to strike the words "and should submit the substance of L. B. 354 to the next Legislature." Is there a second?

MR. GREEN: I am the second and I accept the amended motion.

CHAIRMAN HUNTER: You have heard the amended motion. Are you ready for the question? All in favor of the amendment as stated say "aye"; opposed, "no." The "ayes" have it; the amendment carried.

The motion as amended is now as follows: The Nebraska State Bar Association should not abandon its efforts in this connection, and the House of Delegates recommends to the Executive Council and the Judiciary Committee that a program to educate the Bar and public be undertaken.

If there is no further discussion, is there a call for the question? As many as favor the motion as amended say "aye"; opposed, "no." The motion is carried.

MR. VINARDI: Mr. Chairman, it might be wise to refresh our memory to the effect that the resolution adopted by the Bar Association states in substance that a bill should be submitted to the Legislature as soon as possible, or words to that effect. So actually it would still be mandatory on the Committee to submit the substance of some bill on the Missouri Plan to the next Legislature.

MR. ELSON: The question that concerns me with that plan is this: Our Association has worked for several years in support of the plan. Yet there seems to be an indication today that this mandate which the Association has given to the officers of the Association might not be fully supported by all members of our Association. It seems to me that since we now have a House of Delegates, we have only one way for the membership of the Bar to show whether or not they support this Plan, and that would be for each of us delegates here during this next year to meet with the members we have in our local districts and determine from them whether or not they now presently support this plan. Certainly they will be given an opportunity to study the advantages of it during this coming year, and I would urge all of us to find out from our own local members in our own District whether or not they support this plan so that when we come here next year as voting delegates we can vote the wishes and desires of our own membership.

CHAIRMAN HUNTER: It seems to me that the sense of the motion is that it goes further than that. The House of Delegates, as well as the Executive Council and the Judiciary Committee, are going to do more than just sample an opinion; they are going to educate the Bar and the public.

MR. ELSON: I think that is good. If there has been any change in the attitude of members in the districts that these other delegates represent, they will have an opportunity to change their minds again.

CHAIRMAN HUNTER: Gentlemen, we have covered all of the order of the day. Do any members of the House of Delegates have anything further which they desire to bring to our attention at this time?

MR. ELSON: Mr. Chairman, the Hall County Bar Association asked me as a delegate of the Eleventh District to submit a problem to this House of Delegates which most of the members there feel they have been faced with, that is that by federal statute an attorney cannot charge more than \$10.00 for representing a client before the Social Security Administration. They asked me to call to the attention of this House of Delegates that statute, and that consideration be given by the State Bar Association to study of that limitation of fee charges for such services, and appropriate action be taken by this body.

CHAIRMAN HUNTER: Is there something further, Mr. Elson, or have you carried the water you were supposed to carry?

MR. ELSON: I've carried the water.



CHAIRMAN HUNTER: The Chair hasn't heard any motion on anything yet.

MR. ELLICK: Can't that suggestion be referred to one of our standing committees for a report during this forthcoming year?

MR. ELSON: In order to move it along, Mr. Chairman, I move that the problem just mentioned be referred to the Legislative Committee for study and report back [laughter.]

CHAIRMAN HUNTER: There is a motion that the matter of lawyer's fees in Social Security cases be referred to the Legislative Committee for study and report back to this House. Do I have a second? [The motion was seconded.]

It has been seconded. Is there any discussion?

MR. SVOBODA: Why restrict it to Social Security matters? There is Veterans' Administration; there are suits and torts against the Government. I think that whole field could well be studied.

MR. ELSON: I will amend my motion, subject to the second, that those other fields also be included.

MR. GINSBURG: Mr. Chairman, seriously speaking, I am confused. I don't know what to say because I don't want to give the wrong impression. I am against this motion, but I don't want to give anybody the impression that I am against it because I expect to be on the Legislation Committee again. I am speaking as an absolute neutral. Frankly, it seems to me that this matter of attorney fees under the laws of the United States is beyond the scope of our Committee on Legislation unless through some means you are going to enlarge the powers of that Committee. However, I don't mean to say that the question doesn't deserve study and efforts on the part of our Association. I am wondering whether it isn't appropriately a matter — don't we have a committee on fees? Don't we have a fee committee, or did have? It seems to me that if we don't have, a special committee should be appointed to work on that subject. That is a matter that is going to have to be taken up with Congress, as I understand it. Nothing will be accomplished, in my candid judgment, by referring it to the Committee on Legislation of the State of Nebraska, which is confined to our own state Legislature.

CHAIRMAN HUNTER: Was there a motion to include the other areas here? I don't know whether that was actually made in the form of an amendment or not.

MR. ELSON: I accepted it.

CHAIRMAN HUNTER: Will you restate your motion then, Mr. Elson.

MR. ELSON: I move that the subject of the limitation of fees established by the Federal statutes for services of an attorney to a client in the field of Social Security Administration, Veterans' Administration and other similar Federal administrations be referred to an appropriate committee by this House of Delegates for study and report back to the House.

CHAIRMAN HUNTER: Will the second accept those changes?

MR. DOW: Yes.

MR. ELSON: Power in the Chairman to decide which committee should handle that problem.

MR. ELLICK: Mr. Chairman, it seems to me that Mr. Tye, our President, this morning made some remarks in his talk about the economic situation of lawyers and mentioned the study that was just completed in Missouri. Possibly there is some thought, and I gathered from him that there was, that we would conduct possibly a similar study or survey or review in Nebraska. I wonder if the person making the motion would be willing that the matter be referred to the President or to the Executive Council and allow the President to refer the matter to an appropriate committee. Then I think we might be tying two or three things together.

CHAIRMAN HUNTER: That amendment has been accepted.

MR. SVOBODA: Why should there be a special committee on economics? There is another field that is trying to lawyers where you are appointed to a Federal Court criminal case. We all here in Omaha remember what a tough time Eugene O'Sullivan had when he got appointed to a case that kept him at work for months uncompensated. I realize there is a bill before Congress to remedy that situation, but I think the Bar Association ought to consider that field also and help support that legislation. Therefore I suggest that it might be a broad committee on the economics of the legal profession to look into all these related subjects.

CHAIRMAN HUNTER: I take that as a suggestion rather than a motion for the reason that it seems to me that the fair interpretation of the motion which is now before the House is that this matter be referred to the Executive Council for appropriate action rather than any specific committee. Is that correct, Mr. Elson?

MR. ELSON: Yes, sir.

CHAIRMAN HUNTER: And the purpose of it as stated by Mr. Vinardi was that this whole matter of review of the economic

status of lawyers is now or will be before the Executive Council, so it seems to me that they have accomplished what you are getting at.

The motion is to refer the matter of the limitation by Federal law on attorney fees in the field of Social Security, Veterans' Administration and related matters to the Executive Council for study and report. If there is no further discussion . . .

PLINY M. MOODIE: Mr. Chairman, as a matter of suggestion, it is my recollection that this problem being one that affects all the lawyers throughout the United States, it has been considered by the American Bar Association and is currently under consideration by that Association and perhaps our committee could work through the American Bar Association in getting something done. I believe that the Social Security Administration recognizes that there is a problem, and the American Bar Association also has done some work on that.

CHAIRMAN HUNTER: As many as favor the motion signify by saying "aye"; opposed, "no." The motion is carried.

At this time I would like a report from the Special Committee which was appointed this morning, with President Tye as Chairman, to consider changes in the structure or names of the various sections. That report will be given by Paul Martin.

#### **Report of Special Bylaw Committee**

Mr. Chairman, in the absence of Mr. Tye I want to report that the committee, in view of the acceptance of the report of the Committee on Continuing Legal Education and the possibility of revamping the entire picture as to sections and continuing legal education, feels that at this time it is not necessary to do anything to the Bylaws except perhaps correct the names which are merely misnomers of the sections, and that is changing "Municipal Corporations" to "Corporations" and "Insurance Law" to "Tort Law." That will enlarge the province of those two committees into fields that would be required to be covered at this time. I move that that section of the Bylaws be amended covering those two changes of names.

MR. DOW: I second the motion.

CHAIRMAN HUNTER: The motion of the Special Committee is to amend Article IV, Section 1 of the Bylaws by changing the name of the Insurance Law Section to the Tort Law Section, and the name of the Municipal and Public Corporation Section to Corporation Section. Section 1 of Article IV will read:

Section 1: The following sections are established:

- (1) Junior Bar Section
- (2) Tort Law Section
- (3) Corporation Section
- (4) Real Estate, Probate and Trust Law
- (5) Taxation
- (6) Practice and Procedure

Is there any discussion? If not, all those in favor of the amendment to the Bylaws say "aye"; opposed, "no." The motion of the Committee is adopted and the Bylaws have been amended.

The Bylaws, as I recall, provide for notifying the members of the Executive Committee of the affected sections, and the change will become effective as of the next annual meeting.

Is there anything further, gentlemen? If not, I will entertain a motion to adjourn.

MR. SVOBODA: I so move.

CHAIRMAN HUNTER: All in favor of the motion to adjourn say "aye." The motion has carried, and we will reconvene at 4:00, approximately, on Friday afternoon.

## NEBRASKA STATE BAR ASSOCIATION

## THURSDAY MORNING SESSION

October 8, 1959

The opening session of the Sixtieth Annual Convention of the Nebraska State Bar Association convening in Hotel Paxton, Omaha, Nebraska, was called to order at 10:20 o'clock by President Joseph C. Tye of Kearney, Nebraska.

PRESIDENT TYE: Gentlemen, if you will all kindly rise, we will have the invocation by Reverend Edward W. Stimson, Pastor of the Dundee Presbyterian Church, Omaha.

## INVOCATION

Reverend Edward W. Stimson

Let us bow in prayer.

Almighty and eternal God, Thou who art the source of all justice and right, we thank Thee that we live in this land of liberty under law where Thy eternal justice gains some expression in the institutions of our common life.

We pray that the laws of our land and the way we conduct our society may more and more conform to Thy eternal principles. Help us in the exercise of our duties in the community to make progress toward this end.

Bless the meeting of this Bar Association today, and may our nation as a result of the dedication of men who have high ideals in the law be truly a light to the world in the way eternal justice is administered in human affairs. We pray in Thy name. Amen.

PRESIDENT TYE: Thank you very much, Reverend Stimson, for being with us for that nice invocation.

We will now be pleased to have an address of welcome by Milton R. Abrahams, President of the Omaha Bar Association.

## ADDRESS OF WELCOME

Milton R. Abrahams

Mr. President, Friends: It is a real pleasure for us of the Omaha Bar Association to welcome you to this, the sixtieth meeting of the Nebraska State Bar Association. We always look forward to this annual renewal of good fellowship, as well as to the

massive transfusion of legal learning and erudition which we at Omaha receive from you folks.

You know, I rather imagine that our Omaha merchants would especially want to welcome the lovely wives of you members from out of town — those lovely wives of yours whose shopping expeditions are carried out in such a free-wheeling way. I don't have the exact figures with me at this moment, but I understand from statistics that I receive from these merchants that the average out-of-town wife will purchase more merchandise in the two days that transpire during these sessions than any one of our local wives dares to buy over a period of two months. Having in mind the inflationary level of our office overhead, I think that is just about the right ratio between the Omaha lawyers and the out-of-town lawyers.

As we all recognize, the law isn't something static; the law is something dynamic. It is constantly changing, constantly growing, constantly moving in new directions, and a substantial part of that development of the law is due to groups of lawyers like us, sitting in state and local organizational meetings like this, because notwithstanding the rules that we learned when we were studying geometry, in human affairs the whole is always greater than the sum of its parts. Our mutual study in these rooms of our mutual problems, our interchange of ideas, our cooperative action, these all add up to plus values that are of tremendous value to every one of us, plus values that make it possible for us lawyers joining together in association to accomplish far more than could be done by any lawyers acting separately and individually.

Now sometimes we get so preoccupied with the daily routine of our practice, with the sheer problem of making enough dollars to provide for our families and to pay that overhead that I referred to a moment ago that we completely lose sight of what is happening in our profession and in the law. And it is this kind of a gathering that gives us an opportunity to climb out of our rut, to gain new perspective, to broaden our horizons, to deepen our understandings.

It is in that context that we bid you all a cordial welcome to Omaha for these sessions.

PRESIDENT TYE: We shall now have a response by my friend Merle M. Maupin of North Platte.

## RESPONSE

**M. M. Maupin**

President Tye, Mr. Abrahams, and Ladies and Gentlemen of the Association: It is a pleasure indeed to have the opportunity of expressing on behalf of the membership of this Association the gratitude of the Association to the Omaha Bar for the efforts that they have made today and for tomorrow for our entertainment and for our meeting that we shall have here.

For one who has been attending these meetings for more than half of the time that this Association has been meeting, and I know I speak for others who have been coming as long as I have, it is always a pleasure to come back to Omaha, not only to meet our old friends, but to make new acquaintances and to partake of the hospitality that the Omaha Bar Association always provides for us.

I think it is fitting also that I should mention the fact that the ladies of the Omaha Bar Association seem to always go all-out to provide entertainment for the wives of members in attendance.

So I shall terminate my remarks by again saying to you, sir, "Thank you and your Association, your members, for the program you have provided for us."

## ADDRESS OF THE PRESIDENT

**Joseph C. Tye**

Distinguished Guests of our Association this year and Members of the Nebraska Bar Association: I am now pleased to endeavor to comply with the rule of our Association requiring the President to deliver an address. I say I am pleased for the reason that my predecessors have construed the rule as meaning that the President should make a report of his acts and doings and of the activities of the Association generally for the past year, and the Court has not yet reversed the construction.

The word "address" has always frightened me, but I was somewhat relieved to find in Webster's New Collegiate Dictionary under "address," referring to law: "To unseat or remove as unworthy of office, though not liable to impeachment." I therefore proceed with confidence.

I claim one historical significance: I will be the last President of this Association without Vice-President, that is, or Presi-

dent-Elect. Next year's President will be able to do a superior job because he can assign all the work to the President-Elect and he can take care of the social engagements, and I recommend him highly.

It has been said that there is nothing new. One thing was started and will, with the assistance of God by tomorrow be completed this year—my term of office.

It is indeed pleasing for the President of this Association to make a report to its members for the reason that it is a report of your acts and doings. You are the Nebraska State Bar Association, and the President is simply your instrumentality.

I thank you sincerely for the opportunity to serve you to the best of my limited ability during the past year. It has been a pleasant and stimulating experience. I am convinced beyond any doubt that this Association is as good, if not better, than any other state bar association in this country today. We are well organized; our various sections and committees are working smoothly; and our accomplishments are indeed gratifying.

The committees of your Association have been active, hard-working committees. To avoid repetition I shall not endeavor to detail the work of each of these committees. You have committee reports published in the annual program. I call your attention to the work and activities of four committees because they are of special interest and concern to each of us now and in the immediate future.

The special Committee on Revision of Corporation Laws reports the passage of L.B.349 and L.B. 350, which are of interest and value to many of you. This Committee is continuing the study of our corporation laws.

The Committee on Legislation worked long and hard during the unprecedented (referring to length only) session of the State Legislature. The results obtained by this Committee were most gratifying, and the standing of the Bar has been raised because of the confidence which this Committee has created by its contacts with the Legislature and the public generally.

Our only regret is that we were unable to secure passage of the bill providing for a vote on the constitutional amendment to adopt the "Merit Plan for Selection of the Judiciary." Although there has been some opposition by members of the Association to this plan, no one has been able to satisfy me of the reason or logic of the objections. The argument that the voters should select their own Judges is indeed fallacious, since we all know that a



majority of the voters do not understand the necessary qualifications and ability of an individual to qualify him for a Judge.

The experience of Missouri with this plan has been most satisfactory. I have upon several occasions discussed the plan with members of the Bar and of the Judiciary, both Federal and State, and find that they are heartily in favor of the plan. Kansas adopted some such plan during the past year, and Alaska has such a plan. I dare venture that with the number of vacancies on the bench throughout the State at the close of the present term we will realize the value of this program for selection of Judges come January, 1961.

It is my hope that the Bar will give thought to this subject and that we may by proper planning and education bring about the adoption of the plan to the end that we in Nebraska may in the future obtain the best-qualified men for the bench.

This is not to say that our present Judges are not qualified, capable and competent, but times have changed greatly since many of our present Judges were elected or appointed. I believe the whole problem is explained in this quare, "Can you find a qualified practicing lawyer who will run for the judicial offices of the State under the present system unless the Bar takes steps to draft one man and all of the members agree to support him, which is an unusual circumstance?" The Committee on Judiciary gave special effort to this subject. Although there are many other subjects for this Committee to concern itself with, it may well devote most of its time to a future plan to obtain the necessary legislation for the next two years.

The Committee on Legal Education and Continuing Legal Education has held several meetings. This Committee, in conjunction with the Sections on Taxation and Real Estate, Probate and Trust Law, arranged and conducted the sixteenth annual Institute on Federal Taxation and Estate Planning. The Committee also arranged and conducted the Institute on New Legislation. These Institutes were traveling institutes and were presented at four different locations across the State. This Committee has considered the motion adopted by the House of Delegates and has put into operation some of the suggestions therein contained.

On your behalf I thank each and every member of the sections and committees for their sincere interest and efforts and congratulate them on these fine institutes.

The Public Service Committee did a splendid job with Law Day U.S.A. this year. It is a fine opportunity for the Bar to render true public service. Law Day is now a tradition and a

nationally recognized day of celebration. This Committee continued the radio and TV programs throughout the year and there have been some splendid articles carried by the press. The weekly magazine section of the *Omaha World Herald* carried some excellent legal articles during the year.

The sections of your Association have all been active during the year. Again I shall not endeavor to detail all the activities of these various sections but say to you that you will observe during this annual meeting real live hard-working sections in action. This is an integrated Bar with the House of Delegates organization in action. Visit any one of these sectional meetings and you will find a program of interest and real value. These sections are carrying on our program of continuing legal education. One of these sections has been so active during the year that I have had to open two extra files to take care of the copies of correspondence forwarded to me. They have a real full program which is, in effect, a postgraduate course. My sincere thanks on behalf of the Association to each one of you serving and working in these sections.

Under the heading of what might be considered general Bar Association activities, have you heard of the association between our Secretary, George H. Turner, and Mary Lane? If you have not heard this story, get it. It has resulted in unprecedented demand for our pamphlets and favorable attention to our profession.

George also provided, on behalf of your Association, Nebraska headquarters at the ABA meeting in Miami Beach, Florida, and needless to say, the headquarters was used.

I wish to correct an error in my report to the House of Delegates yesterday in which I stated that the index for the *law Review* was being published in order to be used in the desk book. The correction proves that I do not read the *Law Review*, and I discover, since making the report yesterday, that that index was published in the last issue of the *Nebraska Law Review*.

Our institutes were unusually well attended this year, particularly the Institute on New Legislation, for the reason that it was conducted in early August. The Committee on Continuing Legal Education has a number of institutes under consideration. They have in the making a questionnaire which will be sent to each of the members of the Association, asking that you indicate your preference with reference to subjects to be presented in future institutes. This is a forward-looking project and is in line with the present and future demands for continuing legal education. When you receive these questionnaires, please realize that

it is to your benefit to give immediate concern to them, mark them and return them. This Committee has given untold hours of time. There is a member from each of the law schools on this Committee. They have served faithfully, and the result is that we have splendid cooperation with the law school at the University and at Creighton. The faculty of these law schools is cooperating in our Continuing Legal Education program and we of the practicing Bar are indeed grateful to them, and we urge them to continue to give consideration to this program.

The University of Nebraska College of Law and the Junior Bar Section conducted an institute in Lincoln on Nebraska Probate and Practice. This institute was the largest of its kind we have had, and it was indeed a practical and educational institute. Our thanks to Dean Belsheim, his faculty, Edward A. Cook, III, Chairman of the Junior Bar Section, and each of the gentlemen who participated in this institute.

It is my information that the Creighton College of Law is planning an institute, and that the Omaha Bar Association and Barristers Club is also planning an institute in conjunction with the University of Omaha. It is my hope that in future years the Continuing Legal Education Committee may be enlarged and, if necessary, that we may have some paid personnel, either an assistant to the Secretary of the Association, or a part-time faculty member at one of the Law Colleges in order that this program may be correlated and conducted in such a manner that we may have at least six annual institutes.

The institutes conducted by your Association are of actual value to every practicing lawyer. It was best expressed by one of the older members of the Association when he said, "I am afraid *not* to attend the institutes."

Our institutes are conducted without registration fee or charge for material provided. Such expense is increasing, as is everything else. Printing, traveling and all necessary expense in the conduct of these institutes has increased, yet we get them for our minimum dues. This is not the case in any other state. If you are not getting your money's worth, attend the institutes. Other states report better attendance because of the charge. This may become necessary in Nebraska. California, the largest spender for continuing legal education, spends approximately \$250,000 per year and makes money because of the registration fees charged and the charges for their publications.

We have enjoyed cooperation from business and professional persons and organizations, particularly the accountants and the

medical profession. We should endeavor to work out some understanding with the realtors of the State in order that it may not be necessary in Nebraska to test the question of unauthorized practice of law in many of the fields of endeavor conducted by realtors. The Nebraska State Medical Association has been sending its President to our annual meetings, and our President has been invited to attend the annual meeting of the Nebraska State Medical Association. This has established a very fine relationship and, I hope, a better understanding and respect between members of both professions.

A special committee was appointed to meet with a committee of the State Medical Association relative to medico-legal matters, and I am sure such contact will result in a better accord among the members of the two professions.

Lawyers and physicians in several states have adopted standards of principles governing lawyers and physicians, which is a step in the right direction. These principles have been approved by committees of the AMA and ABA.

Several of the states have adopted the Impartial Witness Plan. The House of Delegates of the ABA adopted a resolution in 1957 approving the plan. It has been used successfully in the City of New York since 1952 and has been utilized in Baltimore, Philadelphia, Los Angeles, Cleveland, Chicago, Minneapolis and Pittsburgh. Proponents say the courts can invoke the plan by rule, and this view was recently strengthened when the United States Court of Appeals for the Third Circuit upheld the Impartial Witness Rule adopted by the Federal District Court of Eastern Pennsylvania. These subjects might well be considered by this joint committee.

Your Association cooperated with the Governor in his traffic safety conference through the Committee on Public Service.

The use of professional cards in newspapers was called to our attention this year. Some of the members have not been aware of the ruling of the ABA that such are considered unethical, and it is hoped that there will be no reoccurrence.

We were glad of the opportunity upon several occasions to call attention to the proposed Nebraska Center for Continuing Education to be constructed at the University of Nebraska. This is known as the Kellogg Center and is indeed a national distinction for Nebraska. I am sure that those who contributed to this worthy project will realize much pride and pleasure in the fruition of this enterprise. The Nebraska Center will be the third Center for Continuing Education to be established in the United States.

It will indeed afford a splendid location for some of our Continuing Legal Education programs.

Cooperating with the ABA, the President of each of the undergraduate colleges of the State was requested to designate a pre-law advisor. The Presidents responded enthusiastically. A list of these pre-law advisors has been furnished the ABA, and your Association is designating a member in each city where the undergraduate college is located to act as counselor. These people will receive material from the ABA to assist them in counseling with students interested in the study of law.

A study of the educational field over the past few years has indicated that the recruiting efforts in science and industry have had an undesirable impact on the quality and quantity of students applying for admission to law school. We are all concerned that the quality of the legal profession be maintained and that young men of high character and ability undertake the study of law.

It is not pleasant for anyone to lose a beloved friend, companion or associate. In the passing of a fine gentleman and a great lawyer, this Association received a unique and invaluable recognition. It is not the amount involved that is the greatest gift to the Association and recognition of it, but the remarks of the donor in connection with the bequest. Daniel J. Gross gave to the Nebraska State Bar Association the sum of \$25,000 "for charitable and welfare purposes of active practicing Nebraska lawyers, their wives, widows and children." His Will provided that the funds should be administered by whatever plan the governing body of the State Bar felt was best, "because I have an abiding conviction that they are and will be men of character, integrity and fidelity, and will see that the fund is prudently and justly administered."

And then, Daniel J. Gross paid his profession a most beautiful and high tribute in the following words: "In this connection, while it has nothing to do with this bequest, as a matter of public record I would like to state that in nearly forty years of practice I have never been approached by an opposition lawyer to sacrifice my client, nor during the thousands of trials in which I have been engaged have I ever had the least suspicion or evidence that the opposition tampered with the jury, nor have I ever experienced a dishonest judge who sought or received from me any money or favors, and although many times their thinking did not agree with mine or the interest of my client, in not one instance did I ever think or even suspicion that they did not express their honest belief and judgment."

Your President was privileged during the year to attend several County and District Bar Association meetings, at which the activities of the Association were presented. In every instance, he found an interested group of lawyers concerned in the affairs of the Bar Association and sincerely desirous of increasing our service to the public and in obtaining the best possible administration of justice.

Your President also attended two conferences of state bar presidents at which there was a thorough presentation and open discussion of the lawyer referral service; the clients' security fund; the program for Law Day, U.S.A.; time and money records for attorneys; Federal legislation which affects the Bar; pension plans for Bar Association employees; special committees on the Bill of Rights, the purpose of which is to investigate alleged claims of violations of the Bill of Rights and to disseminate information concerning the Bill of Rights; the coordination between ABA and State Bar Association activities and a program for Continuing Legal Education.

At the meeting in Miami Beach, Florida, your President was privileged to speak in the conference on the organization and activities of your Association, at which meeting it was most pleasing to find that your Association has been and is operating exceedingly well in comparison with other state bar associations. At the Miami Beach conference your President was the moderator of a panel on the subject, "A House of Delegates in a State Bar Association." Because of the lateness of the hour, this panel was continued until the Mid-Winter Conference to be held in Chicago next February. It was most interesting to learn that a number of states have been investigating and studying the organization and operation of our Bar Association and are interested in organizing their associations in a similar way.

Your President was invited and was able to attend the state bar meetings of Colorado, Iowa, South Dakota and Missouri. These meetings were beneficial and interesting. At Colorado they are investigating and planning to operate a title insurance program by the State Bar Association, and in Missouri they have this year employed a group of counselors to investigate a cross section of the practicing law offices and make recommendations with reference to office methods, management and the general business affairs of operating the law office. This report is available to us and I am recommending to the House of Delegates that a special committee be appointed to conduct a similar study in Nebraska and arrange an institute on the subject.

Probably the highlight of the year was the Arden House conference held at Harriman, New York, December 16-19, 1958. This conference was composed of one hundred ten Judges, Bar Association officials, and members of law school faculties. Every state in the Union was represented. The conference was divided into small groups and the speakers or moderators moved from one group to another, affording an opportunity on the part of every conferee to ask questions and discuss his particular Association.

The result of the conference was that the legal profession must do two things: (1) increase the professional competence of lawyers, and (2) better qualify the lawyers to meet their professional responsibility to their clients and to the public. The ABA, through the joint committee of the ABA and ALI, is formulating a detailed program which will be available to all bar associations—city, county and state—for the purpose of carrying forward this program. The Arden House conference was financed by one of the foundations in such a manner that all expenses of the conferees were paid by the foundation through the ABA. The ABA has become one of the vital forces in this country. It is, as you know, a voluntary association. The men who are active in the Association are of the highest caliber and quality of the Bench and Bar of the United States. They are dedicated men and are doing a grand job for the legal profession of this country. I sincerely believe that every practicing lawyer should be a member of the ABA.

Your President has been deeply moved and enthused with the willingness of the members of this Association to carry on the activities of the Bar and to assist in any way possible. The interest, efforts and cooperation of law students, law college faculty, lawyers and judges have been most gratifying. There has never been a refusal throughout the year by anyone to undertake any assignment requested. Truly you have a most excellent Bar Association. To work for it is a labor of love.

I wish to thank most sincerely each and every one of you who have given of your time, efforts, thought and advice during the year.

Particularly do I wish to add my word of gratitude to those of other Presidents and officers of this Association to our devoted, loyal and valuable Secretary, George H. Turner. Without George I do not know how we could operate this Association. It was highly pleasing to hear John E. Mulder, Director of the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association at Arden House, use the

State Bar Association of Nebraska as an example for associations in states of our size and geographical expanse, and his reference to George H. Turner as "Mr. Continuing Legal Education of the Midwest."

Mrs. Turner, Katherine Schultz and Mrs. Taylor are deserving of our thanks and appreciation, which are extended to them.

The thanks of this Association also to the officers of the trust companies in Omaha and Lincoln who traveled with the Institute on Federal Taxation and Estate Planning and gave their assistance to the success of that institute.

If you will indulge me a moment, a word or two on the role of the lawyer in this rapidly changing world.

At the Arden House Conference Dean Griswold of Harvard Law School emphasized the inability of the law schools today to thoroughly and completely educate young people for the complete practice of the law in all of its varying and expanding aspects. He called attention to the intricacies and complications of our legal system, with the Federal system and now fifty different State systems. He stressed the complication of government in the fifty states and of our Federal Government, and particularly our method of legislation, State and Federal, which results in complex laws. The public naturally looks to the lawyer for leadership in political and governmental affairs as well as in connection with all legal matters. The advance of administrative agencies has greatly added to the complexity.

In England, for instance, there is one law of evidence. In the Moslem countries there is the Koran law handed down from on high, and no one has the power to change it. Once it is learned, that is it. The English lawyer requests an opinion on the law of evidence in America, and when he is advised that twenty-seven states have one opinion, thirteen have another opinion, and ten have not determined the question, and then that the Federal Courts follow one or the other, or neither, you have a really confused Englishman.

The law schools can and do teach a lot of present law, but within a few years it may be difficult to recognize it. Take the field of taxation and what has happened in it during the past thirty years. It is an impossibility to teach the law of the United States as fully as was done forty years ago. To keep abreast of the developments is a continuing legal education problem.

Judge Charles E. Wyzanski, United States District Judge in Massachusetts, speaking on the public responsibilities of the law-



yer, told of his experiences in Belgrade. He was talking with the Judges of the Supreme Court of Yugoslavia and asked if they felt the same freedom that he felt in deciding an important political case against the prosecution. There was a good deal of buzzing among the Judges before one answered: "You will see my brethren are not in agreement as to the answer to give you. But may I remind you that Pericles said, 'The secret of liberty is courage,' and my brethren differ in the amount of courage they have."

It is absolutely essential to a constitutional government of laws that the Bar remain courageous, fearless and independent. The lawyer should never be owned by a client or coerced by a court. Without an independent bar there cannot be an independent judiciary, and without an independent judiciary there cannot be freedom and a constitutional government such as ours. Independence of the judiciary requires courage. Independence of the Bar requires a great deal more courage.

C. C. Burlingham, upon one occasion, notified a Judge to act or else he would. This is the independence and freedom of the legal profession of this country, and only by such courageous and independent lawyers have the freedoms of the people of the United States, including our brothers in other professions, been preserved and protected.

With the rapidly changing course of people and affairs of the world today, the law and the judicial processes must change and progress. They are changing and progressing. It is reported that soon a jet liner will fly nonstop from Chicago to Honolulu in little more than two hours. Legal problems of many kinds will follow. It is the duty and responsibility of the legal profession to keep abreast. The lawyer cannot graduate from law school, become admitted to the Bar and then sit back in his office complacently and proceed to practice the law which he learned for some thirty, forty or fifty years. It is necessary that the lawyer maintain his competency by continual study, review and application. Such a course requires some method or form of education designed particularly for two groups: (1) the newly admitted lawyer, particularly in the field of practice, procedure, evidence and contact with and the handling of people; and (2) the older practicing lawyer who needs to keep abreast of the general field of the law, and particularly in advanced and specialized fields.

There is, in fact, another group of older lawyers who are now showing a great deal of interest in continuing legal education of a type known as "postgraduate courses." Many of the law schools are conducting two- to six-week courses in jurisprudence and

many specialized fields, and these courses have been literally crowded with older practitioners who are desirous of making a further study of subjects which they were unable to study during their law school days and which their busy practices have prevented their studying.

In addition to the lawyer maintaining his competency, he must also give some concern to his responsibilities. The responsibility of the lawyer is increasing every day. He must be responsible to the Courts for the administration of justice, to law reform, to the lawmaking process, to his profession and to the public. The lawyer is called upon to serve his city, county, school district, church, club, lodge, legislature and every other form of organization or group which the mind of man has been able to conceive. He must be honest, courageous and independent as he affords leadership in every facet and phase of community, state and national life.

It is the duty therefore of the State Bar Association to afford ways and means for its members to maintain their legal competency and to fully understand and assume their responsibility. This kind of a program will require every effort and ingenuity on the part of our law schools and the legal profession, including both the Bench and the Bar.

The legal profession is lifting its general standing and reputation in the opinion of the public. The knowledge of the public of our institutes for the purpose of keeping abreast of the times in order to better serve them is good publicity. In addition to this activity, Law Day, U.S.A. has become a national day of celebration. Law Day, U.S.A. has been proclaimed by the President of the United States for two consecutive years. The celebrations have increased beyond all expectations. This year special programs were held in nearly every city and county of the United States. Special programs were held in Alaska, Hawaii, Puerto Rico, Japan, Korea and Okinawa. Thirty-three foreign nations took part in a special Law Day ceremony held at Independence Hall at Philadelphia.

It has been particularly important that Law Day, U.S.A. is celebrated on May 1, since Russia celebrates May Day on May 1. The wording of the so-called Constitution of the U.S.S.R. is in some respects very similar to the Constitution of the United States: "Equal rights for citizens of all races, for women, and also for separation of church and state, and that no person may be placed under arrest except by a decision of a court."

What makes the difference? We Americans are the heirs of the common law based upon inborn ideals of fair play, juries

of free men, the home of the little red schoolhouse and the little white church—symbols of our independence, of responsible authority, of our love for law and respect for nature's God. Such is not the tradition and heritage of the U.S.S.R.

In a special message of President Eisenhower, he said: "So universal is the yearning for peace, none can doubt that the overwhelming weight of world opinion will support measures to substitute the processes of law for the weapons of war."

Law Day, U.S.A. and the program initiated by the American Bar Association of World Peace Through Law have, I believe, helped create a new impression of the United States of America and the lawyer of the United States of America in the minds of the peoples of this country as well as those in other nations. Law Day has won friends for the legal profession by focusing worldwide attention upon the fundamentals of our greatness—the rule of law.

It may seem a far cry for the lawyer in Nebraska to talk about world peace through law. There are some serious problems, particularly with reference to the understanding of lawyers and judges of other countries, of our constitutional rights, privileges and safeguards and of our practice and procedure, but ask, if you will, a group of mothers of sons or a group of wives of husbands who lost their lives during the last war whether they prefer to try to settle international differences by the rule of law or by the rule of force and arms. The answer is apparent.

Five regional meetings were held in the United States during the past year to discuss and consider a program for World Peace Through Law. The unanimous opinion of the lawyers following the conferences was that such an attempt was well worth the effort.

A world conference of lawyers should be held, inviting lawyers from every nation in the world, including those behind the Iron Curtain, and a study should be made of the use of the existing International Court of Justice, how to improve procedures for settlement of disputes in the business field by extending World Court jurisdiction, adherence to legal procedures and institutions and principles known to and understood by lawyers.

Lawyers in other nations are expressing an interest in this program. Some have held meetings in their countries in an attempt to inform their people and begin a program of education for such a plan. Such a crusade should be financed by private, not government, money. It should be a lawyer-to-lawyer-to-people program in the hope that the people will persuade governments to adopt it. Even if the lawyers behind the Iron Curtain should

not participate at the outset, the effort would be successful if all of the other nations would join. Russia's propaganda claim of being a civilized nation would then be defeated in the area of public opinion.

Our history reveals that the authority and prestige of our own Federal Court had to await public acceptance and acclaim. Perhaps such would be true of a World Court which would bring about world peace through law.

In any event, it is a challenge to the Bar of the United States; nothing can be lost by making the attempt, and in the meantime we are establishing respect, confidence and gratitude with our people. The ABA is carrying on this intensive program, and it is my firm belief that every lawyer in the United States should be a member of the ABA. The lawyer, in studying this proposal of world peace through law and discussing it with individuals and groups, friends, churches, civic clubs, etc., is again meeting his professional responsibility.

In closing, I express my opinion that you are members of the oldest and the greatest profession in the world. Let us do those things which will command the respect, the admiration, the confidence and the gratitude of the people of this nation.

## REPORT OF SECRETARY-TREASURER

George H. Turner

Mr. President, Members of the Association: I don't know that you are all familiar with the method of keeping track of the finances of the Association. At the end of each month the Secretary-Treasurer reports to the President all receipts and expenditures for that month. At each meeting of the Executive Council a composite of those reports covering the period between meetings of the Council is submitted to the Executive Council for examination, criticism, if there is any, or approval. At the end of the year the books of the Association are audited by a firm of certified public accountants.

We have the report for this year from Peat, Marwick, Mitchell & Company through their Lincoln office. Their report is:

"We have examined the statement of cash receipts and disbursements of the Nebraska State Bar Association for the year ended September 15, 1959. Our examination was made in accordance with generally accepted auditing standards which we deemed applicable to the cash receipts and disbursements method of accounting, and accordingly included such tests of the accounting

records and such other auditing procedures as we considered necessary in the circumstances.

"The accounts of the Association reported on herein are maintained on the cash receipts and disbursements basis of accounting, that is, accounts are not maintained for assets, other than cash, or liabilities to reflect the financial position of the Nebraska State Bar Association.

"In our opinion the accompanying statement of cash receipts and disbursements of the Nebraska State Bar Association presents fairly the recorded cash transactions for the year ended September 15, 1959, and the cash balance at that date, applied on a cash basis consistent with that of the preceding period."

Then they attach to that a detailed audit of all the receipts and expenditures of the Association and the object of the expenditures. This year for the first time in a number of years expenditures have exceeded receipts. The total receipts were \$47,456.40, and the total expenditures \$51,354.67, or an excess of disbursements over receipts of \$3,898.27, leaving a cash balance at the end of the year of \$2,039.20 and \$6,000 in United States bonds.

The reason for the excess of disbursements over income this year is largely accounted for by a very marked increase in the cost of our publications, the *Law Review* and the *Bar Journal*. The Executive Council at its meeting yesterday gave considerable thought to methods of reducing the cost of our publications.

Another expense of this year which is nonrecurring next year is the cost of the Legislative Bill Digest which is sent to each active member each week during the legislative session. That, again, has troubled the Executive Council somewhat. It involves an expenditure of about \$2,000 during legislative sessions, and it involves a very considerable amount of staff work in the office.

We hear varying reports from members of the Bar. Some say they find the Digest invaluable; others say that they put theirs immediately in the wastebasket. For the information of the Council and for my information, too, if you please, I would like a show of hands of those present who do use the Bill Digest and who find it useful. [Show of hands.]

Thank you very much. I am sure that will have some bearing on the decision of the Council as to whether the Digest is to be continued at future sessions of the Legislature.

I believe that is all, Mr. President.

PRESIDENT TYE: Thank you, George.

We shall now have a report by the American Bar Association delegate, John J. Wilson.

## REPORT OF AMERICAN BAR ASSOCIATION DELEGATE

John J. Wilson

Mr President, Members of the State Bar Association: It is a privilege to report to you the activities of the American Bar Association through the House of Delegates.

It is an organization of lawyers of America, and I join with the President in saying I think every practicing lawyer should be a member. It is not an organization that is going behind; it is a growing organization. There are now about 95,000 members, of which 6,000 joined this past year.

The Bar Center, which was set up a number of years ago in Chicago, has been bursting at the seams so that it is now necessary to add a new wing. The House of Delegates in Miami approved the building of this new wing at an expenditure of \$850,000, which is being financed by \$400,000 given from the American Bar Foundation and \$450,000 by the Bar Association as advance rent, so it will be paid for without an increase in dues.

They have a service on research that you can get nowhere else, and it is worthwhile to use their services.

There are many reports on activities of lawyers. Many reports were given, some of them of interest to you and others are not. I think one of the interesting reports is the Federal Judiciary Committee. The House approved two important recommendations of this Committee on the selection of Federal Judges. The Committee on Nonpartisan Selection of the Federal Judiciary was authorized to endeavor to secure the adoption of a plank by both Republic and Democratic parties at the 1960 conventions in support of the principle that an approximate balance should be maintained between the two parties in the selection of qualified persons for Federal judgeships. They are asking that the planks be put in the party program and the Judges be appointed on a nonpartisan basis.

All the Judges that have been appointed in the past two years have been approved by a selected committee of the American Bar Association, and the Attorney General's office is working in hand with the members of the American Bar. George Turner has been serving on that Committee, and I think he has done a fine job with the other members of the Committee.

Another committee that has done a lot of work, and we can thank our own member, Larry Williams, that part of this has been done. They have been working on Federal taxation and have recommended twenty-four changes in the Internal Revenue Code. This is in a published pamphlet, and a copy of this can be obtained. If any of you are interested, I will give you the address. Larry has done a tremendous job with his Committee and they have worked untiringly.

American citizenship, as the President of our Association has told you, is one of the big programs of the American Bar Association, and they report that Law Day, U.S.A. has been increasing and in 1959 it was much larger than in 1958.

The American Citizenship Committee recommends that in February of 1960 we have appropriate ceremonies in honor of the fiftieth anniversary of the founding of the Boy Scouts of America, and I am sure that pamphlets will be furnished and there will be much done in that regard.

Canon 35 was discussed and any action was postponed until a later meeting. The Committee is trying to find a happy medium that will not interfere with justice and still try to satisfy the media on taking of pictures and printing them in the papers.

There is a lot of discussion as to whether or not Canon 35 should be amended or whether it should be kept as it is, but I think progress is being made and the media are now more in accord that we are not arbitrary and we are trying to work out a program that is best for justice.

There are many sections of the American Bar Association that are working diligently. Members of the American Bar Association should take advantage of what they may learn and what part they make take in helping to improve the trial profession. You get out of it what you put into it, but I think it is an organization that should be supported by all the lawyers of America, and if you are not a member you should be a member.

PRESIDENT TYE: A short report on the Executive Council.

#### REPORT OF EXECUTIVE COUNCIL

Joseph C. Tye

Your Executive Council has been faithful to its trust. Special consideration has been given and a special committee appointed for further study of our group insurance program, including health, accident and professional liability insurance.

Publication of the amended title standards and the advisory fee schedule was provided in order that this material may be inserted in your desk book. The legislative bill service, as George has told you, was authorized and delivered to you during the past legislative session.

Request was presented to the Supreme Court to amend the rules providing for the office of President-Elect. This request was granted.

Approval of legislation to increase the salaries of Judges was given, and the Legislative Committee and Committee on Judiciary were authorized to support such legislation.

Proper recognition of the bequest of Dan Gross was made and appreciation was expressed to Mrs. Gross.

At another session of the Executive Council, your President, with the approval of the Council, appointed trustees to carry out the terms and conditions of the bequest of Dan Gross. These trustees are Harry L. Welch, John C. Mason and Earl J. Lee.

The Committee on Unauthorized Practice was requested to notify collection agencies indulging in the practice of using simulated process that such practice is unlawful and that unless it was discontinued, prosecution would follow.

The Real Estate, Probate and Trust Law Section was authorized to print suggested forms of conveyancing and distribute them to the members.

We will now have a report on the House of Delegates from Richard Hunter, Chairman of the House.

## REPORT OF THE HOUSE OF DELEGATES

**Richard E. Hunter**

President Tye: The House of Delegates of the Nebraska Bar Association met all day yesterday. The work of the House, as you know, is as the legislative organ of this Association.

Largely the reports which were considered and to which I will refer are contained in your program. If you have not done so, I urge all of you to read these reports that are in the program because they contain the actual workings of this organization.

The statement of the President to the House of Delegates was received, as was the report of the Secretary-Treasurer.

Following the suggestion of President Tye, the Chairman of the House appointed a special committee to consider revisions



in the number, composition and title of the various sections of the Association. The following committee was appointed: Joseph C. Tye, Chairman; David Dow, Paul Martin, Herman Ginsburg and Flavel Wright.

The Chairman appointed the following Resolutions Committee: James Green, Chairman; Kenneth Elson and Robert Bulger.

The following committee reports were adopted as published in your program:

- The Committee on Administrative Agencies
- Committee on County Law Libraries
- Committee on Medico-Legal Jurisprudence
- Committee on Cooperation with American Law Institute
- Committee on Crime and Delinquency Prevention
- Committee on American Citizenship
- Committee on Atomic Energy
- Special Committee on Joint Conference of Lawyers and Accountants
- Committee on Revision of Corporation Laws
- Committee on Public Service
- Committee on Oil and Gas Law
- Committee on Unauthorized Practice

The recommendations which are contained in the various reports as printed in the program were referred to the proper persons or agencies.

The following committee reports which required no affirmative action were received by the House of Delegates:

- Committee on Budget and Finance
- Committee on Legal Aid
- Committee on Legal Education and Continuing Legal Education
- Advisory Committee

The report of the Committee on Bar Examination Standards was adopted and the report included a recommendation that that Committee be dissolved.

The report of the Committee on Legislation was adopted after being amended by providing: (1) for the appointment of a special committee of the Association to study the uniform commercial code; (2) a recommendation to the Executive Council that special legislative counsel be retained by the Association during regular sessions of the Nebraska Legislature; and (3) the appointment of a special committee to consider a revision of the Association Bylaws to clarify the status of the Legislative Committee as official representatives of this Association during sessions of the

Nebraska Legislature. I will refer to the results of that Committee in a moment.

The report of the Judiciary Committee was adopted after being amended to provide as follows, and I quote: "The Nebraska State Bar Association should not abandon its efforts in this connection"—which has regard to the merit plan for the selection of Judges—"and the House of Delegates recommends to the Executive Council and the Judiciary Committee that a program be undertaken to educate the Bar and the public as to the merits of this judicial selection plan."

The Chairman appointed the following special Bylaws Committee: Ralph Svoboda, Chairman; Chauncey Barney and Milt Abrahams, which recommended to the House of Delegates the following change in the Bylaws. This is in Article VI, adds a Section 3, which relates to this problem of representation by the Executive Committee during sessions of the Nebraska Legislature, and here is the new Bylaw:

SECTION 3. The Committee on Legislation shall have authority, unless countermanded by the President of the Association, to represent the Association before the Nebraska Legislature, or any committee thereof, on any pending legislation of direct concern to the Association, and to take a position favorable or opposed to such legislation in its discretion, absent any prior action on such proposed legislation by the House of Delegates or the Executive Council.

It is the sense of the House of Delegates that this will remedy a defect which has caused considerable problems to the Legislative Committee and the Association in the past.

This report was adopted, and the Bylaws were changed accordingly.

A special committee to consider the revision of the Association sections moved the adoption of a change in the Bylaws in Article IV, Section 1, which would change the name of the Insurance Law Section to the "Tort Law Section," and the name of the Municipal and Public Corporation Law Section to the "Corporation Section." The change of Bylaws was approved, and this change will become effective as of the 1960 annual meeting.

The House of Delegates approved the creation of a special committee to consider the general revision of the Bylaws, the members to be appointed by the new President.

The House also approved a motion to refer to the Executive Council for study and report the matter of limitation by Federal

statutes of attorney fees in Social Security Administration, Veterans' Administration and related Federal administrative matters.

The Resolutions Committee reported the following Resolution:

WHEREAS, the Nebraska Legislature has passed an act submitting to the electors at the general election in November, 1960, a proposed amendment to Article III, Section 7, of the Constitution of Nebraska, which amendment if adopted will provide that members of the Legislature shall receive a salary of not to exceed two hundred dollars per month; and

WHEREAS, There has been no salary change for legislators since 1937, the time of the adoption of the one-house Legislature; and

WHEREAS, The duties and responsibilities of the members of the Legislature have increased and the cost of living has increased so that many competent men cannot afford to make the financial sacrifice which service in the Legislature now involves; now therefore be it

RESOLVED: That the Nebraska State Bar Association go on record favoring the adoption of said amendment providing for an increase in the salaries of the members of the Legislature, and that the Committee on Public Service be directed to promote the adoption of said amendment by such means as said Committee shall deem appropriate and suitable.

This resolution was approved by the House of Delegates.

The House of Delegates meets on Friday immediately following the Section on Taxation to conclude its business for the remainder of this year, including the receipt of reports of the various Sections of the Association.

PRESIDENT TYE: We will now be pleased to hear a report of the Judicial Council by the Honorable Edward F. Carter.

## REPORT OF JUDICIAL COUNCIL

Honorable Edward F. Carter

Mr. President and Members of the Bar: The Judicial Council met many times throughout the past year. In addition thereto subcommittees of the Council met on many occasions in the performance of duties assigned to them by the Council. I shall briefly review the bills adopted by the Legislature upon the recommendation of the Council.

Legislative Bill 449: This bill amended existing statutes relating to grand juries. It increases the percentage of qualified electors necessary to call a grand jury, prescribes the requirements of a petition to call a grand jury, and provides that prosecutions by information are not interrupted while a grand jury is in session.

Legislative Bill 450: This bill provides the manner of computing time in judicial proceedings and the days on which courts and their offices may be closed.

Legislative Bill 451: This bill amends the statutes on replevin. In substance it provides for the entry of a judgment for possession and damages suffered by the defendant when plaintiff suffers a voluntary or involuntary dismissal, and likewise where a trial on the merits is prevented by irregularities in process or for other jurisdictional reasons.

Legislative Bill 453: This bill provided the manner of obtaining a bill of exceptions in a criminal case. In substance it states that such a bill of exceptions may be obtained the same as in civil cases, except that it shall be ordered at or before the time the petition in error is filed in the Supreme Court.

Legislative Bill 455: This bill repeals Section 29-1801, R.R.S. 1943, as being inconsistent with later enacted legislation. It relates to the trial of two or more indictments or informations for the same criminal act.

Legislative Bill 456: This bill provides that a notice of hearing may be dispensed with and an immediate determination of the inheritance tax due may be made upon compliance with prescribed conditions and circumstances.

Legislative Bill 457: This bill provides for the service of any order, motion, notice or other document upon the attorney of record, either by personal service or by mail, and matters relating thereto. The requirements as to the service of summons are specifically exempted from the operation of this statute.

Legislative Bill 458: This bill authorizes service of process in actions arising out of the use or operation of motor vehicles over and upon any street, highway or any other place within the State by a person who was a resident when a cause of action arose but became a nonresident before the action was commenced, and to provide the venue of such action.

Legislative Bill 459: This bill extends the provisions of Section 25-530, R.R.S. 1943, relating to the service of process on a nonresident on a cause of action arising out of the use or opera-

tion of a motor vehicle, and to provide the venue for the action. The act was formerly limited to use and operation on the highways of the State. It now provides for service of process where the use and operation was anywhere within the State.

Legislative Bill 460: This bill provides the manner of ordering a bill of exceptions in civil cases and authorizes the Supreme Court to prescribe rules for the preparation, settlement, signature, allowance, certification, filing and amendment of such bill of exceptions. We think this was the most important legislation relating to the practice of law enacted at the last legislative session. The Court adopted the rules drafted by the Judicial Council and they became effective on September 28, 1959. Every lawyer should familiarize himself with the contents of these new rules. We have long been in need of a new bill of exceptions statute in this State. The new statute purports to eliminate numerous pitfalls in the old statute which were causing many litigants to lose valuable rights for failing to get a proper bill of exceptions before the Supreme Court. The Supreme Court recognized this situation and lent its aid in obtaining a new statute and a new set of rules. Unfortunately, some rules are necessary if litigation is to be expeditiously handled. We made the new rules as simple as we knew how, but if the lawyers of the State neglect to know their contents, valuable rights may still be lost by noncompliance with the statutes enacted and the rules adopted. The rules adopted are too lengthy to be reviewed here, and consequently I limit my report to an admonition to the Bar to know the contents of these new rules.

Legislative Bill 461: This bill provides the method by which the State may have a review by error proceedings in a criminal case of any ruling or decision of the District Court adverse to the State, and to prescribe the effect of a judgment of the Supreme Court thereon.

Legislative Bill 462: This bill provides a uniform fee in the District Court for each civil and criminal case. There are many provisions in this act which should be given study by practicing lawyers. Space will not permit a discussion of them here.

One legislative bill offered by the Council, an alternative one dealing with bills of exceptions, was not enacted. The Legislature adopted the preferred bill submitted. This necessitated the killing of the alternative bill which was with the approval of the Council.

We submitted another bill providing some minor changes in the bill of exceptions statute and raising the fees of court re-

porters for preparing bills of exceptions. This bill was passed by the Legislature and vetoed by the Governor. The Judicial Council made no recommendation as to the fees to be paid to court reporters, it not being a matter of practice and procedure, to which we limit our activities. The Governor's veto was directed to the increase in fees for court reporters and not to the other provisions of the bill. Neither the Legislature nor the Governor evidenced any objection to the procedural provisions of the bill. Whether or not the procedural matters contained in the bill should be resubmitted at the next session will depend largely on our experience with bills of exceptions during the next two years.

We have maintained, we think, a fine relationship with the Legislature. We have obtained their confidence in our integrity in dealing with matters of practice and procedure. We were called upon by the Legislature, particularly its Committee on Judiciary, to give them legal assistance. One example was their request for aid in preparing a juvenile court bill which would meet Constitutional requirements. We did not concern ourselves with the question as to whether or not a juvenile court bill was needed. We merely drafted a bill along the lines suggested to us by the Legislature's Judiciary Committee. The primary work was done by a subcommittee of the Judicial Council whose chairman only was a member of the Council. We merely tried to do the job requested on this very controversial legislation without entering into the merits of the bill any more than was necessary.

Due to the volume of work submitted to the Judicial Council, we have adopted a policy of farming out certain problems requiring investigation and research to subcommittees, with only one member of the Council serving thereon for liaison purposes. These subcommittees have taken an interest in this work and have made a great contribution to the effectiveness of the Council's work. The Council is grateful to these busy lawyers who have given of their time in the interests of better practice and procedure in the administration of justice in this State.

The improvement of judicial procedures is and always will be a constant challenge to the Bar of this country. Apparent errors, needed changes or new situations not dealt with should be called to our attention by members of the Bar. The Judicial Council will remain an effective clearing house in the field of practice and procedure only if we receive the cooperation and assistance of the Bar.

PRESIDENT TYE: Thank you very much, Judge Carter.

Secretary Turner will now present to us a report on the Dan Gross bequest, which report I think was submitted by Harry Welch.

SECRETARY TURNER: Mr. President and Members: This is the first report of the three trustees, or, as they call themselves, the Special Committee on the Daniel J. Gross Nebraska State Bar Association Welfare and Assistance Fund.

As President Tye told you, he appointed Trustees Harry L. Welch, as Chairman, John C. Mason and Earl J. Lee. Their report is:

Your Special Committee on the Daniel J. Gross Nebraska State Bar Association Welfare and Assistance Fund, which Committee has also been named and designated by the Association as Trustees of said Fund, submits the following report:

That on the 12th day of June, 1959, the Executive Council of the Nebraska State Bar Association at a duly called and constituted meeting of said Executive Council held in Omaha, Nebraska, adopted a resolution with respect to the testamentary gift and bequest to the Nebraska State Bar Association of the sum of \$25,000 under the Last Will and Testament of Daniel J. Gross, deceased, which resolution accepted with deep gratitude and sincere thanks said gift and bequest. That said resolution provided that said Fund shall be managed and administered by a Board of three Trustees, and that the undersigned were so appointed by the President of the Nebraska State Bar Association.

The Last Will and Testament of the late Daniel J. Gross has been admitted to probate in the County Court of Douglas County, Nebraska, on the 19th day of December, 1958, and that said probate is still pending; that no distribution of bequests has been made as yet, and it is contemplated that distributions and bequests will not be made under said Will until after January 1, 1960.

That by reason thereof no funds have come into the hands of this Committee and Trustees, and that it is contemplated that said Committee and Trustees will not receive said funds until after January 1, 1960. That upon receipt of said bequest said Committee shall take further action as provided and directed in the resolution of the Executive Committee.

Respectfully submitted,  
Harry L. Welch, *Chairman*  
John C. Mason  
Earl J. Lee

PRESIDENT TYE: I believe the next matter of business is the announcement of new officers.

### ANNOUNCEMENT OF NEW OFFICERS

George H. Turner

Under the Constitution of this Association the Executive Council meets at least ninety days prior to the annual meeting and makes nominations for the officers for the ensuing year. This time for the first time there was nominated in addition to the customary officers a President-Elect, provided for by amendment to the Constitution referred to by President Tye. Consequently the Council nominated for President for the next year Flavel A. Wright of Lincoln; for President-Elect to succeed Mr. Wright, Thomas C. Quinlan of Omaha; and for Member-at-Large of the Executive Council, C. Russell Mattson of Lincoln.

Notice of the nominations was mailed to all active members as required by the Constitution. No opposing nominations were made by petition, as is also permitted by the Constitution. Consequently these gentlemen stand elected as your officers for the coming year.

PRESIDENT TYE: Thank you, George.

The next item on our program this morning is a statement as to group life insurance. This statement will be made by Walter I. Black, a gentlemen whom I have known for a good many years.

Walter was admitted to the Bar in 1925, has had the foresight to find something a little bit more productive than the practice of law, and he is now with a life insurance company, the John Hancock Mutual Life Insurance Company.

### GROUP LIFE INSURANCE PROGRAM

Walter I. Black

Thank you, Mr. President. Members of the Nebraska State Bar: It is a distinct pleasure for me to present these figures to you and denote the progress of your group case which was adopted by your Association just two years ago this month.

The first year premium last year amounted to \$90,162. There were six members who became deceased the first year, thus claims amounted to \$60,000. The dividend structure returned \$12,653.

The second year, of which we are not quite completed as far as the adoption of the group case is concerned, has found eight



members deceased, to an amount of \$76,000. Of course we do not know what the dividend structure will be this year. It will not be given to us until toward the end of the year. We anticipate and hope that it will be as good or even better than it was the first year.

Incidentally, I just learned a few minutes ago that since a year ago, October to October, your convention periods, there have been fifty-five deaths of lawyers in this State.

Now we have good news. In accordance with the suggestion and wishes of your Insurance Committee, the John Hancock granted this privilege: an open enrollment—open season I was about to say—open enrollment season from this date on until the first of November, or the last day of this month. That is an unusual privilege or procedure, as many of you, I am certain, know that ordinarily once a group case is instituted, there is a certain period of open enrollment and that is it, except for new graduates in a case like this once or twice a year.

Now that doesn't mean carte blanche. If I had had a heart attack and had had TB and a dozen of my neighbors had had that situation occur this year we could all rush in and sign the application card and the home office would accept all of us, because they might come back and ask for a physical statement. If we get enough—how many is enough, I cannot answer and I don't think at this moment the home office can—but with a reasonable amount of enrollments at this convention and up until November 1, we are very certain that the home office will accept one and all.

Consequently Dick Temple, group home office representative, and I will be at one of the desks in the north end of the lobby and we will be very, very happy to answer any questions and lend such assistance as we possibly can. The enrollment card—here is an enrollment card—and the booklet which is available to you answering any and all questions will be there on the desk. Help yourselves in case we are busy as you go by at any time or if we are not there on active duty.

Once you have secured the card and if you haven't made a decision before you leave tomorrow afternoon, which we hope you have and turned the cards in to us along with your check, of course, return home and then mail the card in to the general agency, George Bodenmiller's agency of the John Hancock here in Omaha, or to your good Secretary at the state capitol, who in turn will present them to the proper party.

PRESIDENT TYE: We shall now hear from the Committee on Memorials, Honorable Joseph T. Votava, Past President of this Association.

## REPORT OF COMMITTEE ON MEMORIALS

Honorable Joseph T. Votava

Mr. President, Fellow Members of the Bar: With regret I must report that one of my associates on the Committee, Mr. Abel V. Shotwell, is among those hereafter to be named. My remaining associate, Mr. Earl J. Moyer, and I respectfully present:

Since our last meeting the Almighty in His wisdom has taken from our midst many of our colleagues. Some have left us after many years at the Bar and others in their youth. Some had distinguished public and professional careers; others have labored quietly and humbly in their profession and rendered faithful and valuable service in their communities. Some have achieved success as the world measures success; others lived and died in comparative obscurity. Which have been the great lawyers? Who can say! We do not know which have been the most valuable members of our profession; which have earned the most respect and deserve the highest honors from the Bar and the Public. We do not know which of them stands highest before the judgment seat of God.

We revere the memory of each and every one equally. Each and every one has been an honor to our profession. Their lives are an example of integrity and steadfast loyalty to the trust reposed in them. Their lives are an inspiration to us, the living.

Let us stand in loving remembrance and pay solemn respect to all the departed members of our Association and especially those who departed from us during the past year. Will you please stand while I read the names of the departed members during the last year:

John H. Agee, Lincoln  
Lee R. Aitchison, Jackson, Mississippi  
Paul H. Bek, Seward  
Allen M. Boggs, Tallahassee, Florida  
Harold P. Caldwell, Omaha  
H. W. Campbell, Glendale, California  
Lee Card, Chadron  
Edward E. Carr, North Platte  
Iva Baker Chace, Pilger  
A. G. Cole, Denver, Colorado  
Harvey A. Collins, Papillion

Edward A. Coufal, David City  
Burr R. Davis, Wayne  
Claude A. Davis, Estes Park, Colorado  
Edmond T. Dolan, Omaha  
Jeannette Regan Duffy, Norco, California  
James T. English, Omaha  
Ted R. Frogge, Elwood  
H. G. Greenamyre, Lincoln  
Daniel J. Gross, Omaha  
H. Halderson, Newman Grove  
Robert B. Hamer, Omaha  
James L. Heaton, Sidney  
Lynn E. Heth, Valentine  
Clark Jeary, Lincoln  
Oscar W. Johnson, Omaha  
Lee W. Johnston, Red Cloud  
John P. Kelly, Broken Bow  
Harold D. LeMar, Omaha  
James M. Lanigan, Greeley  
Myer Linda, Hollywood, Florida  
Daniel H. McClenahan, Lincoln  
Donald D. Mapes, Norfolk  
R. R. Mastin, Seward  
Clarence G. Miles, Lincoln  
Alfred C. Munger, Omaha  
Edwin F. Myers, Broken Bow  
Robert A. Nelson, Omaha  
Ralph W. Norman, Ord  
Richard S. O'Brien, Sr., Omaha  
Louis J. Patz, Lincoln  
Charles S. Phelps, Tecumseh  
George A. Piper, Silver Spring, Maryland  
E. S. Schiefelbein, Wahoo  
Thomas J. Sheehan, Jr., Omaha  
Abel V. Shotwell, Omaha  
Harry E. Siman, Santa Monica, California  
Randolph J. Soker, Los Angeles, California  
C. A. Sorensen, Lincoln  
W. E. Spear, Omaha  
John Stevens, Beaver City  
Walter P. Thomas, Omaha  
Phillip A. Tomek, David City  
Roger F. Warin, Omaha  
Fred S. White, Omaha

[The Thursday morning session adjourned at twelve o'clock.]

## THURSDAY LUNCHEON SESSION

October 8, 1959

[The luncheon session was called to order by President Tye.]

PRESIDENT TYE: Now it is my very pleasant privilege to present to you the speaker. I don't know why it is that ordinarily toastmasters and masters of ceremony want to say everything they have to say without mentioning his name. I suppose they think they will surprise somebody, but in the printed program which I have his name appears there, so I think it won't make much difference if I call Brother Randall by name at the outset.

John D. Randall is a resident of Cedar Rapids, Iowa. He was born at Lisbon, Iowa; he attended Coe College; he graduated from the University of Iowa with an LL.B. in 1923; he was President of his County Bar Association in 1946-47; he is a member of the Iowa State Bar, the Illinois State Bar, and the American Bar Association. He was a State Delegate for Iowa to the ABA in 1948 to 1954. He was Chairman of the Unauthorized Practice Committee from 1946 to 1952. He was Chairman of the Rules and Calendar Committee of the House of Delegates of the American Bar Association from 1952 to 1954. He is a life member of the American Bar Association from 1948. He was Chairman of the House of Delegates of the American Bar Association from 1954 to 1956. He is a member of the American Law Institute, a member of the International Association of Insurance Counsels, a member of the Association of Insurance Attorneys; he is a Fellow of the American Bar Foundation; he is a Fellow of the American College of Trial Lawyers. So you see he has been most active in Bar Association matters, as well as carrying on a very, very active trial practice in Cedar Rapids, Iowa.

He is married, has a very lovely wife, which I think is a necessity for a man who takes on a position such as his this year. He has two children, a daughter who is married, and a son, John, who has joined him in the practice of law at Cedar Rapids this year.

He is the present President of the American Bar Association, our friend and neighbor across the river to the east, and it is my happy pleasure to present to you John D. Randall, President of the American Bar Association.

[The audience arose and applauded.]

## ADDRESS

Honorable John D. Randall

Fellow lawyers: I have enjoyed all of the nice things that have been said about me and I assure you that no matter what may be said in an introduction, that doesn't necessarily guarantee that the speech that is going to be made will be good. Maybe it will tend to soften you up a little so you will pass over some of the things that you might think are not in the speaker's favor.

I have always enjoyed coming to Nebraska, and I have had the privilege of coming here for a number of years through a long and close friendship with my friend George Turner, who is your representative in the House of Delegates of the American Bar Association and, incidentally, a most able representative and most highly respected.

If I wished to take the time, I could relate also the names of other Nebraskans who have made a distinct contribution to the work of the American Bar Association. While the American Bar memberships in the State of Nebraska are only forty-four per cent of the lawyers in Nebraska, the contributions that your members have made to the American Bar Association have been percentage-wise much higher. I have no doubt but what you are all familiar with the activity of these Nebraska lawyers in the American Bar Association.

In the Washington State Bar Association meeting of 1958, the gentleman who introduced Ross Malone said, "You are all familiar with the fact that the American Bar Association is controlled by lawyers in the various metropolitan areas, and that the ones who head the American Bar Association are from those enormous Wall Street firms." He said, "To illustrate this, I now present to you Exhibit A, Ross Malone, from Rosewell, New Mexico."

When I was at the Washington State Bar Association approximately two weeks ago, the gentleman in introducing me referred to that fact and he said, "To illustrate the fact that there is a continuity of leadership in the American Bar Association from these large metropolitan firms, I now give you Exhibit B, John D. Randall of Cedar Rapids, Iowa."

So you gentlemen from Nebraska can appreciate the fact that us big city boys from Nebraska and Iowa are now fully in charge of the American Bar Association.

Once in a while you get to the place after traveling the circuit for a short time where you think well, maybe you have had

the wrong opinion of yourself, maybe you are pretty good, and then you occasionally think of a story that puts everything back in proper perspective. The one that I always appreciate and think of when I feel this coming on is the one about the speaker to whom, after he had finished speaking, a number of very kind people who had suffered through his speech came up and congratulated him and told him how wonderful he was and what a marvelous job he had done and how the speech had gone over so well. And after all of them had come up there was a little fellow who came up and he looked him in the eye and he said, "Gosh, you made a lousy speech. The subject matter was insipid; the way you presented it was terrible. I don't know what you came here to give it to us for anyway."

One of the gentlemen who was trying to pat him on the back and be friendly with him came up and he said, "Pay no attention to Charlie. He is a little cracked. All he can do is repeat what everybody else is saying."

If you tell yourself that story often enough, you are not under any illusions, you know, about how good or how poor you are.

I think the State Bar Association of Nebraska is without doubt one of the most active organizations in the country, and most conscious of the needs of its members. Your program of continuing legal education, supported by the law faculties of Creighton and the University of Nebraska, as well as your program of legislative institutes reflects the concern of the Nebraska State Bar for raising the professional standards and maintaining the talents and training of its members at a very high level.

This is professional responsibility which cannot be imposed from without. No statute nor canon of ethics can ever effectively require that which you do voluntarily.

The *Nebraska State Bar Journal* tells the same story. Its pages are full of information on Bar activities, and I have noted that each issue contains a paper on a point of law of interest to members of the State Bar. This is continuing legal education at its best.

A son of Nebraska of whom the entire legal profession is very proud, Dean Roscoe Pound, said in an address delivered in this State in 1949, and I quote: "When we speak of the old recognized profession, we mean an organized calling in which men pursue a learned art and are united in the pursuit of it as a public service. Here from the professional standpoint there are three essential ideas: organization, learning and a spirit of public service."

This quotation accurately reflects the immediate aspects of the profession. Certainly it can be said of the Nebraska State Bar that it has these three traits: learning, organization and a spirit of public service. It is perhaps in this context that Dean Pound's observation is quoted most frequently.

Today I should like to consider his statement from another perspective. Remember he said, ". . . we mean an organized calling in which men pursue a learned art." Let us step back a bit and consider the nature of the learned art which we are pursuing. I think that from time to time such a retreat is necessary on the part of every lawyer to get a clearer notion of what he is doing.

I am reminded of the story of the architect who came upon three men working at a construction site. There was a pile of bricks on one side of it, a mortar board at the other, and before them what looked like the beginning of a brick wall. The architect asked the first of them, "What are you doing?"

The man responded with surprise and then with a shrug of his shoulders said, "Laying bricks."

The architect turned to the second and asked what he was doing. The workman answered, "I am building a wall. It will take about two days and when I am finished I am going home."

Then addressing the third the architect heard him reply, "I am building a cathedral."

Let us step back for a moment then and consider the learned art which we are pursuing. We shall see that we are not probating wills, organizing corporations or framing contracts but that we are building a system of law.

What do we mean by building a system of law? Justice Holmes said: "Law is an attempt systematically to order social relations. By their profession lawyers are immersed in this effort. It is a working environment inherently conservative, in that it seeks regularity and predictability in affairs. No less inherently, it involves a constant experience of adaptation to change; it is a restless pressure for change in human relations that largely creates the felt need for law. Where lawmen made creative contributions it was, as in the Federal Constitution, by combining unafraid and even daring readiness to innovate with tough-minded insistence that the need and direction of innovation rest firmly on fact. Such an approach is at the pole opposite to standpatism."

But how is a system of law built? By advising, counseling, teaching, lecturing, arguing cases, by deciding difficult cases where

there are close questions of law and conflicting interests, by reflection and, yes, by experiment.

So far I have tried to define the learned art by what it accomplishes and how it operates. Lawyers pursue this learned art in many places: in private practice, in government service, in teaching and in business.

Consider for a moment how the learned art is pursued in one of these fields. Let us dwell for these few moments on the contribution made to our system of law by the lawyers serving in our state and national legislatures.

It is not surprising to note that a large number of our legislators are lawyers. Turning back to the Constitutional Convention, we find that of the fifty-six statesmen who framed our Constitution, thirty-two were lawyers. Mr. C. H. Hyneman in a study published in the *Political Science Quarterly* stated that during the period of 1925 to 1935 twenty-eight per cent of the 12,689 legislators serving in the thirteen lower chambers and twelve senates were lawyers. A later study showed that in 1949 twenty-two per cent of the members of the forty-eight state legislatures were lawyers. These percentages become all the more impressive when one recalls that the percentage of lawyers in the adult population of the United States is less than one-fourth of one per cent.

What conclusions can be drawn from these figures? First of all the most obvious conclusion is that the voters have confidence in lawyers. They feel that lawyers as a profession can be trusted to do a good job in legislating for the good of their constituency. This is perhaps why de Toqueville stated in his penetrating analysis of democracy in America: "The government of democracy is favorable to the political power of lawyers; for when the wealthy, the noble and the prince are excluded from the government, the lawyers take possession of it, in their own right, as it were, since they are the only men of information and sagacity, beyond the sphere of the people, who can be the object of the popular choice."

Certainly the esteem and reputation in which the legal profession is held account in large measure for these figures.

I think that in addition the public feels that the lawyers are trained for the job. This too is borne out by statistics. Consider the question of sponsorship of bills. An interesting study on the roll of the lawyers in the legislatures of Missouri and Illinois appeared in the *Journal of Politics* this year. Its author, Professor David R. Derge of Indiana University, reported that "in the 1955



Missouri House, lawyers held nineteen per cent of the seats but sponsored forty-two per cent of the bills considered by the chamber. Except for the 1957 Missouri House session, at least two-fifths of all bills were lawyer-sponsored. Lawyers, more consistently than nonlawyers, were found to be the sponsors of several bills in one session. The ratio between the average number of bills sponsored by lawyers and those sponsored by nonlawyers ran from nine to two in Missouri, to ten to seven in Illinois."

The lawyer legislator not only sponsors many bills, but they usually are quite important ones. In the national Legislature, where incidentally fifty-five per cent of the members of the House of Representatives and sixty-two per cent of the Senators currently serving are attorneys, the Sherman Anti-Trust Act, the Clayton Anti-Trust Act, the Taft-Hartley Act, the Wagner Act, the Norris-LaGuardia Act and the Tennessee Valley Authority Act were all sponsored by lawyers. Now we may have diverse opinions about these laws, but everyone must admit that they are extremely important and have shaped the course of development of our nation.

Certainly by training and temperament the lawyer is well suited to legislative work. By training he is accustomed to searching for the facts. Rumor, gossip, hearsay, casual impressions impress him not at all. Cheap emotional appeals are usually lost on him, but give him the clear testimony of an expert or the worthy appeal of one who has suffered an injustice and he will be moved to act.

In addition, the lawyer's temperament is one conditioned to dispute and debate. As a result he is willing to discuss a point without believing that the other side is motivated by dishonest purposes or that every disagreement is a personal affront to his ability or intelligence.

Voters are, of course, aware that lawyers form an important segment of the Legislature. Ordinarily one might expect voters to hesitate to increase the size of this group. Often it is felt that in a democracy one should avoid the control of legislatures by one class or by one professional group, but it is clear that the voters have no such fear regarding lawyers.

According to the studies conducted on the Missouri and Illinois legislatures, there was no evidence of internal cohesion among the lawyer groups. They did not vote in a bloc, but rather split along party or regional lines. This was not true of legislators from other professions, as for example farmers, men of labor or of business.

To explain the absence of a "lawyer bloc," I think we can turn once again to the training of the lawyer. In practice the lawyer represents clients with whom he may agree or disagree. Really unless a strong moral issue is involved, the lawyer's personal opinion is of little or no importance. This is as it should be, for if the lawyer were to pass judgment on his client, the client might be blocked in his attempt to secure the rights to which he is entitled by law. It is for this reason that Mr. Adolf Berle has referred to the lawyer as an "intellectual jobber and contractor." Taken in its best sense, I accept that characterization. We lawyers hold out our training and talents to those who are in need of them. I believe it is this very quality of being an intellectual jobber and contractor which permits the lawyer to do a good and accurate job of reflecting his constituency in the halls of the Legislature. It is for this reason that he is not a bloc voter with the other members of his professional group, and he does his best to represent the needs and interests of his community in the Legislature. Here the art of advocacy familiar to every lawyer will play an additional role. It is not surprising that the learned German thinker Max Weber observed that the modern lawyer and modern democracy absolutely belong together.

We of the legal profession can and should be proud of the contribution made by our fellow lawyers to the fabric and institutions of our nation. As we have seen, they are not only numerous in our legislatures but they are extremely active. In addition, they have sponsored important legislation in crucial fields of governmental activity. The pride we have in their contribution does not diminish the respect in which we hold the nonlawyers serving in the legislatures, nor does it mean that the legislator alone shapes the laws of the nation. Laws are formed by lawyers in many ways. The role I have chosen to discuss with you today, that of the lawyer as legislator, is only one phase of those activities.

Lawyers make the law in other ways as well. Law is not only statutory enactment and custom and judicial decisions; it is also the agreement reached between two men to conduct themselves in a certain way. The lawyer who aids in this agreement is aiding in the creation of law. He is building that solid base which a complex society needs to go about its work.

The lawyer functions as a legal housekeeper of the community. He is interested in revising the outdated statutes, in enacting laws to protect the new rights which evolve and are recognized in a changing world. Thus he works to extend and improve the body of the law.

But he also prevents the erosion of existing rights by defending unpopular causes. Often these causes would be decided by the mob in a different fashion, but the lawyer, as a custodian of the integrity of the social institutions, cannot permit this, and resists. He defends the unpopular cause, knowing that the institution will be altered forever if he fails to do so.

Thus the lawyer finds nothing unusual in exercising civic leadership. Because he is interested in the relationship of one citizen to another, of one man to another, he deals with these questions which, with religion, touch closest to the hearts of men. He is a leader in the community, a member of the school board, of the town council, active in charities and in cultural activities of the community. These are the unpaid obligations undertaken willingly and eagerly by the lawyer.

Why does he do these things? I suggest that it is because he is inclined by the profession he practices to see the alternatives of the future. He knows that in moments of concord the earth could be fair, and that man can live by the law. But he knows too the moments of darkness when the most important problem looming in a complicated issue is that of finding ways for man to get on with his neighbor.

Resolving conflicts of this nature is often a spiritual problem, but it is partly a legal problem too, and I am one who believes that the problem comes a little closer to solution every day as each lawyer in his own practice resolves one by one the questions which could cause strife.

In this way he builds toward tranquility in his community, stability in his nation and peace under law throughout the world.

**SECTION PROCEEDINGS**

**THURSDAY, OCTOBER 8, 1959**

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

**Fred H. Richards, Jr., Esq.**

*Chairman*

"Suggested Will and Trust Forms—Their Explanation and Purpose, Including Tax Consequences" ....William E. Murray, Esq.  
New York, N. Y.  
Member of Jackson, Nash, Brophy,  
Barringer & Brooks

**REPORTS**

By: Franklin L. Pierce, Esq., Real Estate Division Head, and his Subchairmen, including:  
John R. Fike, Esq., Chairman of Title Standards Committee  
George A. Skultety, Esq., Chairman of Committee for Improvements in Conveyancing  
Lewis R. Ricketts, Esq., Chairman of Committee on Current Legislation

By: John W. Delehant, Jr., Esq., Probate Division Head

By: Lewis R. Ricketts, Esq., Trust Law Division Head

**SUGGESTED WILL AND TRUST FORMS—THEIR EXPLANATION AND PURPOSE, INCLUDING TAX CONSEQUENCES**

**William E. Murray**

Shall we all sink our teeth into this before we get started because it will probably be the most digestible part of the program. It is my way of drawing a will.

There are several reasons why you draw a will, and there are several reasons why you have each different provision in a will. One of the things that you have to consider most of all is the period over which the terms of your will are expected to last. Will it accomplish your family purpose, because it doesn't make much sense to draw a will because a lawyer wants those provisions for you. If they don't meet the family needs of your client, you haven't accomplished your purpose.

Now the biggest problem in will draftmanship today is the inadequacy of the fee received by the lawyer for drawing the will. That is the greatest crime in America today, because it

results, and I am certain in this, in lack of time necessary to deal with all deliberateness and concentration on the many problems which will arise over the generations following the death of your client: the care of the widow, provisions for her maintenance, income to her, principal to her in the event of her death or disability, a flexible means of transmitting this income or principal to her, an eye on estate taxes at the time of the death of the client — just a little slip costs \$10,000, \$15,000, \$20,000 additional estate tax — powers to administer the trust that may be in the will, powers to deal with the property.

When you consider that a lawyer does all of this for \$50.00 or \$100.00, you have one of the greatest crimes perpetrated upon the American Bar. Now this is a problem that we all have to deal with. We deal with it by taking a loss, but we can't deal with it by sacrificing the quality of our work because it is not our place to do that.

I cannot see how a lawyer skilled in the draftsmanship of wills and trusts can prepare a will for a client having an estate of \$120,000 or more in less than five to ten hours. I think it is almost impossible. That will mean that the average rate of pay of a lawyer will range somewhere between \$5.00 and \$10.00 an hour. Now if you have the aggravation of having to obtain the facts from the client, just literally pull them out, then you may add another five, ten or twenty hours, or the rest of your life in getting the facts that you need to draw the will.

I think it is partly our fault for not educating the client as to the importance of the will. A will is generally the most important document that a client signs during his entire life. He spends all his life accumulating wealth. Surely the document disposing of that wealth should be the most important document that he ever signs, and it should be signed after thoughtful consideration of all the many possibilities, probabilities and contingencies which will occur over the next fifty years in which this will may influence his family.

Let's move along, because we have only a brief time today to hit some important features.

We are all familiar with the Federal estate tax and the Federal gift tax. We know that there is a \$60,000 Federal estate tax exemption. In other words, if a person has an estate of \$65,000 and debts and administration expenses of \$5,000 so that he had a net taxable estate of \$60,000, then the exemption would take the entire \$60,000 and there would be no Federal estate tax. That is one type of estate in which we can ignore the Federal estate tax consequences.

However, if your estate is greater than \$60,000 and is up to \$120,000, with care we can also avoid every penny of Federal estate tax if we are willing to do certain things, or if the client is willing to do certain things, I should say. One of those things is leaving the maximum marital deduction to the widow. I am assuming that the wife always survives the husband for the purposes of this discussion, although after meeting several of the elder members of the Nebraska Bar I am not too sure that it isn't easier on the men out here in Nebraska than it is on the women. One man I talked to last night I thought was about fifty-five, and he told me he was seventy-six. It must be a good climate or something out here.

Let's take this marital deduction and find out what it is. A marital deduction is an amount allowed under the tax law to be transmitted to your wife, tax free, and it amounts to one-half of your adjusted gross estate. If you have an adjusted gross estate, which we will call your total assets for simplicity, if you have total assets of \$120,000 and one-half is left to your wife, there is no Federal estate tax on that half of \$60,000 that passes to your wife, if it passes in a certain way. Your other \$60,000 remaining is subject to your exemption of \$60,000, so there is no Federal estate tax.

Let's suppose we have a large estate of \$200,000. There again we can leave one-half or \$100,000 to the widow, and that will leave a net estate of \$100,000, less the \$60,000 exemption, which will give you a taxable estate of \$40,000.

Now how can we leave this amount to the wife? Well, in Nebraska we have many cases of joint tenancy, farms owned by husband and wife going to the survivor. A joint tenancy in which the surviving widow receives the property will qualify for the marital deduction. An outright bequest or devise of the property will qualify for the marital deduction.

There are also certain other more complicated forms of property which in many instances are much more beneficial in the long run as far as the family is concerned to transmit this property to the wife.

We can set up a trust, a testamentary trust. A testamentary trust is a trust in a will. We are all familiar with the characteristics of a trust. There has to be a trustee, there has to be a corpus which is the part of the estate which is assigned to the testamentary trust. There have to be certain rules about the distribution of the income, the distribution of the principal upon the death of the widow, who is commonly referred to as the life beneficiary.

A marital deduction trust is commonly one in which you have a trustee other than the widow. It could be the local bank, it could be you as the attorney for the client, it could be one of the children. The provision generally allows the income — in fact, it has to in this case — the income has to be paid currently to the widow. And upon the widow's death the principal of the trust has to go as the widow appoints in her last will and testament.

Now suppose the widow does *not* appoint. Then you have to have an alternative provision which says, "In default of the exercise of the power of appointment, then it goes to my children." So if the widow does not have a will, it passes to the children of the client, which is generally where most people want it to go. However, the widow has the right by designating in her will, if she draws one, where this property is to go. She could leave it to her second husband, she could leave it to the butcher boy, she could leave it to a college. She could leave it to the Nebraska Bar Association. Anyway there are quite a few places it can go.

Now let's see some of the provisions which we will use to accomplish a testamentary trust. First, let's analyze for just a moment what a "power of appointment" is. It merely means that the widow has the right by a certain means of designating where the property is going after she receives the income from the property during her life. You can give her a power of appointment by will, which is a customary provision, or you can give her power of appointment by a deed executed during her life. In other words, instead of a will, she could provide in a deed where the property is to go after her death. It doesn't make much sense to do that, so customarily you have a provision which will allow the property to go as she designates in her will.

There is one other alternative which is not too widely used but which I should call to your attention. It is what is known as an "estate trust." We are getting a little complicated now. Let's assume that the widow had a very substantial income of her own and that if you left her the income from your property it would be subject to a very heavy income tax. You could provide in your will that a certain part of your property could be set aside and that the income could be accumulated by the trustee and upon the death of your widow that that income, plus the property, would be paid to the estate of your widow. That is what is known as an estate trust and is used primarily for income tax purposes. You see no reference to it in this document here because we have what is known as a testamentary trust, a marital deduction trust in this provision.

Our problem is in shifting values. You know we might have an estate of \$100,000 one day, and land may go up and it may be worth \$200,000 by the time the client dies. Or they might discover oil on it and it might be worth a million dollars. Or good crops may come in, stocks that he may buy may appreciate. We have no way of knowing exactly how much the total assets of your client are going to be at the time of his death. In fact, it is very hard to find out what the total assets are at the time you examine him. [laughter]. The usual arrangement is this: Most laymen think that lawyers charge according to the amount of assets they have for drawing their will so they don't want the lawyer to know how much they've got. Also they just don't want anybody to know how much they've got, so they are very distrustful about passing out information.

We somehow have got to find out approximately what that client has got, and this is one of the greatest three-ring circuses at any place other than the usual Barnum & Bailey, a lawyer trying to find out what a client has got and a client trying to conceal it.

Of course, when you start pointing out the possibility to the client of not knowing what he has got, then you can sometimes get him to come out with the truth, but in most cases he will underestimate the value of his property, and in many cases he doesn't really know. But this marital deduction that we have in this first form of a will here today is one that is designed to take care of flexible values so that we can achieve the maximum tax benefit and at the same time not know exactly what the client has got. We assume that, as a state of fact, the client is not going to tell us all he has got. So we have to figure out a way of computing the maximum marital deduction, which is one-half of the assets of the total estate going to the widow.

As you see on page 1, upon the death of the client, look in Article 3, after "All of the rest, residue and remainder" clause you see in the next unnumbered paragraph, "If my said wife survives me, I direct my Executors to divide my residuary estate into Share A and Share B as follows:"

Share A is what we are talking about, the marital deduction. That is the part that is going to be one-half of the estate of your client which we are going to have go to the widow for her life, estate tax free. When you recall what it means in an estate of \$120,000, if we qualify for this marital deduction it means that we save nearly \$10,000 in Federal tax, it is almost a necessity in most cases to qualify for this marital deduction and save that tax.

Suppose we have an estate of \$120,000 and we leave the widow \$60,000. If she has no assets other than what is left her, when



she dies the \$60,000 will also be subject to an exemption of \$60,000 and there will be no estate tax paid on the transmission of the \$120,000 to the children. But if we leave the property to the widow without qualifying for the marital deduction, we pay an estate tax of \$10,000 at the time of the death of the client. So we want to save that \$10,000 if we possibly can.

We are trying to determine what Share A is. Notice that this is a bequest out of the residuary of the estate. That is important because of shifting values which may occur during the period of administration. If we leave the widow a specific sum or amount as a general legacy or general bequest, and we satisfy this general legacy of a dollar amount with property which has increased in value during the year or two or three years of the administration of the estate, we may have to pay a capital gains tax on the appreciation. The estate would have to pay that. So this avoids possible income tax problems which you may have in the estate by having the marital deduction bequest made out of the residuary estate.

Now you all can read this paragraph as well as I can. That is the amount of Share A. We could leave that to the widow outright. We don't have to put it into a trust. You will notice in Article 4 there is a gift and bequest of Share A in trust. That is assuming that you want a testamentary trust. You could just leave that Share A to her outright if you wanted to. Many people don't like trusts. If you don't want a trust, just leave Share A to her outright.

Now let's go back and determine how we computed Share A. First, they add to the residuary estate the property of all general bequests and devices made by this will and passing to the wife. This is Article 2 up there. We subtract that again from the amount obtained. We also subtract the amount of life insurance and joint property that passes to the wife outside of the will, so that the property passing outside of the will to the wife which qualifies for the marital deduction and the property in this provision which passes to the wife together aggregate one-half of the total assets of the deceased, so that we get the maximum marital deduction which goes estate tax free.

The balance of the estate is known as the "balance of the residuary estate." Slip over to Article 5 for just a second on page 3. What do we do with that? We might want to leave that to the wife outright, but generally we don't. We might want to leave it to the children outright. That is one of the very frequent types of bequests, to leave Share B to the children outright.

The reason we don't want to leave Share B to the wife outright is that that would be included in her estate when she died for estate tax purposes in addition to Share A. So we would have an unnecessary estate tax if we left Share B to her. We could provide that Share B is continued in a trust and that the income went to the wife during her life and then upon her death the remainder went to the children and there would be no estate tax upon the widow's death of this Share B. That is what we have here, only we don't have exactly that here. We have a provision here that the trustees first determine the amount of income from this second trust.

Let's use some figures so we can follow it a little bit better. Here is Share A. We assume we have \$120,000 in our adjusted gross estate. Here is Share B. We set up a trust of \$60,000 in Share A. We provide that the income goes to the wife for life, plus wife's general power of appointment. That means the right of the wife to say where the property goes at the time of her death.

This \$60,000 would be included and taxable in the wife's estate, but if she had no other property, her \$60,000 exemption would eliminate any Federal estate tax upon her death.

Share B is \$60,000 less any taxes on our client's estate. As we know, there is an exemption of \$60,000, so in this case, an estate of \$120,000, there would be no Federal estate tax. So here we might provide the income to wife for life. Now we may not be sure she will need all that income, so we could have a provision like we have in Paragraph 1 of Article 5 on page 3 that the trustees should pay "such part of all of the net income from Share B therefrom as is needed to maintain my wife in as much comfort as that enjoyed by her immediately prior to my death." That is a provision which has common acceptance in the tax law and in the probate law of most states, so you can ascertain what is meant by that. In practical effect most corporate trustees would pay her all of the income if she needed it. Now where they would not pay it to her is if the income would increase her income tax.

You see we have a little flexibility here. To the extent that she doesn't need the income, then we put the income to the children. We might have three children, and if we could distribute the income from this \$60,000 to the three children, we might get it in much lower income tax brackets. So we have flexibility and we have a possible saving of income tax, but at the same time we have the income available for the use of the widow in the event it is needed.

So we have what generally accomplishes our client's views. I have found that most clients want to protect their wives first

of all. A few clients want to leave their wife as little as possible. They say, "She has made me miserable all during my life; I'm going to really fix her now." Fortunately that is a very small minority. That is generally abated by the laws of many states which give them dower interests and rights of election so they can't do this to their wife even if they want to. I think that may be a restraining influence as much as the continued fidelity and devotion.

Now let's go back and see how we have a little bit more flexibility in here, because this is what we have got to have, flexibility. If we get into the trust area, we have to have a carefully drafted trust which will take care of contingencies. The criticism which many lawyers feel toward trusts is that they are not flexible. The reason they aren't flexible is that we don't draft them flexible, so let's see how we can draft them to take care of these contingencies and avoid the stigma which many lawyers feel toward trusts.

We provide that in default of valid appointment by the wife, you know she has the power of appointment of this Share A, then it would go over to the children or it would go over to a continuing trust for this provision for the children. Continuing trusts for children are generally used where there is for instance a daughter of the client and he doesn't want, well, maybe he is a little suspicious of the son-in-law, or maybe he has a son who spends most of his time commuting to Las Vegas, and the father doesn't want the farm land sold in installments to take care of the numerous sources of entertainment in Las Vegas. In that case you would lock it up real tight in a trust and just give the dear son the income to lose on the installment basis.

We have to have a little bit of flexibility here. Remember our client said first that he wanted this property to go all to his wife outright. We say, "Now, look, if she needs it we can put a provision in here where she can get it." Look on page 2. "During the continuance of the Trust of Share A of my residuary estate for my wife's benefit, my wife shall have the absolute right at any time and from time to time to withdraw from the principal of such trust . . . an amount not exceeding the greater of the sum of \$10,000 or four per cent . . . ." So she could draw this whole thing out in six years if she wanted to.

In a trust of this size you normally wouldn't put \$10,000 or four per cent in there. You might put \$2,000 or \$3,000 or four per cent, something like that, which would give her a supplemental source in case the income wasn't sufficient to take care of her.

In addition we have to put in provisions whereby the trustee can invade the principal of the trust for the widow in the event of illness, accident or extreme need. We have provisions like that in there.

Going back to Share B—I am switching around a little bit here—we have a provision in here which takes care of a daughter-in-law. In our case the father told me he thought more of the daughter-in-law than he did of the son, and he wasn't going to draw a will in which his daughter-in-law had to depend on the allowances of a court, on property owned by her children if she survived his son. That is one of the things we all should think about because quite frequently we leave the property to the wife, then to the children, and we never think of what might occur if one of our sons died while he had young children, leaving a widow who did not remarry. We might want *her* to get the income rather than the children during the minority of the grandchildren and during her widowhood. This has a provision in here which might be applicable in a situation like that.

In many cases we want the trust proper to be paid over to the son when he attains a certain age. For example, at the time we drew the will we might have a son, or the client might have a son, who is only ten years old. He would say, "Well, I would like it in trust until the boy is thirty. At that time give him a fourth of the property or half of the property and terminate the trust when he reaches forty. If he doesn't have good sense by then, he'll never have it." We can put provisions in that terminating the trust pro rata as the beneficiary of the trust attains a certain age. We might terminate it for the son when he reaches the age of twenty-five, thirty, or thirty-five. We might continue it during the life of the daughter.

Notice that we have also powers of invasion in the trustee to take care of emergencies while the trust is continuing for the children.

We have another provision in here which allows the principal of the trust to be invaded for purposes of the purchasing of a home for the children; even though the trust continues, part of the principal is paid out for home needs.

We have various powers in here which are not too important. Notice we have a very broad investment power in here. I think you will find that you need that, powers to invest completely in the trustee's discretion, irrespective of state laws which may restrict investments to bonds or things of that nature.

Look down at the powers on page 8, powers 16, 17 and 18. On all large estates, a couple hundred thousand dollars or more,

you should seriously consider having powers comparable to those in your wills to allow flexibility insofar as your tax treatment and tax administration of the estate. It is a little complicated; I am not going into it now in detail because I want to get onto trust, but read them over in your leisure, and remember you are dealing with large estates, estates of over \$150,000 or \$200,000. Consider putting in powers similar to this so that you have no question about taking steps which may save income taxes and estate taxes to the estate which you can't determine with any precision until after the death of your client.

So much for wills, except I repeat what I said: No will is worth drafting if it isn't worth drafting well. We have to gradually upgrade our charges as far as the drafting of wills. Most lawyers earn the fees that they gain during administration at administration. Clients take the position that a will should be a complimentary affair, pay \$50.00 or \$100.00 at a maximum. This is absurd because no good will can be drafted in less than five to ten hours.

Now let's get over to inter vivos trust.

Many people say that trusts, inter vivos trusts, living trusts, deal with lots of money. That is not so. You look at the schedules on these trusts which I have left on there deliberately. You will see the first one on page 16 has a corpus of \$16,000; that the corpus of the second one, which is on page 23, is \$20,000; and the corpus or assets in the third one on page 31 are \$10,000. So we have three trusts with total assets of only \$44,000, so we are not talking big money here; we are talking big savings. When you don't have very much money it is more important to save a dollar than if you have so much money that the loss of a dollar doesn't amount to anything.

In this case we have provided for the education of four children at a cost equal to one-half of the cost of education of those four children if the trust device had not been utilized. In this case—I called him Mr. Smith, I believe, I hope I don't speak his right name—Mr. Smith resides in Bronxville, my native town. He has five children. The oldest one is in college now and he is through. There is nothing we can do for him as far as a trust device. We should have thought about him years ago but we didn't.

Now we have four other children who range in age from maybe ten on down to a little fellow, a couple of years old. What we are doing here is setting up these three accumulated trusts.

Before I go on into this, I spoke on the same subject at the North Carolina Bar in 1954. When I got through a distinguished

lawyer stood up and he said, "Mr. Murray, I don't know why you talk about this around the country. This is too good for the client. We lawyers ought to keep this for ourselves." And it is true. I'll bet a good thirty per cent of the lawyers in this room could save half to a third of the cost of the education of their children through the use of this trust device. So think about the applicability of it to your own situation or to your brother's situation as we discuss this, because it may be too good for our clients but it may be applicable to ourselves. If I can just talk ten per cent of you all into doing this for your children, it will have been well worth all the time and effort that went into drawing these trusts, because I really believe that a good twenty, thirty, forty per cent of you in this room could use this for your own personal family situation.

Let's see how we took this \$44,000 and cut the cost of the education of four children in half. We have a trust of \$20,000; we have a trust at \$14,000; and we have a trust of \$10,000. The principle is that from the age of the child now until he reaches seventeen or eighteen when he goes to college, we have got to accumulate enough income in that trust to pay him while he is going to school.

We can see if a child is ten now and he goes to school until seventeen we have only got seven years to accumulate it. So for an older child we would put a disproportionately higher amount in trust, because we have fewer years to accumulate the income for this educational purpose. Now if this child is not ten, but we will say seven, we would have ten years to accumulate, so \$14,000 would result in an accumulation of the same amount by the time the child was seventeen. This little fellow, let's assume he is just two, so we have got fifteen years to accumulate.

Notice I keep emphasizing the word "accumulate" because you can't take current income from a trust and use it to pay educational costs of a child without serious risk that that will be deemed a support obligation of you as the parent and have it taxed to the child. Now that depends upon state law. Is it an obligation of support of a Nebraska citizen to send his child to college? That depends upon state law. What is your obligation of support? However, if the citizen of Nebraska is prosperous, and most of you lawyers out here are very prosperous, they would assume that there was an obligation—when I say "they," I mean the Treasury Department—would assume there was an obligation to send your child to college.

So we have to be sure, and to be sure we have to have income accumulated at the time the child gets to college, and then

in paying out that income to the child we don't pay out more than \$2,000. Remember that figure, it is a magic figure, \$2,000 in any one year.

Let's follow this \$20,000 trust down the road a piece. Let's assume that we get five per cent, which we can get on government bonds today. We have \$1,000 of income here in this trust. We get a \$100 exemption, which is the trust exemption. We have got \$900 subject to income tax, so we pay \$180 worth of income tax on the trust, so we accumulate \$820.

Now if that same income had gone to a client who is in the thirty-eight or forty-two or fifty per cent bracket, you see there would be substantially less accumulated and available for the child's education at the time the child attained the college age. But by using this trust we not only get another \$100 exemption but we take income and we pull it down from the top bracket of ourselves, of our client, and put it in the lowest possible income tax bracket. So we have two beneficial results: one, we get another deduction, exemption; two, we get a lower bracket; and, three, it has accumulative effect. In this case we got \$820 now which in itself will produce five per cent income for seven years, whereas if we paid a fifty per cent tax on it we would have only \$500 worth of income, so we would have less income coming in on the accumulated income. The result generally is that you save somewhere between thirty and fifty per cent in increased savings during this period of years.

We can also pay out \$600 of that \$1,000 worth of income to the child, make a distribution to the child, and that \$600 would be exempt from all income tax, because the child himself would have a \$600 exemption.

Now, you say, that's bad to give all that money to the child. He may go down to Vegas, and he might! Now how do we stop him from spending it if he goes to Vegas? Well, you see in here somewhere along the line there is a provision that the trustee can distribute the income to the child by purchasing shares of stock or Government bonds, securities, in the name of a parent or any other person as custodian for the child pursuant to your uniform gifts to minors act here in Nebraska. That means that you can distribute income to the child but you can have the income invested for the child, the child can't get at the income until he's twenty-one, even though it is in his own name. It means that you have a flexibility of changing your investments if you want to. Maybe Government bonds look sour next year, so we want to buy General Electric stock. You have the flexibility because you take the income from the trust and transfer

it to your custodian type situation here in Nebraska. Flexibility is what you want.

Of course you can pay the income out and put it in the savings bank or the Federal Loan Association here. You have got complete flexibility. Or you can accumulate it in the trust and with the income accumulated in that trust buy securities which themselves will produce income.

Let's just assume that we average \$1,000 a year of accumulation because the income on the income will build back up and pretty well meet your tax obligation. So by the time we have reached the college age of that child we have \$7,000 accumulated. The first year we distribute \$1,999 to the child, not more than \$2,000, and everybody likes at least \$1.00 margin of error. When that income is distributed to the child it is tax-paid income. It is not subject to any tax. It is not taxed to the parent because it is distribution of accumulated income, not current income. The next year we distribute another \$2,000, next year another \$2,000, fourth year another \$1,000. By that time maybe we can find another \$1,000 from someplace else, but that would meet in most cases the \$8,000 that you need minimum to send a child to college. In most cases you figure now on \$12,000. I don't know what your figure is here in Nebraska but from the size of some of these sporty convertibles I have seen some of the younger folk driving around in here I may be figuring quite low. But here you have a means of transmitting accumulated income to the children for educational purposes tax free.

The same thing is true over here (\$14,000). We have ten years to accumulate, so each year even though the amount accumulated is small we have more years to accumulate so that the amount would be enough at the time to meet the college needs.

And here for the little fellow we have the same thing.

Now that is all very nice, one says, but let's assume that we have got only \$42,000. That is every penny we have got in "this-here" world. "Are we going to tie it all up in that miserable trust? God knows, what happens? Suppose I lose my job? Suppose we need the money? Suppose I don't get any more clients? Things could get pretty miserable, you know."

How do you avoid being tied up in an inflexible trust? Can we have flexibility and at the same time achieve this savings? The answer is "yes." Notice that the money is not absolutely payable in these trusts to the child. In each case we tie the wife of the grantor as a possible beneficiary. In other words, every year that goes by you make a decision. I can either accumulate



it for the child or I can pay it out to the wife. Now if things are real dismal and you pay it out to the wife you are naturally subject to income tax on it, but if you have no other income, who cares? So that gives you the flexibility that you need.

Now suppose you need the principal. We have provisions in here that in the event of the—look at Article 8 on page 13. "If the Donor should become unemployed, or is for any reason whatsoever unable to earn an income which is sufficient to provide for emergencies of illness, accident or extreme need on behalf of his said wife or children . . .," then invade the trust.

From a practical standpoint let's look at who the trustees are. They happen to be the wife's sister and brother-in-law in this case. They could be the lawyer of the donor. We have to have certain types of people or banks as the trustees in this particular kind of a trust because we have flexibility insofar as the income is concerned. We have a power to spray the income to decide whether we are going to distribute it to the wife or the child or to accumulate it or to distribute it to another child. We have the same powers of disposition here in effect that the donor has himself if he kept the money in his own hands. We have the same flexibility.

Because of that flexibility the tax law says you've got to have an "independent trustee." We know how independent the sister is and the brother-in-law is where they are dealing with their family's money, but that is what the tax law says so we try to live with the tax law. What do we do? Each year there is a decision made as to how it will best suit the family's interest for the distribution of the income. So long as we have the proper type of trustees making that decision, we are all right.

Now what are the proper kinds of trustees? If you have a pencil, jot down Section 672 of the Internal Revenue Code, because that tells you which persons are permissible trustees in trusts of that nature. They are people other than the wife of the donor, unless she is no longer living with the donor. Now naturally if your wife is no longer living with you, you are separated or divorced, she is the last person in the world you want dealing with your money, so the tax law didn't give us very much there.

It also says that we can't have our parents, going up, ancestors, or descendants, straight line. We can't have our brothers or our sisters but it allows you to have a brother-in-law or sister-in-law or mother-in-law or son-in-law. Of course the problem is that you only find an acceptable in-law once in a blue moon. I have drawn hundreds of these things and I think I

have only gotten three of them with in-laws up to now. I could say up to two years ago that nary an in-law was named, but I found some people with some exceptionally good in-laws. It was a long hard struggle, but they are there. I haven't found anybody with a mother-in-law yet but I guess I will some day.

Once you have the acceptable trustees, then you can have this spray type power. The income can be distributed to your wife or distributed to your child or accumulated for your wife or your child so that you have got complete flexibility. The only thing up to now that is detrimental is that you have taxes, and most of us are not so philanthropic that we prefer to pay a higher tax, although I understand there is an agent out here named Volpe—is Mr. Volpe here?—I can speak frankly. He believes all Nebraskans should conduct their business in such a way that they pay the maximum amount of income tax. He is a minority in the Bar Association, I understand.

Let's assume that we have this. Now the next question that comes up is: How long does a trust have to be? Can we set a trust up for a year or two years or three years? The answer is "no." It has got to be a minimum of ten years from the time of the creation of the trust. In other words, the principal of the trust can't come back to the donor for ten years. I understand that a period in gross is permissible under Nebraska law, so you could set it up for up to twenty-one years—is that right?—and it would not violate your rule against perpetuities here in the State of Nebraska. So you don't have to do any guessing. In New York we have to play with words to accomplish the same results. We have to measure it by a life or a period, whichever is shorter. Here you just say how long you want it. You get to the substance of it without quite as many words.

Notice that we have a little bit of flexibility in the term of the trust. Look on page 12. It says, "The trust herein created shall terminate on the death of the Donor"—because if he is dead and his income goes, we need to really have flexibility. I don't know of anybody that can think up all of the contingencies that could occur with a widow and five children. If he goes, let's get all the money in one pot so we can decide from day to day what to do with it, because the only thing we know for certain is that there isn't enough. "... shall terminate on the death of the Donor, the death of the survivor of the above-named income beneficiaries"—because if they are all dead we have no longer any income tax savings by distributing it to them, or we take a fixed date, December 18, 1978, which is the day this guy is going to retire and his income tax problems will be over.

Now in this case there is a rather intricate pattern between the three trusts so that the income from the first trust will be available for distribution over to the younger children to accumulate some income for them, too, under certain contingencies, but unless we know the family pattern and can fix up a chart, it is much too complicated to go into it. But remember you can have the utmost flexibility in these trusts and at the same time accomplish some very — [to a photographer] you're making me nervous [applause].

I should tell you all the story about a prominent West Virginia coal miner's widow. She was going to Europe, and she was not particularly a modest soul. In fact, she wasn't particularly a gentle soul. I heard that she had run some striking coal miners out with a stick of dynamite when she was younger. She was sailing at ten and she went to have breakfast. She had diamonds that looked like chestnuts around her neck, pearls, a gaudy old soul if there ever was one. She was having breakfast in this place and a bandit came in. He held up the place and he got the money and then he looked over at her and there were all these jewels. He came up and stuck the gun in her face. She said, "Young man, what do you want?"

He said, "Give me your jewels and your watch."

She said, "Move that gun. You're making me nervous."

He said, "Give me your jewels!"

Whereupon she picked up her pocketbook and she swatted him across the face. He dropped the gun and ran and she followed him hitting him on the back. Then she said, "My, this is a nasty place to eat!" so she went and got on the ship to Europe.

They finally found out who she was. They had captured this bandit a few blocks down the street but no one could positively identify him but since she had knocked the mask off him they thought she might. So they had him in the line-up and they asked her to go and identify him.

She said, "Yes, I can identify him the rest of my life."

So they lined him up and she walked by and when he saw her coming he cringed and said, "Don't hit me, lady!"

That is what is known as positive identification.

Let's get back to trusts, because with television today after-dinner speakers don't have much of a chance.

Let's get to these other problems that we have when we set up a trust. One of the biggest problems is capital gains. You know, in a ten- or fifteen-year trust we are going to want

to change the securities around from time to time, or we might. If the capital gain is realized by the trust and even though it is put back into securities, that capital gain is deemed accumulated for the grantor. So he has to pay an income tax on it in the year of the realization of the gain even though he can't get at the money in the trust. Now most donors are very unhappy about that, but we have a provision in here that the capital gain is accumulated and at the termination of the trust it is paid over to the widow.

The result is that the wife gets the capital gain at the termination of the trust. We have also accomplished something else. We have achieved the result of having those capital gains taxed to the trust. We have a capital gains tax of twenty-five per cent, but that isn't necessarily so. Let's assume that we have \$1,000 worth of income here, that we paid out \$660 to a child so that we had only \$320 worth of taxable income. Let's assume that we realized \$1,000 worth of capital gain. We know that only \$500 of that, fifty per cent, will be included as income. Now you take that fifty per cent or \$500, you subject it to a twenty per cent tax rate and we have only a ten per cent capital gains tax instead of a twenty-five per cent capital gains tax. It may be that we can accomplish some other motive by setting up this trust. By putting up a trust of this nature we can perhaps reduce the capital gains tax of our client or of ourselves by selling the securities over a period of years so that they will fall in a lower bracket of the trust.

In that way we can reinvest appreciated securities or land, interest in land, or various other types of personal property that has appreciated in value without paying the twenty-five per cent capital gains tax.

Let's see what else might have some meat in it as far as this is concerned. Take a look on page 12. I mentioned that when you distributed the income, the \$600 or the \$660 to the child, you didn't have to do that in cash. Let's read the provision over so that it will stick in our minds.

"In addition, the Trustees may in their discretion make such distributions of income to the members of the family group who are infants by the purchase of securities in the name of the infants, or in the name of any adult member of said infants' family or their guardian, as custodian for such infants pursuant to Section 265 of the Personal Property Law of the State of New York." There would be a section of the Personal Property Law of the State of Nebraska.

In some cases only an adult member of the family can qualify as custodian. I don't know what your law here is in Nebraska. It may be that a bank could also serve as custodian. It is according to whether you have the uniform law—they have another one now, the original stock exchange law—but be sure to check your own state law on that point because it may need a little adjustment of language.

Notice that we have Article 9, page 13, third power: "To invest accumulated income in insurance upon the life of any beneficiary hereunder or upon the life of persons other than the Donor in whom such beneficiary may have an insurable interest or in educational endowment policies or plans and upon termination of this Agreement, or from time to time, to distribute such policies of insurance to anyone of the income beneficiaries hereunder, or generally to and among any or all of such income beneficiaries."

A very useful power. You can't exercise that power because of usual state laws. You have got to have a specific power dealing with insurance to put into your trust. That means that if you accumulate too much income here, maybe this trust goes up in value quite a bit, you might want to take some of the excess income, buy a policy of insurance on the life of your child so that when he gets out of college and immediately gets married he will have a little protection there, a good gift to a child, a paid-up policy on his life.

That insurance is kind of like borrowing money from the bank. You need a lot of insurance when you don't have money enough to buy any insurance. When you have plenty of money you don't really need it unless you are going to pay estate tax. You all know that. You go to the bank and you say, "I want to borrow some money."

They say, "What have you got?"

If you've got money, you don't want to borrow money, so this is the kind of situation where you can accumulate money and purchase insurance on your child's life if you don't have an educational problem.

Of course this type of trust has applications completely aside from the educational field. Let's assume that you have a wife with a substantial income, and let's assume that you have substantial insurance. She could set up a trust on the term of your life, put property in it, and it could pay the insurance proceeds on your insurance. You could transfer your insurance policies to the trust, and the income from your wife's property that is now in the trust will be taxed to the trust. As a result you would

have a very substantial savings in income taxes on the income used to pay your premiums.

That is just one of the illustrations. In that case you have to be very careful that the wife doesn't take the beneficial interest in the insurance after your death. It would have to go to the children or take care of some other need, but there are numerous applications for the use of inter vivos or living trust which will substantially reduce your income tax over a period of years.

## TITLE STANDARDS COMMITTEE

Clement B. Pedersen

The Title Standards Committee had two meetings in 1959, one on June 20 at Fremont and another one on October 3 at Lincoln.

The Committee during the year reviewed the existing Title Standards, and we now have sixty-seven of them, some of which are statutory and some of which are not. We have found no fault or any suggested corrections in the existing standards, with the exception of Standard No. 52.

Standard No. 52 reads: "Marketable Title Act, Quitclaim Deed: An unbroken chain of title within the meaning of the Marketable Title Act may originate in a quitclaim deed."

That standard came in for some abuse and discussion as a result of a case handed down by our Supreme Court on March 6 of this year. The case is *Smith v. Berberich*, 168 Nebr. 142. In that case the grantor of the quitclaim deed owned only an undivided fractional interest, either a tenth or a twelfth. More than twenty-three years before, he had given a quitclaim deed under which he deeded all his right, title and interest in Black Acre to another individual, and this other individual was then trying to support his fee simple title to the property based upon the Marketable Title Act. Our Supreme Court held that an ordinary quitclaim deed vests in the grantee only such title or interest as the grantor had at the time of the execution and delivery of the deed.

This threw a lot of us into confusion, I think, and the question was whether our Standard 52 should still stand. This was discussed both in Fremont on June 20 and again October 3 in Lincoln, and the Committee is of the opinion that the standard should stand, but that we should add an additional paragraph to the Comment of the standard. The present Comment says:

"A quitclaim deed is a conveyance or other title transaction which purports to create an interest in the grantee within the contemplation of Section 76-289, re-issue Revised Statutes Nebraska, 1943. While originally quitclaim deeds were used to release the interest or claim of the grantor to one who already had an interest in land, in modern times they are commonly used as primary conveyances to a stranger to the title. A quitclaim deed has been held to be a conveyance protected by our recording statute," and then the Comment goes on and cites a number of Nebraska cases sustaining that position.

Now the Title Standards Committee felt that this paragraph should be added to the Comment:

"However, in *Smith v. Berberich*, 168 Nebr. 142, 95 N.W. 2d 325, the particular Deed conveying all 'my' interest, where the records showed that the Grantor owned only a 1/10 interest, was held to be insufficient within the meaning of the Act. The effect of this case is that the document must purport to convey the land itself, and not merely the Grantor's interest therein. This construction can arise by covenant, warranty, recital in the Deed itself, or even by implication."

That is the report of the Title Standards Committee. If there are any questions or any further discussion about this particular Standard or this case of *Smith v. Berberich*, I will try to field the questions, although I am only substituting for John Fike. I may have to call on some of the more able members of the Committee to assist me. If there are no questions, I will turn the meeting back over to Mr. Pierce.

QUESTION: Mr. Pedersen, if a quitclaim deed purports to convey the title to the entire property with all "my" interest in there, your thought is then that that would be sufficient after twenty-three years of operating under a fee simple title?

MR. PEDERSEN: I think it is the feeling of the Title Standards Committee that if the particular quitclaim deed recites language comparable to the following: "I hereby quitclaim, convey and transfer Black Acre," that based on that language you can put a Marketable Title Act on that quitclaim deed if it has been of record twenty-three years, but if the particular deed recites that he is conveying all "my" right, title and interest, well, that puts the examiner on inquiry, "What is the grantor's interest in that?"

I think that is the distinction that the Committee feels should be made, and I think we have some basis for that. In this Supreme Court case that I mentioned, the Court on page 149 said:

"If the conveyance from Frances L. Smith to Lizzie M. Smith had purported to create an entire title to the land in the grantee, it would have satisfied the provision of the Marketable Title Act, and appellees would have been qualified to have invoked the aid of that Act to sustain their claim of title to the land."

It has been moved and seconded that the Comment which I just read be added to the existing Comment to Title Standard 52. Carried.

## COMMITTEE FOR IMPROVEMENTS IN CONVEYANCING

George A. Skultety

These eight forms of deeds were submitted to the Real Estate Section a year ago for the purpose of being studied by the lawyers in Nebraska. There are eight of the forms: a quitclaim deed, warranty deed, special warranty deed, survivorship warranty deed, survivorship quitclaim deed, corporation quitclaim deed, corporation warranty deed and a corporation survivorship warranty deed.

During the past year those forms have been revised about three times. There are more of these sets of forms here at the head table. I believe there are some at another table and a boxful back here. There are lots of these forms. If some of you don't have them, please feel free to come up and get some.

During the past year we did have suggestions from a great many of the lawyers over the State who read and studied those forms that were submitted a year ago. We are now prepared to recommend that these forms be adopted.

There are three typographical errors that we know of in these forms and we will correct them, of course.

Mr. Chairman, I move that the eight forms of deeds are approved by the Section on Real Property, Probate and Trust Law, and that such forms be submitted to the House of Delegates with the recommendation that they be approved as "Nebraska State Bar Association forms of deeds." [The motion was seconded.]

MR. PIERCE: You have heard the motion. Are there any questions?

HERMAN GINSBURG, Lincoln: Is Paul Good in the room? If not, I will speak for Paul and somewhat for myself, too. We have a question to present as to the special warranty deed. There is a very serious question as to what a special warranty deed is. Mr. Good, and I might say I concur with him, takes the



position that a special warranty deed is a deed without covenants except only against the acts of the grantor and his heirs.

Here we have a special warranty deed that does have covenants in it. The grantor covenants that he has seisin. That is a most important covenant. Are we going to take the position that when you covenant in a contract or agree in a contract that you are only going to furnish a special warranty deed, are you going to be compelled to give a deed that contains covenants of seisen and covenants against encumbrances, etc.? There is a question there.

Now I can see to a considerable extent how the problem arises. Bear in mind originally of course quitclaim deeds were only deeds of release. By these forms we are turning the quitclaim deed, in effect, into what used to be the deed of special warranty because we are making a conveyance out of the quitclaim deed. I have no objection to that, that's fine, but are we going to say that when the man agrees only to give a special warranty deed, that that means he gives a deed with three warranties?

That is the question that Mr. Good has, and as I said a moment ago I concur with him. I personally don't approve of the special warranty deed.

CHAIRMAN RICHARDS: I don't quite understand what you have in mind, Herman. What is the particular wording that you are objecting to?

MR. GINSBURG: Two things. First that "the grantor does hereby covenant with the grantee and with grantee's heirs and assigns that the grantor is lawfully seised of said premises." For instance, Mr. Good mentioned a client that he has who got the title through a devise in a will. He doesn't know and he won't guarantee and when he contracted to sell he contracted to sell by special warranty only because he wouldn't assume any responsibility for the ownership of the previous grantor. He doesn't know whether the previous grantor had good title or not. As this would read, Mr. Good's client would be obligated to warrant that he is lawfully seised. Well, we all know what lawfully seised is. That means that we are warranting the title.

WALTER G. HUBER, Blair: Mr. Chairman, as far as the proposition of seised, I believe that that is in the present Huffman form. I had occasion to check on that when I worked on the effect of a quitclaim deed as starting the chain of title, because our Supreme Court went into the question of the after-

acquired property there in this Smith case, and I purposely looked at the Huffman form as it has been in existence, so the special warranty deed printed form has had that provision in it. I don't know about the question of whether it is free from encumbrance, but I do know that it does state that "I am lawfully seised of the premises."

CHAIRMAN RICHARDS: Did you hear Mr. Huber say that the current Huffman form, at least one issue that he has inspected, contains this same language regarding seizure? I will ask Mr. Skultety to discuss Mr. Ginsburg's comment.

MR. SKULTETY: Let me ask if Robert H. Petersen is in the room. He is the member of the Committee who asked us to add a special warranty deed form to the several ones we were working on, and he did most of the work on this particular form.

Mr. Huber has hit the one thing that controlled our selection of the phraseology of these forms. We did not try to revise the forms that the lawyers have been using for the last fifty years in this State in any way as to their substance. They have been changed mostly as to convenience, as to leaving out blanks, but the substance we tried to keep, and that word "seised" is in the old Huffman form and in the old forms that are used by other printing companies.

I don't know the answer to the point that Mr. Good raised. It is true that those of us who use a special warranty deed form do it because of the last clause in the body of the deed there, that they are warranting against the lawful claims of persons claiming under or through the grantor. Now that is enlarged by the word "seised"; the word "seised" has no condition of that kind in it. That is ahead there and it isn't limited by that business of being through the grantor. So there is another warranty of seisen there, that is true.

It may be that the answer to Mr. Good would be that for a client in the situation he mentioned he would want to use our quitclaim deed form rather than a special warranty deed form.

MR. PIERCE: Are there any questions regarding any of the other forms?

Mr. Ginsburg, do you think it is desirable to get an expression from this body regarding this particular form?

MR. GINSBURG: Mr. Chairman, I don't want to prolong debate. I know it is late. I feel quite strongly that this form is wrong. You know our statute says that the rule of estoppel

by deed doesn't apply to quitclaim deeds and special warranties, and it seems to me any deed that has a covenant of seisin in it that the rule of estoppel by deed ought to apply.

In order to save time and to be fair to everyone, I would like to move that all of the deeds presented be approved, with the exception of the special warranty deed, which should be reserved for further study. [The motion was seconded.]

CHAIRMAN RICHARDS: I believe we have a problem of parliamentary law here. I believe we have a motion and a second before the house. This would be a substitute motion. Are you ready for the question on the substitute motion? The substitute motion is to accept all of the forms with the exception of the special warranty deed form. Is that all clear to everyone? All in favor of the substitute motion please signify by raising the right hand; all opposed to the substitute motion signify by raising your right hand. The motion was carried. That disposes of that?

What is the suggestion there?

QUESTION: Shouldn't you have a vote on the original motion?

CHAIRMAN RICHARDS: As the parliamentarian and prima donna of the group, I rule that the substitute motion being carried practically unanimously leaves nothing further for us to consider.

## COMMITTEE ON CURRENT LEGISLATION

Lewis R. Ricketts

It is a pleasure to be able to report that the four bills recommended by this Section and by the House of Delegates at the 1958 meeting were all adopted at the 69th Session of the Nebraska Legislature.

I will just point out in a few words what each of these bills were.

L.B. 353 provides, in substance, that no reference or recital contained in a recorded instrument concerning an unrecorded instrument shall be effective as notice to any person not an immediate party to the unrecorded instrument. The Act was approved by the Governor May 15, 1959, and became effective without the emergency clause on September 28, 1959.

The second bill, L.B. 358, which also became effective September 28, 1959, provides a limitation on the lien of alimony

and child support judgments. The alimony judgment will now cease to be a lien ten years from the date of the judgment, the date of the most recent payment on the judgment, as shown by the court records, or ten years from the most recent execution, whichever date is the latest. The child support judgment ceases to be a lien ten years from the date the youngest child attains his majority, or ten years from the most recent execution, whichever date is the later.

L.B. 360 carried an emergency clause and became effective May 15, 1959, upon signature by the Governor. This, in our view, is a very important bill. This Act will serve to eliminate any ancient reverters, restrictions and conditions subsequent. Under this Act no possibility of reverter nor right of re-entry for breach of condition subsequent shall be valid for more than thirty years. In addition, any such possibility of reverter or condition subsequent which had been in effect more than thirty years on May 15, 1959, the effective date of the Act, will be eliminated one year from the effective date of the Act unless action is brought to enforce it within such period. The Act makes certain exceptions with respect to leases, mortgages and certain conveyances to public utilities.

L.B. 359 became effective September 28, 1959. This Act amended Sections 30-1806 and 30-1807, R.S. Supp. 1957, relating to "pour-over" trusts. It will be treated more at length in Mr. Berkheimer's report for the Committee on Trust Procedure.

In addition to the foregoing bills sponsored by this Section, the Legislature also passed the following bills which may be of interest:

L.B. 361 provides that testamentary gifts of money or securities may be made to minors under the same terms and conditions as now provided for inter vivos gifts under the Nebraska Uniform Gifts to Minors Act.

L.B. 456 simplified and shortened the procedure with reference to the determination of inheritance tax in certain cases.

L.B. 148 provided for the releasing and extinguishment of certain real estate taxes and tax liens after fifteen years. This Act was passed to implement the recent Constitutional amendment on this subject. It carried an emergency clause, and became effective March 31, 1959.

**REPORT OF TRUST LAW DIVISION****Lewis R. Ricketts**

First of all, so far as the Trust Division is concerned, I would like to call on Mr. Richard Berkheimer, who is head of the Committee having to do with trust procedure.

**REPORT OF TRUST LEGISLATION AND  
TRUST PROCEDURE COMMITTEES****Richard L. Berkheimer**

The primary concern of our Committee has been with the pour-over trust statute legislation.

To refresh your recollection, pour-over trusts are inter vivos trusts to which property passes by will.

At our last year's meeting this Committee suggested that the Section and the Association sponsor an amendment to the statute which was introduced as L.B. 359, which was designed to eliminate some of the problems in the then existing pour-over trust statute, particularly with regard to the question of County Court supervision.

The old statute had provided generally that an inter vivos trust to which property passed by will would not be subject to County Court supervision if the trustee were a corporate trustee. The amendment sponsored last year provided that that distinction be eliminated, but in an effort to meet the objection of those who felt County Court supervision of individual trustees to be desirable, the Bar Association amendment provided for elimination of County Court supervision only if the testator so provided in his will.

But as it turned out, this provision did not meet those objections. The Judiciary Committee of the Legislature advised the Association that it would not under any circumstances eliminate County Court supervision of individual trustees receiving property under a will, and that if the Association wished to suggest amendments which did not abolish the distinction, they would be considered, but otherwise the Judiciary Committee intended to leave the statute generally the way it was.

This Committee felt that even though this perhaps dubious distinction was retained, there were problems in the bill, many of which were raised before Judge Troyer before this Section two years ago which should be eliminated. We wrote to the Judiciary Committee, saying that speaking for the Association

we could not do otherwise but urge the Committee to adopt the Bar Association bill, but speaking for ourselves we did suggest certain changes in the language of the bill which we believed would eliminate most of the inconsistencies. These suggestions were adopted by the Judiciary Committee. L.B. 359 was amended in that manner and passed.

Now as passed, L.B. 359 preserves the corporate trustee distinction, and as in the old law, provides that corporate trustees are not subject to County Court supervision unless the testator expressly provides for such supervision. However, the language has been clarified and an individual co-trustee of a pour-over trust acting with a corporate co-trustee is now also excluded from County Court supervision, which gives some more flexibility.

The definition of corporate trustee has been changed from one authorized "to act as an executor or administrator" to one "authorized to exercise trust powers." This change was made because of the new statute which provides that commercial banks may act as executors or administrators but does not provide that they can exercise general trust powers. The statute also expressly includes unfunded life insurance trusts within the statute's application. The Committee is not wholly satisfied with the new law but it believes it is much better than the old one, and we are not now recommending any further legislation on this subject. But if any of you find inconsistencies or problems under the statute as it exists, your suggestions for amendments would certainly be welcome.

For the future, the Trust Procedure Committee has been studying two proposed statutes. One of these is the uniform principal and income act, which I am sure most of you are familiar with, and the other is the uniform act for the simplification of fiduciary security transfers. This act is designed to simplify the documentation necessary when a fiduciary either transfers stock or when stock or other securities are transferred to a fiduciary.

The Committee does not at this time make any recommendation as to the sponsoring of these particular statutes but does recommend that they be given further study.

## **REPORT OF COMMITTEE ON DRAFTING TRUSTS**

### **L. R. Ricketts**

Because of the untimely death last month of Mr. Clark Jeary, who had been Chairman of this Committee for the past year, I am undertaking to make the following brief report on behalf of the Committee.

Needless to say, any report from this Committee comes as a distinct anticlimax to the excellent presentation which Mr. Murray has made on this general subject this afternoon. In fact, that was quite a Committee report itself.

At its meeting in Fremont last June this Committee again recognized the great difficulties involved in attempting to draft standard or recommended forms of trust instruments; nor are these difficulties completely eliminated if the task is limited to special trust provisions, such as those dealing with administration. The hazards of using so-called "boiler-plate" are extremely great in this field. No two situations are ever exactly the same. There just is no substitute for the trained and skilled draftsman.

For these reasons the Committee decided that for the time being, at least, it would direct its efforts toward the goal of attempting to supply certain guides and caveats on some of the more difficult problems which the lawyer may expect to encounter, and to furnish bibliographies of some of the more helpful texts and form books on the subject.

## REPORT OF PROBATE DIVISION

**John W. Delehant**

The report of the Probate Division is the last one, and I guarantee you it will be the least, at least in point of time.

Reporting for Fred Hanson of McCook, who is Chairman of the Committee on Improvements in Probate Procedure, I will say that many recommendations were made by this subcommittee, only one of which cleared the House of Delegates of the Association, and that one, namely, L.B. 361, the testamentary gifts to minors statute, also passed the Legislature.

The other recommendations had to do with simplifying, speeding up, combining probate notices, etc., and will no doubt again be presented to the Bar Association at the next annual meeting for consideration once again.

The second subcommittee, that on Inheritance Taxation headed by Tom Davies of Lincoln, worked closely with the Taxation Section in the past year and came up with many legislative recommendations, most of which were incorporated into law by the 1959 Legislature.

At the present time and for the coming year it is the intention of this subcommittee to once again circulate all the County Judges and County Attorneys for suggestions on improvements in inheritance tax legislation.

The third and last subcommittee, that of the Committee on Will Drafting, headed by Varro Rhodes of Omaha, has been working on probate forms with the eventual hope of incorporating suggested forms in the lawyer's desk book in a somewhat modified version of that adopted by the Iowa Bar Association last year. Many of you may have seen their work, which is quite monumental, and one that I would recommend that you invest a couple of dollars in to buy from the Iowa Bar Association, a very fine work. We hope to eventually have an abbreviated work.



## SECTION ON MUNICIPAL AND PUBLIC CORPORATIONS

Anne Pickett Carstens  
Chairman

"Investment of City, Village and School District  
Funds" .....Warren C. Johnson, Esq.  
Lincoln

INVESTMENT OF CITY, VILLAGE AND SCHOOL  
DISTRICT FUNDS

Warren C. Johnson

The subject assigned to me assumes that municipalities and school districts have at least at times surplus funds, and if this assumption is not correct this paper could easily be terminated *ab initio* by recognizing that most public bodies are not fortunate enough to have such funds. However, assuming that there are such groups that are so fortunate or might be at some time in the near future, it is my purpose to outline the possible investment of such surplus funds.

It is always much easier to say what you're not going to talk about than to say something about your subject. It is usually better to state, however, what you're not going to cover so that those of you who are looking for something the speaker isn't going to talk about can leave immediately. I do not intend to cover any special problems in the investment of funds that are caused by cities having home-rule charters. Neither will there be covered special provisions on the investment of funds by metropolitan and primary class cities or funds of the State of Nebraska. Likewise I am not covering irrigation districts, drainage districts, public power districts, except as the same are covered by the general investment statutes, and last of all I am not covering deposit of municipal funds in banks.

There are a surprising number of statutes in the State on the subject of the investment of city, village and school district funds. Some deal with all state agencies and political subdivisions, and others are very specific and limited. Let us first consider the general statutes on the question.

The following statutes deal with all State agencies and political subdivisions. Section 8-712 R.R.S. 1943 states that surplus funds of State agencies and political subdivisions may be invested in bonds and notes secured by FHA mortgages and FHA bonds and

also bonds of national mortgage associations. Section 46-567.04 provides that the same agencies can invest their funds in reclamation district revenue bonds. The principal statute governing general investments is 77-2341, which states that such agencies may invest their surplus in general fund or in sinking funds in excess of current needs in any securities that are authorized for the Board of Educational Lands and Funds to invest in. It is then necessary to look at Section 72-202 for such investments. This section provides that funds can be invested in United States or state securities, bonds and debentures issued either singly or collectively by the twelve Federal land banks, the twelve intermediate credit banks and the thirteen banks for cooperatives under the supervision of the Farm Credit Association, registered county bonds of this State, registered school district bonds of this State, registered bonds of cities and villages of the State on which there has been no principal interest default in the past ten years, Dormitory Bonds of the University of Nebraska or the State Teachers College. (There are certain restrictions as to the terms and conditions of such dormitory bonds in order to make them qualified.)

With respect to the statutes referred to above, I would give a word of caution about investing in bonds and notes secured by FHA mortgages, bonds of national mortgage associations and bonds or debentures of the thirteen banks for cooperatives. It is possible that investment in such bonds, debentures, notes and mortgages is unconstitutional in view of the decision of our Supreme Court in the case of *State ex rel Beck v. City of York*, 164 Nebr. 223, 82 NW2d 269. Article XIII, section 3 of our Constitution provides that the State can't lend its credit. In the *City of York* case our Supreme Court held unconstitutional industrial revenue bonds issued by a city, which bonds would be used to purchase industrial sites and build plants and lease the same to private persons. Our Court said that this amounted to a lending of credit and therefore was unconstitutional. It occurs to me that you have the same situation in connection with using municipal or school district funds to buy bonds and notes secured by FHA mortgages, bonds of national mortgage associations and the bonds and debentures of the thirteen banks for cooperatives.

Let us next consider some of the specific statutes on investments. Section 10-713 is applicable to school districts. This section provides in effect that any surplus in the bond levy accounts with the county treasurer, when ordered by the school board, may be invested in (1) redeeming bonds of said school district, (2) registered bonds of the county in which the district is situated, (3) bonds of the State of Nebraska, (4) bonds of the United States

of America, any bonds so purchased to be purchased at the lowest market price after twenty-one days' notice by publication, published in Lincoln, Nebraska, and (5) interest-bearing time certificates of deposit in depositories approved and authorized to receive county money and not in excess of the amount the depository is authorized to receive in deposit of county funds. Section 77-2338 provides that sinking funds of school districts may be invested in its own warrants provided that such investment is limited to fifty per cent of the sinking fund and that such investment is safe and expedient at the time. Section 79-1308 provides that school treasurers are forbidden to lend or use any part of school money under the penalty of embezzlement, and Section 79-1308.01 provides that a school district treasurer may invest funds of the district in those investments that are legal for the Board of Educational Lands and Funds, which, we have previously seen, are those investments specified in Section 72-202.

Now let us consider some of the specific statutes applying to cities of various classes. Section 77-2337 provides that the sinking funds in the hands of the city treasurer of any incorporated city may be invested in warrants of its own issue or in warrants of any school districts situated mainly or wholly within the boundaries of such city. This section, however, is limited by Section 77-2336 which provides that only fifty per cent of the sinking fund may be so invested, and that such investment must also be safe and expedient. Section 16-691.01 provides that in cities of the first class, funds of the Board of Public Works or in any of such city's utility funds may be invested with the approval of the mayor and city council in interest-bearing securities of the United States, the State of Nebraska or any political subdivisions thereof. Section 17-803 pertains to surplus funds of utilities in cities of the second class and authorizes the same investment as previously noted for such funds in cities of the first class. Section 19-1304 applies to cities of the first and second classes and to villages. It states that any sinking funds voted for library, auditorium, city hall, jail, park, cemetery or hospital purposes *shall* be invested immediately in the investments authorized by Section 77-2341.

The foregoing is a brief summary of the applicable statutes of Nebraska relative to the investment of city, village and school district funds. After these statutes are studied, it is obvious that such funds cannot be invested in certificates of deposits or time deposits, in banks, in savings and loan associations, in building and loan associations or in industrial loan companies. At times in the past and very possibly now some city, village and school district funds have been invested in savings and loan or building

and loan associations, and it is probably your duty as city or school district attorneys to check and see that your principal is not violating the law on investments and funds.

What procedure should be followed in making investments? The following guides should be considered:

1. City, village or school district treasurers should be sure to get approval of the council, the village board or school district board before making such an investment.

2. The investments should be of funds that are in excess of current requirements. In this connection investments of sinking funds should be made so that the investment will either be liquid or mature at the time of the maturities of the sinking fund obligations. In connection with purchasing warrants, the warrants cannot exceed fifty per cent of the sinking fund, and such purchase must be found to be safe and expedient.

3. There are usually special restrictions on electric, water and light funds in revenue bond ordinances governing electric revenue, water revenue and sewer revenue bonds. These revenue bonds ordinances should be checked specifically before any investment is made. Particular attention should be given to investing the reserve fund, as many times these ordinances provide that such reserve fund is to be held in cash.

4. There might be some question whether treasury bills and notes of the United States are bonds. Generally, however, this probably will not be a problem, as Section 72-202, which is the broadest of the investment statutes, refers not to United States bonds but to United States securities, and in all probability treasury bills and notes are United States securities.

What are the penalties and liability of city, village or school district treasurers for not complying with the law with respect to investment of funds? The penalties are not mild. The criminal penalty is stated in Section 28-543, and in effect provides that the treasurer who fails to comply could be guilty of the "high crime of embezzlement," and upon conviction would be subject to one to twenty-one years' imprisonment and a fine of double the amount involved. This fine is a criminal penalty, and the treasurer would still be liable civilly for any loss. The civil liability for investing other than in accordance with the statutory method would undoubtedly leave the investing officer personally liable. In support of this are the many cases during the 1930's that involved the deposit of municipal funds in banks where the statutory procedure was not followed. Attention is also invited to the case of *Fulk v. School District #8*, 155 Nebr.

630, 53 NW2d 56, wherein certain officers of the school district were held liable for purchase of a house which was not authorized by law. There should also be considered whether there is any civil liability upon the treasurer or officers of a city, village or school district for failure to invest surplus funds. There is an absence of any law or adjudicated cases in Nebraska on this point. It should be noted that of the statutes heretofore referred to, all appear to be discretionary except Section 19-1304, which involves the investment of sinking funds voted for library, auditorium, city hall, jail, park, cemetery or hospital purposes. In the case of the mandatory provision, presumably failure to comply would result in civil liability. It is also possible that in the discretionary statutes there could be an abuse of discretion by failure to invest. In these days when the interest rates on United States Government obligations are as high as they are, a substantial amount could be lost to a city, village or school district by failure to invest surplus funds, and such failure could be an abuse of discretion which would result in civil liability.

By way of summary, the investment of city, village and school district funds is a matter almost wholly governed by statutes in the State of Nebraska. The statutes should be carefully noted prior to investment of funds. As a general rule, investments in direct obligations of United States Government, registered state, county, city, village or school district bonds of the State of Nebraska and warrants of the particular city, village or school district up to fifty per cent of its sinking fund are investments authorized for most general purposes. In making investments it should be kept in mind that there should be board or council approval that the investment of funds are in excess of current needs and there should probably be a finding that such investment is safe and expedient. Above all it should be remembered that the penalties, both criminal and civil, in this matter are severe, and it is submitted that it is the duty of attorneys representing cities, villages and school districts to caution their clients both as to the proper procedure for investing funds and also as to the penalties involved if funds are not invested as they should be.

# ASSOCIATION DINNER FOR MEMBERS AND THEIR LADIES

Presiding .....Joseph C. Tye, Esq.  
President of the Nebraska State Bar Association

Introduction of Guests

“Trial Technique in Default Cases—or—Let’s  
Face the Issues” .....Hon. Carl F. Conway, Esq.  
Osage, Iowa  
President of the Iowa State Bar Association

PRESIDENT TYE: It is my pleasant privilege to present to you our speaker of the evening. He is an Iowan. He was born in Garner, Iowa, he received his ABA Degree from Coe College in Cedar Rapids, Iowa, and graduated from the Law School of the University of Iowa with the degree of J.D. He served as County Attorney of his county in Iowa. He was President of the County Bar Association from 1946 to 1953. He was a member of the Iowa State Bar Association and a member of the Board of Governors of the Iowa State Bar Association from 1952 to 1958. He was Vice-President of the Iowa State Bar Association in 1958. He is a member of the American Bar Association. He is married and has one daughter eleven years of age. He is at present the President of the Iowa State Bar Association.

Shortly after Carl Conway started to practice law over in Iowa he had a client—that comes to us if we wait long enough—and this client went in to ask for some advice. After the conference was over there approached the question of fees, and Carl, wanting to satisfy this first client in the hope that he might return, discussed the matter of fee with him rather freely and asked him what he thought the service was worth.

The client said, “Well, Carl, when I came in I was prepared to pay you a fee of \$2.00, but since you had to take the time to look it up, I think \$1.00 will be enough.”

Carl F. Conway is a scholarly gentleman and he came here, as George Turner and I have promised you, to deliver a scholarly, legal address. I trust that your dinner is well settled, that you are able and willing to partake of some further legal education. He is a serious gentleman, will deliver a splendid legal subject to you and you will be edified after you hear this fine gentleman.

He will speak to you on “Trial Technique in Default Cases—or—Let’s Face the Issues.” Brother Conway! [Applause]

TRIAL TECHNIQUE IN DEFAULT CASES—OR—  
LET'S FACE THE ISSUES

Honorable Carl F. Conway

President Tye, distinguished guests, members of the Nebraska Bar, and friends: I am certainly very, very happy to be here this evening with you. That concludes the formal part of my address.

However, I do have a few additional remarks that will take roughly thirty-five minutes, so I shall go on from here. Seriously, first of all I do want to bring to you the greetings and good wishes of the Iowa State Bar Association. We feel very close to the Nebraska Bar; your officers have visited us frequently and we are always happy to have them over there. It is a pleasure to sort of return the visit tonight.

As I say, with Nebraska we feel we have a community of interest. I particularly sense it because we are close enough so we feel like we are very friendly to you and yet we are far enough away so we are not soliciting in each other's territory.

I don't mean that exactly, because this afternoon as I went down the street I did ask these people whether they had drawn wills or not. Unfortunately most of them had, so I left them as they were, but I tried not to solicit any more than would be proper from a visiting statesman.

I think the other part I brought to you was indeed serious and that was bringing you our best wishes. I would like to say now that we are very, very happy to be able to have with us this evening and to bring to you our good friend and our fellow Iowan, John Randall, as President of the American Bar Association.

I do want to let you know how proud we are of John Randall. He, I am sure, will make a fine President of our American Bar Association. It is an honor that he richly deserves. I know that sometimes you wonder just how a man is thought of by his fellow lawyers and fellow citizens, and I can tell you that he ranks A-1 with all of us there in Iowa. We think the American Bar is very, very fortunate to have a man of his caliber at its head. [Applause]

Incidentally, he also has a very gracious and very fine family. I wish they had been able to be here, John. I know you would love them just as you love John.

My subject tonight, as President Joe has said, is to be on "Trial Technique in Default Cases—or—Let's Face the Issues."

George Turner asked me what I used as my subject and I told him I used both of those, and he said, "Well, let's combine them," so I am going to use both of them actually, but if we are going to start in on "Let's Face the Issues" I think we may as well ask ourselves, "What are the issues?"

Frankly, I don't know. But that is not going to stop me from talking, I'll tell you that. If every speaker were to quit just because he didn't know what he was talking about, it would be a pretty sad affair, so I am going ahead anyway.

Before I get into this, there is another field I would like to talk to you about. I think maybe we are getting into too much law here, so I would like to get into something that the ladies would be more interested in. It's rather scientific, a fourfold subject that I have used sometimes in a limited time: it is the Atom Bomb, World Peace, Einstein's Theory, and the High Cost of Living—just those four things. I would rather take four things like that and cover them completely than to ramble on for a half hour and not have you know what I am talking about. And I would like to do it in such a way that when I leave here tonight you can build your own atom bomb if you want to. And if we have time we are going to explode one. I doubt if we have time, though.

Anyway, as I come to you tonight I know that most of you have never heard of me, and probably don't care, but I always feel this way: that in coming to a strange audience, and most of you are strange—I mean to me. But I would like to say this, if any of you don't know a thing about me and whether I get into atom bomb first or trial technique, any of these things, I would like first to have you know a little bit about my background so you can decide whether I am a fellow who has got a lot on the ball or whether I am just some big blowhard. And at the end of my talk I will not ask you which you think [laughter]. I did that once and I will never do it again.

I was born—and I can prove that, too. No, I thought I had the doctor bill with me. I got another one just the other day and it said, "The last notice before suit." That's the trouble with that doctor. He is a good doctor but he is so quick-tempered. Just because it has gone on for some forty or fifty years he starts getting huffy about it. As if I didn't know about the statute of limitations, which shows you I do know some law.

Anyway I was born at Garner, Iowa, on Highway 18—I wasn't born right on the highway. I would rather have that clear be-



cause if I am going to get your confidence I have got to be truthful about all of this. But I was born there at Garner, Iowa, on September 16 in the early 1900's. The Governor has asked me not to give the exact year. I mean if Russia isn't going to tell us anything, we're not going to tell her anything either, particularly about our military strength.

I was born there at four o'clock in the morning, and the reason I remember that so well is because up until the time I went into the Army I was never up that early again, which is right. A lot of you fellows don't care a hoot what I weighed but you ladies I know will. At birth I weighed 7½ pounds. The doctor said I weighed 8 but he had formerly been a butcher and he weighed his thumb right along with me. But that wasn't the reason I haven't paid him. I mean, he wasn't getting paid by the pound anyway—it was piece work. That's right!

I would like to say this just to keep the thing on an even keel and to show you that I am trying to be truthful about this. I know it will surprise a lot of you folks but it is the honest-to-goodness truth, that at first I was not considered a particularly beautiful child. That's right. It wasn't until I reached the age of fifteen or sixteen that I began to develop the beauty you see here tonight [laughter]. I am sorry to have you laugh at *that*. That is the one serious thing I had in my talk. Anyway that is the situation.

A lot of people ask this, "Did you ever go to school?"

I did. The law required it. I remember the years passed rather swiftly; I passed rather slowly. But the three happiest years of my life I know were those I spent in the fifth grade. I had a teacher who sort of took a liking to me and held me over. I got a rotten deal. That's what happened, I'll tell you. Anyone who knew me said that I should have made it in two years with any brains at all.

Then I went on into high school. This has to be rather fast, but you are entitled to know my background. I went into high school, and the only thing I want to mention there I did have a leading part in the senior class play, "Three Men on a Horse." I led the horse on and off the stage. Then in the senior year, and I say this modestly because, well, whatever I tell you I am saying modestly, I was elected as the senior most likely to succeed. It was a rather close vote. It was two to one. My sister and I voted for me, and the other guy voted for himself, which was a pretty lousy thing when he knew he didn't have a chance.

I went on through high school there and finally finished, and I know a lot of people ask this question, too. They say, "Mr. Con-

way, were you ever an athlete?" And, frankly, I was. I played football, basketball, baseball. In football, I won't have time to go into a lot of detail, except I will say that we had an extremely fine football team in high school. We had an unusual team. Back then we used to play all comers. Our opening game the senior year was the Alcatraz prison team—the Alcatraz Rocks, they called themselves. We were out there for their Dad's Day. You can imagine how proud their fathers were to see their boys on the field playing us. The year before that they tried to have a big game at homecoming but so few fellows came back that they shifted it to Dad's Day.

So we went out there and that's the first game I have ever known of in which the fathers up in the stands and the players down on the field wore the same numbers. They do that now in almost all big games, but that is where it originated. We played that team out there. Actually we lost 87 to 0; but our big trouble was we didn't see the ball. They had a quarterback who had been a sneak thief—well, his father actually was a pick-pocket and his mother had been a magician, and between the two of them he had inherited their best qualities. He was the fellow who originated the T formation where really you don't see the ball at all. He had been with them twenty-three years and he had seventeen years more competition.

We were a bunch of high school kids, none of us over twenty-eight or thirty trying to play that kind of a team. Well, as I say, we lost.

There was only one other game I want to talk to you about, and this doesn't particularly tie up with the atom bomb except it was in high school that I got interested in science. I think that ties that up.

Then we did have one game I think you might like to hear about briefly, and that is the game we played with Lady Windemere's School for Bashful Girls, and that is the only game in which I know of in which a high school boys' team played a girls' team in football. We went out there and they were really bashful, as bashful as anyone could be. I think we were more bashful than they were, and the first half was about as dull a half as you have ever seen, no blocking or tackling or contact work, and people started to go home. So by the second half we got a lot better acquainted and there was too much contact work, so much so that at the end of the game they changed the name of their school. A lot of people asked me how we came out and I don't remember, but we did have a lot of fun, I remember that.

Now we are finally through high school and I am not going to bother you with college things but I did, as your Chairman said, I did go into the law school at the University of Iowa and finished there and came out to practice in 1931. Then I sat there practicing in Osage for ten years, minding my own business. I think if ever there was a peaceful fellow in the world it was me, and yet after Pearl Harbor I got a note from the late President Roosevelt asking me if I would like to take part in the war effort. He didn't really say, "Would you like to take part?" He said, "You'd better take part or else." So I did, and in April 1942 I went into service and stayed there for three and one-half years.

The only thing I want to mention there is, I don't have any big complaint coming except that it was quite a sacrifice financially. When I went in, I went in actually as a private in the infantry at \$21.00 a month, which was then the going rate. I don't want you to write back to Washington and say I am grouching about the way I was treated. I got the \$21.00. There was no withholding or social security. I got the whole thing. Twenty-one dollars wasn't a lot of money to live on at that time, as you know, and the thing that irritated me so much was that I had been practicing law for ten years and I was making twice that much in the law business. I don't mean every month. As I say, I want to be truthful about this thing, but you do hit some good ones. That is the only complaint I had.

Anyway we must move on here. It is always difficult to know just what to talk about first in a group of this size, and it is always possible to be very deceived about how your message is being received.

We had a fellow who came down from Drake University a while back and gave a commencement address at a big outdoor affair and he thought he had done a tremendous job. He finished and he got a pretty big hand and a little old lady came up to him and she said, "Dr. Smith, I just want to tell you that I listened intently to every word you said and I didn't like what you said."

He was sort of taken back and he said, "I'm sorry about that."

"Furthermore," she said, "I don't like the way you said it."

He was further taken back, and she walked away and he thought, "My goodness, what was the matter with her?"

Some fellow was standing next to him and he said, "Dr. Smith, don't pay any attention to her. She doesn't have an original thought in her head. All she is doing is repeating what all these other people have been saying around here."

So we never know just how things are going over or whether the audience is getting the point of our address. I want to say now that one thing I want to do tonight, and I will try to do during the time I have. One thing all of us do as lawyers, or try to do, is to think things through. If I do nothing more tonight than to get you to analyze things and to think for yourself, then I will have met the challenge.

When I say "think for yourself," it is easy for me to stand up here and say that, but you say, "Well, now, what do you mean?" Let me give you a concrete example that I have taken from my laboratory there in Osage. We will say that you and your wife, you're the husband, you and your wife were having a house guest over the week end, a high school or college friend of your wife, a lady friend. So Saturday night you decide to go out and see the town, and you, the husband, go up into the bathroom to shave and clean up, and there in the tub taking a bath is the house guest. Now, don't you sense the situation? What is going to happen? She'll scream, you'll scream, your wife downstairs screams, everybody is mad at everybody else and it's a mess.

Now then can you analyze that thing, in other words so as to save embarrassment on the part of everybody around. It is possible to do that. I'll tell you what you do. You simply say, "Honey, are my glasses downstairs?"

And your wife will say, "Yes, they're right where you left them."

And you say, "I'm going to have to come down and get them because I'm getting so I can't see a thing without them."

Now don't you see how you've tied a double hole just by thinking things through. But if we're going to analyze, what about the man who doesn't wear glasses? Well about the only thing he can do is simply say, "Excuse me, sir," turn around and walk out.

That is something that may never happen to you and I sincerely hope it doesn't, but if it does you'll be glad you were here tonight, I'll tell you that. Many people wouldn't know what to do under those circumstances, but now you will.

When I talk about analyzing, we must analyze to realize what things are worthwhile and what things are not. So often we are mistaken on that thing. I have made boners myself. I could kick myself all over. Awhile back I wanted to get one of those ballpoint pens that would write under water, and now they advertise that they will write through butter. Well, I don't

care about writing through butter but I did want one that would write under water. They were \$15.00 and then they went down to \$12.50, and I wouldn't buy one—too much. They went down to \$10.00, \$7.50, and finally got down to 98 cents and I bought one, just like that.

I went home and told my wife. I said, "Edith"—that's my wife's name—I said, "Edith, I bought one of these pens that will write under water."

Then we got to sitting down and analyzing that thing that night and I thought, "Carl, what a silly thing to do, to put all this money into a pen that will write under water when so little of my business is done under water."

I don't mean that I wouldn't witness a will or something like that in a bathtub but basically I do ask people to come to the office, which I think is good practice. Anyway, as I say, it all gets back to the idea of analyzing.

Recently I gave a talk, and I think it was one of the deepest talks ever given on "Legal Opportunities in Outer Space," and we finally concluded that there were no opportunities in outer space, which made it easy after I had done all the preliminary work. But the first question you run into is, "What is outer space?" People are dumbfounded by that, but if you analyze it it is very simple, really. You take all space and then you subtract inner space and what is left, obviously, is outer space.

So that is what I am trying to get you to do, to think these things through for yourself so that when I am not here you will be able to handle it.

I would like to just address myself tonight to some problems we have as lawyers and as lawyers' wives. All of us have problems, and I know we always think the other fellow doesn't have problems. Those of us in small towns think we have all the problems and the city fellow thinks the country boys have all the problems, but everybody has problems is what it amounts to. I used to think the only group that didn't have problems were the undertakers, and yet I stopped at one of their conventions awhile back in Des Moines and they were debating a big thing about a real problem they had—how to look sad at a \$10,000 funeral. Really to them that was a problem and a very real one.

They are not the only ones. This last summer there was a lady in New York, a psychiatrist, and she had a problem. She went to a moving picture one afternoon, decided to play hookey from the office and took in a movie. The thing was a rather emotional type of drama. Everything went fine until a fellow

came in and sat down in the next seat. He started tapping her on the knee as the picture got a little warm there and as they kept sitting there he kept tapping a little harder. Finally the psychiatrist thought to herself, "What in the world is the matter with him?"

First of all she started to get very, very angry, as I know any of you ladies would. Then she grabbed hold of herself and thought, "Well, after all why should I get upset about this? Really, it's his problem."

I mention that only to illustrate the fact that everyone does have problems that we must try to get together and solve. I think in every talk you hear of this kind at a Bar meeting or the Chamber of Commerce, or whatever it is, everyone tells you about "Let's cooperate, let's get together," whether it is the Bar Association or what, "Let's get together, work together, and progress." Cooperation is a wonderful thing, and yet I do want to caution you when you are analyzing, let your cooperation be intelligent cooperation.

Up in Mason City, near our town, about thirty miles away, I was in there one day and a fellow ran into the corner drug store and he said, "Mister, I need something for the hiccups. Its an emergency, something for the hiccups."

The clerk never said anything to him, he just hauled off and hit the guy and knocked him down. He got up and said, "What in the h--- is the matter with you? All I asked for was something for the hiccups.

The clerk smiled and said, "Well, you don't have the hiccups any more, do you?"

He said, "No, but my wife out in the car has still got 'em!"

So there is the fellow who is willing to cooperate, and yet he didn't do it intelligently, and I say if you don't do it intelligently you're better off not to cooperate at all.

I think, too, in cooperation, I always enjoy a meeting of this kind where the ladies are present because you can give advice not only for the men but for the ladies. I would like to give the ladies this bit of advice: "Please cooperate and give your husbands a chance to express themselves." I know that many of you do and yet some of you thoughtlessly do not, and men have talked to me about it. I do say, "Let's give them a chance to talk."

Sometime ago I was up in Minneapolis—you may think I travel a lot, but I was up there—and I ran into a fellow I hadn't

seen for twenty years and I said, "John, how are you?" He said, "Carl, how are you?"

We shook hands and that was all we got to say because his wife was there and she was yakkety, yakkety, yak. And all she could say was, "We're up here on our twentieth wedding anniversary. Seems just like yesterday, doesn't it, honey?"

"Yes, dear, just like yesterday."

"Mr. Conway, do you know how long we've been married?"

Of course I knew, but she said, "Twenty years! It seems just like yesterday, doesn't it, honey?"

He said, "Yes, dear, just like yesterday."

"My," she said, "how time flies. Twenty years! You'd never think it and yet it's just like yesterday, isn't it, honey?"

He said, "Yes, dear, just like yesterday."

Finally he got a chance and turned aside to me and said, "It's just like yesterday. And you know what a helluva lousy day yesterday was."

So if we will cooperate then as lawyers and as lawyers' wives, then we can get along I am sure very, very much better.

One thing I always like to stress and that is the idea of knowing your job, whether you are building an atom bomb, or whatever you are having to do, really know your job. I think that is the big thing. An illustration I had, I was not present but I think it is true, came out of Chicago. A couple was out spooning there in Grant Park after midnight. A cop came up and he flashed his light and he said, "Ha, you're spooning, aren't you?"

And they said, "Yes."

He said, "I've got to arrest you and take you in. You've violated ordinance No. so-and-so, City of Chicago."

So he took them into night court and the Judge said, "What are the charges?"

He said, "They were spooning in Grant Park after midnight."

"Tsk, tsks," the Judge said, "that's terrible. I don't have any choice. You look like nice people but I have to arrest you."

The man said, "Your Honor, would it make any difference if I were to tell you we are husband and wife."

The Judge said, "Yes, if you are husband and wife, there is no offense. In fact, we encourage it."

So the man said, "We are husband and wife," and he pulled out his marriage license—and that is the reason I want to encourage you men always to carry that marriage license with you.

He pulled out the marriage license and sure enough they were husband and wife.

The Judge said, "My goodness, I am sorry. I want to apologize to you on behalf of the City of Chicago." He turned to the cop and said, "Officer, don't ever let this happen again. Here you didn't know what you were doing, you didn't know your job, you arrested these innocent people. They could sue you, they could sue me, they could sue the City of Chicago, they could sue everybody. It's a mess. If this happens again I'll fire you."

Well, the officer was a pretty good egg and he was very sorry about it. I mean tears were streaming down his face and he turned to the man and said, "Mister, I can't tell you how sorry I am. Really I had no idea that lady was your wife."

And the fellow said, "Don't feel too bad about that. Until you flashed your light on us I didn't know it was my wife either."

So I think it does behoove us to emphasize the fact that we should know our business regardless of what we are doing.

I heard a rather cute story. I want to change from too serious a vein now. I did hear a cute story down in Miami at the American Bar meeting that I think you will enjoy, about the fellow working his way through college in Chicago. He went to work part time in a bar, and the barkeeper said, "Now, there is nothing for you to remember. You know how to mix all the drinks."

"Yes."

"Well," he said, "the only trouble you'll have is about ten o'clock at night. We have a deaf and dumb institute over here and about ten they come in. All you have to remember is that a tap on the wrist means a martini, a tap on the elbow means a short beer. If you remember that, that's all you have to do."

So the fellow got along splendidly. Ten o'clock came and a troop filed in from the deaf and dumb school and they started signalling for the short beer and a martini, and everything went fine, and finally some of them got to doing this.

He didn't know what in the world they wanted so he called the boss and said, "Boss, something has happened. I don't know what to do. I wonder if you could come down here."

The boss came down and said, "What are they doing?"

He said, "They're doing this."

He said, "Good heavens, that means they're starting to sing, and they're going to be here all night."

That is one of the things that happens, and it does tie in with the idea of knowing your job.



I think I should spend a little bit of time anyway seriously, it's going to be very brief, but I do know that you are doing a fine job over here in Nebraska. I don't just say it for the benefit of Joe and the people present but I do know that you have a real program here in your Bar Association. We are proud of the work we are doing over in Iowa. I don't know your special projects you're having but I know you had some section work today and you're going to have some more tomorrow.

Perhaps if you are interested in what we're doing, very briefly I can tell you a couple or three things we have had under way. We did revise our corporation laws completely. They were passed in this last session of the Legislature this winter.

We have another project under way that is a tremendous upheaval, if you want to call it that, on judicial administration. That is what we are in right now. We have had a real battle. We are trying to change our method of selection and tenure of judges to get them out of politics. To do that we have to have two affirmative votes in the Legislature and then a vote of the people. It will be a constitutional amendment. Actually it is a form, you might say, but we don't particularly refer to it as the Missouri Plan, regardless of our delegate from Missouri, but Missouri does use it in some cities, I understand. Basically the idea would be that rather than to have the judges run on party tickets as we have them now, would be to have them run on the record, have them serve longer terms, and provide adequate salaries, we hope, and retirement plans. So we are under way in that up to our ears. We did have a bitter battle in the Legislature. We did pass it this first session. We have a similar battle coming up two years from now and we are getting ready to try to carry that.

Kansas has done the same thing but only with its appellate courts. We are trying it both from the standpoint of the appellate court and the district court level.

We are also trying to revise our probate laws, and we are toying with the idea of a client security fund indemnifying clients against loss by defalcations on the part of lawyers. So far that is in the infant stage and I know that over the country it is being considered. I don't know whether you have considered it here, but we are toying with the idea. So far it hasn't made much progress.

Those are some of the things that are on the agenda, plus all the routine things. We do, as you do here, try to keep busy, trying to be worthy of our profession and trying to serve, I hope,

the public as well as the Bench and the Bar. Certainly it is a wonderful field; certainly there is a lot for all of us to do.

Now to get back, I think I should say a little bit here about some of the interesting cases I have run onto. One of them you may not think a whole lot about, but it is a case that was entitled "Iver Klutz v. Knud Igloo," a case that came up in Iceland. I do quite a bit of international law—international law and JP cases. This case, the way I happened to run onto it—by the way it is Volume II of the Snowshoe Reports, page 103, if you are taking citations.

The way I happened to run onto it, I was up in Iceland trying a rather important case—overtime parking. We won the case or I certainly wouldn't have mentioned it here. That night they had a blubber dinner in my honor and we sat there just chewing the fat. Then they got to telling me about this case that had happened up there that I thought was of value to us as lawyers, and I'll tell you why.

In this case, Knud Igloo and Iver Klutz were both in love with the same girl. She was an Eskimo girl, a nice girl, but very homely. She was the only girl on the island, and they fell madly in love with her. There was quite a lot of rivalry, and finally she decided she was going to marry Iver.

The result was that Knud was very upset about this and very bitter about it, so the big day came for the wedding and Iver and his bride were married. Then they decided to leave on their honeymoon, and they climbed into the dogsled to go on their honeymoon, and as they did that Knud was hiding out in back of a tree with an air rifle. As I say he was pretty bitter about it. He pointed his air rifle and shot the rear dog from behind just as they were ready to take off. Of course the dog jumped and all the dogs jumped, the sled upset, and the result was Iver and his bride were thrown out and severely injured. So Iver sued him for damages.

In that case Knud had entered all the defense that he could think of, contributory negligence, assumption of risk, temporary insanity, and everything else, but the Court held him liable, which I think was a just result. There was one Judge who gave this opinion that I thought was worth quoting to you now. He said he would reverse the thing and he just said this, "If I were Knud" . . . no, he said, "If I were the dog and I had been hit where the dog was hit, I would have done the same thing the dog did." And isn't that good law!

What I am getting at is that law is just common sense . . . sometimes. But let's not forget that. Let's use good judgment,

good reason, common sense, and we will get along fine. That was the only principle in that whole case.

I think now, before we get to the atom bomb, it is time to get into "Trial Technique in Default Cases." For the benefit of you ladies may I say a default case is a case that you start and the defendant, although served, fails to appear. Now there are plenty of books on how to try a lawsuit, how to cross-examine, when to stop cross-examining, etc., but never have I seen any thorough work on trial technique in default cases. To me it is the most neglected field in the law, and that is the reason that I have spent considerable time on it. I think one thing you must do in that type of a case is to exude confidence. I think, gentlemen, if you can't be confident in a default case, you'll never be confident in any case.

I have known fellows to start bringing up a default case and there is a creak on the stairs and they practically faint. You have to get away from that. I think too that you should impress your client! Always carry lots of papers with you. What I do in my case is carry around my unpaid bills right in my brief case. Otherwise your client is apt to think, "Well, now, my lawyer doesn't have much business if he just has one client," so carry a lot of papers with you, exude confidence. Those are the first two steps.

So many people ask me about clothing. "What kind of clothing should I wear? Shall I be real snazzy in my dress or should I be somewhat crumpled?" Well, I would say it depends on the Court. You have to know the Judge. If you get a Judge that is a pretty snazzy dresser himself he may resent your trying to outshine him. In that case I would go a little the other way. On the other hand some Judges think, "Well, here is a successful man. He is entitled to this. I'll give him the benefit of the doubt," and in that case of course you want to dress very, very well.

The main thing I would say is this, and I say it for particular benefit of the younger lawyers, in that case be sure that your clothing is presentable and clean and, if possible, paid for. I think there is nothing more irritating to a lawyer or aggravating than to have the feeling that his suit may be repossessed during the time he is talking to the Judge. I really mean that.

Some people ask me, "What do you think about a pre-trial conference?"

I am very much in favor of it; I have always used them a lot. Get the Court and two attorneys together, call in the court reporter, and there you have your fourth for bridge. I say this

advisedly, that I think the astute practitioner will see to it that the Court wins occasionally if you are going to get into that sort of thing.

I do think it is well to sound out the Court, find out what he knows. I have always been a strong advocate of the position that the Judge should look up the law rather than the attorney. Now some Judges disagree with that, but I always feel that is what the Judge is paid for, and after all there is no use in both of us looking up the law.

I might say since we are honoring the Judges tonight, in a sense, that I certainly join in that very, very heartily, and I think in this trial technique in default cases that we can carry some of our weight there. We should remember that our first duty as lawyers in a default case is not to prove up your case but to keep the Judge awake. I think we should remember that. That is the reason why, if I am ever elected to Congress, which I doubt, I am going to insist that a law be passed requiring safety belts on Judges' chairs. I think that is one way we can be of service is by coming forth with ideas like that.

Incidentally you can tell that I don't have any cases pending before any of these Judges. As a matter of fact, I don't have any cases pending anywhere or I wouldn't be here. But I do think this idea of being considerate of the Judges and being courteous is something we certainly should do.

We did, without bragging, I think we did such a nice thing at home. We had a beloved Federal Judge there, Judge Henry Graven, in the Northern District of Iowa. He is a grand fellow, a very good friend of mine, and he was formerly a District Court Judge and then went on the Federal Court bench. But when he went on the Federal Court, remember this was during the time when they were having all this hullabaloo about "George Washington Slept Here." Of course he used to come to Osage and hold court, be there for a week and then move on. He stayed at the local hotel, so they put up a big sign in the hotel, "Judge Graven Slept Here." We thought, on behalf of the Bar Association, we should do something nice for him to recognize him, so back of the Judge's chair in the courthouse we put a sign "Judge Graven Slept Here, Too."

I never knew whether he liked it or not but I assume he did.

Some time ago I was attending a Bar meeting in which a speaker, I think from Colorado, told this little story on the Judges. I simply mention it because we should help stamp out this kind of feeling. A lawyer was very bitter about one of the Judges and he said he had lost a case and he was appealing it, or rather

filing a motion for a new trial. The Judge kept asking for more citations, more citations. He said, "I'm getting sick of it. I have given him seventy-five citations now, and I'm really getting fed up." You know the Judge; I won't give his name, but, "the Judge is just like an owl. The more light I throw on him the blinder he gets."

The reason I mention that to you, that is the sort of thing we must stamp out as lawyers. My idea is; why not bring it out in the open, and I could tell you folks not to repeat things like that. Then I think we will all do a service.

Well, really, as I often say, no one has a kinder regard or better feelings toward the courts than I do. I say that because I may have a case over here some time myself. But what I do say I am saying in a kindly spirit, trying to help the judiciary.

I think if you will pay attention to some of these little things on trial technique it will be of big value to you. We have one fellow at home that I know who has followed these rules, with the result that he has won ninety-six per cent of his default cases. Most of them he has tried in front of his father-in-law.

Well, we are going on here. Time is drawing short. I promised Judge Simmons here I would be very, very brief in this thing. I can't help but tell you how pleased and honored I feel to have been invited here tonight. Don't get the feeling that I am all through yet because we haven't even got into the atom bomb. But I do feel honored to be here with this group and it is a real pleasure. Actually, as I told President Tye, "I don't know why you asked me. You probably could have the Governor of the State or a congressman or senator or someone like that. I have never accomplished anything really worth while at home in a public way." Oh, I have. I should take that back, too. I am serving my fourth consecutive term as notary public. That is undefeated, too.

I would like to say to all those of you who do aspire to being a notary public, if you are commissioned, as I have been, don't let it go to your head. It is so easy for us to be conceited and think, "Well, now, I am a public servant just like a Federal Judge." And yet as I say, don't be conceited about it. I try to be just as calm and as I go up and down the street I say "Hi, John," "Hi, Tom," and I don't expect them to say, "Hi, Notary." It is easier said than done, but let's remember that.

I think one of the greatest thrills I ever had in my life was last year when I was invited to Chicago to give the commencement address to the Chicago Academy of Notaries Public. This notary business now is a far cry from—it is now a four-year

course. The first year all you do is practice signing your name; the second year you do nothing but blot. Boy, I tell you if there is anything I hate it is sloppy blotting. Then the third year is pretty much a civil engineering course on care and maintenance of the seal, when and where to oil, and that sort of thing. Then the fourth year you get the works, you sign, you seal, you stamp, you blot, you do everything, and then you graduate.

That is the reason I happened to be there to give the commencement address and sell seals. I talked to the group on the subject of "Guard Your Seal with Zeal." It was really one of the biggest thrills I have ever had.

I think if you are appointed—and I am getting back to this again—let's not be conceited and let's not chisel. We have at home a fellow up there advertising "Notary Public—25 cents, two for 35." It takes all the dignity away from the thing. You just feel like giving up. I have felt a lot of times anyway like giving up. It is bad enough if you didn't have to do everything but when you have to sign and stamp and seal, do all of that, you just get to be a nervous wreck. A lot of times really I think I would rather give it up and go back to private life. I don't suppose I ever will, though. But don't chisel. I mean, keep the honor of the Association there. Charge them 25 cents straight if you do get that position.

One criticism I have always had, and I am rather frank, as you can see, with the courts, and I am rather irritated about this because the courts have never spoken out openly, as I think they should in answer to this problem about what is the responsibility of a notary public?

I am thinking of this case—now suppose a couple comes in to me and they say, "Mr. Conway, we are John Smith and Mary Smith, husband and wife. We want to sign a mortgage. Will you take our signatures?"

And I say, "Very happy to know you." But what if they are not husband and wife? Then what's my responsibility? Well, that's a hard thing. You hate to stand there and quiz them if they say they're husband and wife. Are you going to take a chance on insulting them and losing a quarter? Of course you're not! You're going to say . . . but what if they aren't husband and wife, what's your responsibility?

The only thing the courts have ever said was this: "In that kind of a case a notary public is held to a higher degree of care than is a hotel clerk." That may be of value to you and it may not. I sincerely hope that it is and I trust that it will be.

I think a lot of the things I have told you tonight are things you probably haven't thought of before. Frankly, a lot of them I got from my grandpa. He was a terrific fellow. I don't want to take more time going into personal history, but he was really a grand fellow. He came over to this country when he was only four years old, and he went to work for a big department store in Chicago, and when he was seven years old he owned the store. He couldn't do it nowadays with everyone using cash registers. Back there he saw his opportunity and he grabbed it. Along with that he had this thing I would like to leave with you, this idea of perserverance. That is something I do want to leave with you, stick-to-itiveness, which I know all of you have heard about.

I'll never forget the time we had a big flood at home. Our house was going down the river. We sat on the rooftop and we could see nothing but all the debris and timber and stuff out there. The only thing unusual was a straw hat. It was going up against the current, down with the current, up against the current, and down with the current. Someone said, "What in the world is that?"

Grandma spoke up and said, "That's Grandpa."

"Grandpa?" How do you figure it's Grandpa?"

"Well," she said, "you know how stubborn he is. This morning he said come hell or high water he was going to mow the grass today."

He really was a grand fellow. As I say, I got a lot of my ideas from him. But with all his strength, and he did have a strong character, with all his strength he also had weaknesses. I've got to be truthful about it. One of his weaknesses was a tendency to drink a little too much. In fact, he was, you might say a drunkard, but he was so clever about it my grandmother never knew he drank until one night he came home sober.

He imbued me with this philosophy, he said, "Now, Carl, above all, assume and carry your share of responsibility." And he told me a little story which I am going to repeat to you now because it will sort of wind up what I am going to tell about Grandpa, but it is the idea of responsibility, of doing your fair share, of assuming your share of the load.

He told about the boy who was drafted for military service and he decided he wasn't going to serve. He went down to the corner drug store and he bought himself a truss, and two weeks ahead of his exam he started wearing this truss and bending over, and when he came up for his exam the doctor said, "John, how are you?"

"Doc," he said, "I'm terrible."

He said, "What's the matter?"

"Well," he said, "I've got to wear this confounded truss. I can't straighten up."

The doctor said, "Well, I have to examine you. That's regulations."

So he thumped him all over, front and back, and he said, "Why, you're all right. You're 6-E."

The fellow said, "6-E, Doctor? What do you mean? You mean 4-F, don't you?"

The doctor said, "No, 6-E."

So he said, "What's 6-E?"

He said, "That's Egyptian cavalry."

"Cavalry? Doc, I shouldn't be in the service at all, to say nothing about the cavalry."

The doctor said, "No, anybody who can wear a truss upside down for two weeks like you have certainly can ride a camel."

My time is definitely up. I have overstayed, Judge Simmons, which is I know unforgivable, but I do want to inject just one serious thing at the conclusion. I have a little story and then I am through.

I do want to say this, and I know you have heard it said many times. I think probably Mr. Randall said it today in his capacity as President of the American Bar Association, but I do say it seriously: Let's remember that as members of the legal profession we do have an obligation to the public as well as to ourselves. Let's remember, seriously, that the public, the people are entitled to fair and prompt and impartial justice. I think if we lose sight of that fact then we are losing sight of our obligation as lawyers and we are losing sight of one of the things that make our profession really great.

I would seriously like to leave that thought with you which I have condensed much more than I expected to, but it is easy sometimes to forget about our responsibility. It is easy to think about how can we get more fees? How can we do this and do that? But we should also remember there is a fellow on the other end who has the right to expect a fair deal regardless of his position, regardless of the charge, regardless of the nature of the suit, a fair deal, a prompt decision, and I would say a reasonable charge for services. So as members of the Bar and the profession let's remember those things.

By the way, I am not going to get to the atom bomb tonight. I am sorry, but the introduction has taken longer than I thought.



I do want to say this to you, now that I have told you all that I know, don't go away tonight feeling that you know it all. You are going to have a tendency to do that, I know, but really there is always someone just a little smarter around the corner.

I think perhaps I can show you this. A fellow went into Chicago and sold a little livestock. He hit the top of the market and he came back, a good farmer, and on the way he rode the Pullman and the fellow sitting next to him was a professor from the Northwestern University.

The professor said, "John, let's play a little game to help pass the time."

John said, "What do you want to play?"

He said, "Let's play a thinking game. You ask me a question and if I can't answer it I'll give you a dollar. Then you ask me one and if I can't answer it, I'll give you a dollar."

So the farmer said, "No. That's an even exchange. I don't want to do that but I'll play if you give me odds."

The professor said, "All right. You can ask the first question, too. I'll give you odds. If I can't answer your question I'll give you a dollar; if you can't answer mine you give me fifty cents."

The farmer said, "All right. What is it that has three legs and four wings when it walks, and five legs and six wings when it flies?"

The professor said, "I'm not sure I got the question. What is it?"

He said, "What is it that has three legs and four wings when it walks, and five legs and six wings when it flies?"

The professor said, "By George, I have studied all kinds of birds and bees and animals and reptiles, and never have I heard of anything like that. Here's your dollar. Just out of curiosity, what in the world was that anyway?"

The farmer said, "Hell, I don't know either. Here's your fifty cents."

And now, really, without any further ado we have reached the end of the road. Just let me say that I have been very, very happy to have been here today. I mean that. I want to express regret, too, that Mrs. Conway was unable to come with me due to some circumstances in the family. I hope next time she will be able to come along. She did ask me to extend her regrets to you and her thanks, Joe, for the invitation. We are very sorry she couldn't make it. We do hope that we will see you again,

and we hope that you will come over and visit us in Iowa. Thank you very much.

[The audience arose and applauded.]

PRESIDENT TYE: Carl, on behalf of the Nebraska State Bar Association, I wish to thank you for that very learned discussion of law.

And now if I may have Flaval Wright, please.

Flaval, it is indeed my honor and pleasure to present to you this new and beautiful gavel on behalf of the Nebraska State Bar Association, which is your authority to deal with learned gentlemen who may return here later. It is a mark of distinction. You will enjoy it, and I am very, very happy to pass on to you the reins of this, the finest Bar Association under the sun.

[The audience arose and applauded.]

PRESIDENT-ELECT WRIGHT: Thank you, Joe.

I am deeply honored and touched. I trust that I will be able to carry on the tradition of this Association as well as the many presidents who have gone before me, and as well as you have, Joe. Thank you. The meeting will stand adjourned.

## SECTION PROCEEDINGS

FRIDAY, OCTOBER 9, 1959

## SECTION ON INSURANCE LAW

A. J. Luebs, Esq.  
Chairman

## PANEL DISCUSSION

"PRACTICE AND PROCEDURE UNDER NEBRASKA  
WORKMEN'S COMPENSATION ACT"

Hon. Albert Arms, Moderator

Presiding Judge, Nebraska Workmen's Compensation  
Court

"Rules of Procedure, Rights and Remedies in Compensation  
Cases"

Panel Members

A. W. Storms, Esq.  
Holdrege

"Preparation and Presentation of Evidence in Compensation  
Cases"

Kenneth H. Elson, Esq.  
Grand Island

"Doctrines and Definitions Followed by Nebraska's Compen-  
sation Court"

John E. Dougherty, Esq.  
York

"Evolution of Gross Negligence Law in Nebraska"

The Section on Insurance Law did not file manuscripts for  
publication.

## SECTION ON PRACTICE AND PROCEDURE

David Dow, Esq.  
Chairman

"Trial Tactics—How to Win the Verdict" .....James A. Dooley, Esq.  
Chicago, Ill.

Question and Answer Period

"New Legislation Affecting Practice and  
Procedure" .....David Dow, Esq.  
Lincoln

## TRIAL TACTICS—HOW TO WIN THE VERDICT

James A. Dooley

George, Mr. Dow, fellow students of the law: Many thanks for that generous and certainly hyperbolic introduction George. I am certain even my mother wouldn't know about whom you are talking.

It seems that whenever lawyers get together they talk about money. I don't know why that is, because of course none of us is actually interested in money.

Whenever one mentions money there comes to mind the instance of Smith, the bank teller, who was likewise conscious of money, and one day he was walking down the street and he saw Paddy Murphy's wife. He noticed that she was dressed in black. He stopped and talked to her. Paddy had been a longshoreman, so after a few words he naturally made inquiry as to Paddy's welfare. She informed him that while working he had fallen overboard and had drowned.

He was taken aback, and being a banker he made inquiry or expressed the hope at least that Paddy had left her well provided for. She said, "That Paddy certainly did—\$50,000 in insurance."

"Well," he said, "Mrs. Murphy, that is an awful lot of money for a man who couldn't read or write."

And she said, "Or swim, too."

We have come here for a number of reasons. First of all because George invited us, and when George asks us to do anything there isn't much you can do.

The second reason I think is best described by the anecdote of the mongrel who told a fellow mongrel that he was entering

a dog show. This other mongrel said, "Fido, what are you doing in that dog show with all those thoroughbreds? You know you won't win any prize."

And Fido said, "Yes, but think of all the good company I'll be in."

And of course, last but not least, the World Series is over.

Someone asked us before we came up to the rostrum if we had selected the title, and I wish to assure you that we had nothing to do with the selection of the title. In fact as I conceive the practice of law, anyone who undertakes to tell fellow practitioners, especially fellow practitioners who are perhaps more experienced than he, is indeed treading upon dangerous ground. Each of us it seems has to travel our own way, and the observations and comments which I will proceed to make will be purely in the nature of personal observations and perhaps personal prejudices.

If we were to ask you ladies and gentlemen what you conceived to be the most important phase of a lawsuit, I am certain that there would be a diversification of answers. Some of you would perhaps say the opening statement; others, the examination of the jury; others, cross-examination; others, the summation; and perhaps a few, the Court's charge to the jury. But I think that anyone who has had any experience with the law in action will agree that most cases are won or lost before the clerk calls it. The fate of most cases I think we will agree is determined before one enters the courtroom, and that being the fact, that resolves itself to the preparation stage. And if such is the fact, then of course what stage can be more important than the preparatory stage?

Insofar as preparation is concerned, preparation is nothing more than the prosaic hard work in fundamental principles in which all of you are well versed. The recreation in a lawsuit is the trial for the well-prepared advocate. He knows every detail in the case, he knows the propositions of law, and the problems perhaps of evidence which will arise in the trial of that cause, and he is prepared to meet them. So the trial actually is nothing more or less than recreation, and I use that term advisedly.

Insofar as preparation is concerned, preparation has its foundation in the facts. Why do I say that? Simply because the facts are the case. Every lawsuit is cut out of the cloth of some human passion of some kind or other. The facts themselves are the well springs of the law. The law itself is a living thing. The law is life, life in many forms.

In order for one to be prepared, one has to know the facts; one has to get all the facts and all the details. Insofar as I see it, the first stage in representing a plaintiff is knowing him and knowing his background, who he is, what has been his past. Has he had a criminal record? Has he had prior injuries? What kind of person is he? Is he a likable person? You know and I know that the same man with perhaps the same jury can obtain a verdict favorable to him, and a man with a different personality will not sell the same jury.

You are likewise interested in the defendant, and I am talking just from the plaintiff's side of the docket at this stage. Who is the defendant? Where was he going at the time? Where was he coming from? Was he on any mission for any third person? Does his driver's license contain any restrictions? Those are just as I say fundamental demonstrations of what one must know about the facts.

Of course you will be concerned with the occurrence itself, and you know that seldom do you find a witness who has seen the actual occurrence. Thus it becomes necessary to stress all antecedent and subsequent events. By that I am referring to events which preceded and occurred after the event around which this lawsuit arises, the position of the automobiles, the damaged parts, the debris in the highway, and things of that character.

Thus we are again referring to what you men and what you ladies conceive to be fundamental, because as I see it every lawsuit is based on fundamentals. Every witness who has any possible knowledge should be seen. His knowledge should be circumscribed, circumscribed either by a court reporter's statement or by the old-fashioned signed statement. There is a split of authority among the lawyers as to which is the most effective. For myself, I like the signed statement because when he has written his signature below the sentence, "I have read the foregoing statement consisting of so many pages and it is correct," there is little means by which he can wiggle out of that circumscription. It is more effective than the court reporter's statement because he has seen it, because he has read it, because he has signed it.

These, as I say, are gross examples of preparation.

Insofar as your lawsuit is concerned, subsequent to its filing, we believe and I know you believe that all the discovery mechanics should be employed. We believe in interrogatories. And why do we believe in interrogatories? Because they remove many issues which have been created by the pleadings. Perhaps there

will be an issue of agencies, lone servant, interstate commerce, and all that can be removed by interrogatories.

For example, in many states, and I do not know what the Nebraska rule is, one can for the purpose of discovery learn through the interrogatory route the amount of coverage involved, and that is particularly important if cases are to be disposed of, because the plaintiff's lawyer cannot be asking for \$12,000 when he knows that the policy is \$10,000, and in ninety-five per cent of all cases the financial responsibility of the defendant is measured by the terms of the policy.

In Illinois we have had that rule for about three years and it has facilitated the disposition of cases. It is important too when the plaintiff represents a minor. He has a particular duty towards that minor, and it would be indeed difficult if not impossible to completely fulfill that duty unless he knew the amount of funds available to pay a judgment, particularly in the case of a seriously injured infant.

I know that you believe in requests for admissions of fact, and I think these are very important. You take a simple statement of fact, and of course under the Federal rules, and I presume your practice is similar, unless that request is objected to on the ground that it is irrelevant or incompetent or that it is privileged or for some other reason, as the rule says, it stands admitted. And if there is a denial, there must be a sworn statement setting forth why the particular request cannot be admitted.

Make a whole series of simple statements of fact, requests for admissions. And what do they do? They try part of your lawsuit before you even enter the courtroom. They, together with interrogatories, dispose of much of the case which you would have to prove and depend upon live witnesses for its proof before you even enter the courthouse, and so you know pretty well just what the road is you will have to travel.

With our discovery devices as they are today there is no reason why we cannot be prepared. They are not expensive, the cost, the time of the lawyer, they are not as expensive as depositions or anything of that character. It is only the lawyer's time, and if he has taken the case, then it is his obligation to give the necessary time to that particular piece of litigation.

Insofar as substantive law is concerned, I think Professor Dow will agree with me that that is important. The greater the fund upon which the lawyer has to draw for substantive law, the better lawyer he is. And why do I say that? Simply because any set of facts can be fit within the existing framework of the

law, or can fit some doctrine of law if the lawyer has imagination.

No lawyer was ever a great lawyer without imagination, without an ability to take a set of facts and to apply to that set of facts certain principles of law which would furnish a remedy or a defense, whichever the case may be.

Knowledge of the law pertinent to the case is most important, otherwise how can you prove your case? Otherwise how do you know what is or is not a valid defense? You will find yourself floundering, the Court will become conscious of it, he will lose confidence in you, and more than that, that floundering effect will creep into the jury box and they, too, will lose confidence in you, for how can you expect them to have confidence in you if you have demonstrated a lack of confidence in yourself?

Insofar as these matters are concerned, I know they are all fundamental. They are like blocking and tackling.

Now what do we do when we have all our facts? I like to sit down and analyze the case. Every case, no matter how complicated, has but a few kingpins, maybe one, maybe two, maybe three. Choate called it the "hub" of the case. You find out what the kingpins are of your lawsuit and then of course everything will be directed at those kingpins. They will be directed at them from the time you enter the courtroom until the time the jury has retired. You will not be introducing a mass of confusing evidence so that, when it comes time for you to sum up the case, you will in effect be faced with the onus of having the jury forget much of this immaterial matter, immaterial inasmuch as it does not focus upon these kingpins. So you find what are the kingpins and then you proceed accordingly.

You likewise ascertain in this analysis where you are vulnerable, where your weakness will be, what you can expect the opposition to do, what course of conduct they will follow, and how they will attempt to prove certain facts by way of defense, perhaps on cross-examination of your own witnesses.

Then of course you will be confronted with another problem. What witnesses should you use? Some lawyers, and I have heard this theory articulated, say, "Oh, we bring in everyone who knows anything about the case." Well, I think that is just plain stupid. Every time you put a witness on the stand you are vouching for him, and any time a witness whom you have placed on the stand is impeached or discredited it hurts your case, hurts your case more than anything else in the trial.

As far as we are concerned, give us the statements, and give the adversary the witnesses. I like to prove the case with as



few witnesses as possible for each of the kingpins, the best witness first, of course, to make the best impression, because we are all familiar and we all believe in the axiom that first impressions are usually lasting impressions.

Then of course if you have a second-best witness, and in the usual case you do not have a second-best witness, put him on at the close of your case, but do not overdo the number of witnesses. It seems that much of the evidence which is introduced is cumulative, and perhaps when one does that, one is giving his adversary the opportunity to develop his defense by way of cross-examination.

There comes to mind a simple illustration of what I am trying to say. Some years ago there were several witnesses in a case which we were trying, and one of my personal prejudices is lawyers who talk about their own cases, but I am not going to tell you what happened in this case. At any rate there was a group of witnesses both for the plaintiff and for the defendant and they were all condition witnesses.

We talked to the town constable, who seemed to be a very unstable person. We had a very favorable statement from that man but we decided not to use it. The first witness produced by the defendant, who apparently had a very favorable statement from him, was this man. He was impeached. They had probably six or seven witnesses from whom we had statements, but they weren't as favorable as the statement which we had from the first witness. I knew the claim agent went into the room and asked each of them for the first time if they had given statements. They said "Yes," and he sent them all home. That, of course, is the greatest asset to your case if you can show that you have laid the cards on the table and that the other side has produced witnesses which are thoroughly impeached.

Insofar as this question of the trial is concerned, of course no one could tell anyone how to paint a perfect portrait or compose a beautiful sonnet. We all know that and we are very conscious of it. Perhaps there is nothing so simple that with a little learning it cannot be made complicated.

Someone has mentioned something about the selection of the jury. I believe the interrogation of the juror is very important. Why do I say that? Because speech itself is the index to the make-up of the individual, and in selecting a jury the advocate's problem is to obtain persons who will have reactions favorable to the cause he represents. That conversation need not be protracted, it need not be drawn out, but at any rate you have an opportunity to question, and it isn't what he says by way of an-

swers, it is *how* he says it. You, I know, have all experienced that.

I think all of us should know the statutory grounds for challenge. Many times there is a juror who could be challenged for cause. The advocate wants him to get off and thinks he has to challenge him peremptorily. But know the grounds the statute provides for challenging the jurors for cause, and if you don't know them you have no right in the courthouse.

You likewise must have given thought to the kind of jury you want in the given case. You must have considered who the plaintiff is, what his station in life is, perhaps his nationality, who the defendant is, what his or her station in life is, the persons she or he may or may not be familiar with, and then you must go still further and you must look to the witnesses and decide that you can expect that these witnesses will testify for the opposition. We have these witnesses. Will there be any feeling of kinship between the jury and any given witness?

By that I mean this: Many years ago we tried a case where the last witness of the day for the plaintiff, and that was many years ago when we represented defendants, was a woman of a certain race. We found a lot about her overnight, and we were confronted with the proposition of letting her testimony go unchallenged or hitting it head-on. We decided upon the latter course.

There was a person of the same race in the jury box, and he resented that, and he tied up that entire jury. So at least in a large metropolitan community such as Chicago we look to who the witnesses are, pro and con, and we have that in mind when we are selecting the jury.

Now of course the one rule in the selection of the jury is to make a good impression. And how do you do that? I certainly do not know. I know a few rules. You should always be polite to the prospective juror. You should never talk down to the juror. If she says her husband is a *maintainence* man, you don't ask her where he does *maintenance* work.

You should get the necessary information: marital status, husband's employment, whether or not there is anyone else in the family employed, their relationship or knowledge of any of the parties or the attorneys. Don't dig for a lot of information, because here they are with a group of strangers and perhaps you can tread on ground which will embarrass, and if in the course of your examination of a juror you have done anything to embarrass that juror, excuse him or her, because if you

don't, the memory of what you have done will haunt you throughout the trial of the cause.

We represent plaintiffs. Whom do we like as jurors? Well, let me tell you first whom we do *not* like. For myself, and as I say these are purely personal prejudices, we do not like clerks who have served corporations for many years. They are usually small-minded people, and you can't try your lawsuit and change their make-up. We do not like scientific people, engineers or draftsmen. They think in terms of mathematical equations, and a lawsuit is a human equation. That is the answer to the problem presented by what you and I call a lawsuit.

In addition to that, we don't care for wealthy people. You know wealthy people don't desire any change in the status quo. They think that perhaps their income taxes will be increased, or perhaps their automobile rates, and of course they are not far from wrong on the latter.

And then we have this eternal problem of men and women. Whom do you want on this case? Do you want men or do you want women? Well, gentlemen, who is your client? Is she some attractive woman? Is she a woman of affluence? Is she a woman with a handsome husband? If she is, then you don't want women.

You know women's inhumanity to womankind is unequaled. I think it was Macaulay who said the most odious characteristic of human nature is a delight in misery as misery. And so if a woman has anything that another woman wants, you don't want women jurors. And believe me, that's the fact.

If on the other hand you represent some handsome chap like these gentlemen to my left and right, they can be the greatest roués, they can be impeached, but women will always make excuses for them. If it is a child, women are very good.

On the other hand, men are more stable. They are good in a woman's case. They are good in another man's case. Ladies, these remarks are of course purely impersonal. They are rather stable. If there is something wrong with a case, and by that I mean what we call in the courthouse "smelly," a man will pick it up quicker than a lady.

On the whole, I would say that, depending upon the character of the case, a person over forty-five years of age who knows something about the realities in the problems of life, and by that I mean some man or woman who knows what it is to depend upon a paycheck, is the best juror for our side of the docket.

Now of course you men, and I know many of you represent defendants, have different ideas. I have been completely wrong,

we have all been completely wrong, but those are just a few rules we follow.

Insofar as this question of opening statement is concerned, and I am going to touch upon just a few phases of the trial, should you make an opening statement, gentlemen? If you have the affirmative of the cause, you should always make an opening statement. What are the rules for an opening statement? Orderliness and clarity. This is your first opportunity to tell these persons who have had no contact with this lawsuit with which you and your client have been living to learn something about it. You should lay out the scene. If it is a personal injury case, describe it so simply, so clearly that they can follow you and visualize it. Describe the occurrence, describe everything which has happened to your client from that date until the present. Lay the cards on the table and bring out any weaknesses in your case.

If you know of course that the other side has motion pictures, there comes to mind the story of the lawyers who were in the judge's chambers and the defendant said, "Well, of course, we got motion pictures of this man." His adversary in the opening statement said, "And he tried to work and he did farm work, but he just couldn't stand it," and of course the moving pictures were shot.

I mean just lay the cards on the table, the criminal record, anything else, and that takes the thunder out of the case of your defendant. And don't be saying, "I believe the evidence will show," or "We expect the evidence to show." The students of semantics tell us that there are certain phrases and expressions and words which express strength and weakness.

Your opening statement should have a subtle force to it. It should be a narrative of facts but it should have a subtle force to it. And the test of a good opening statement is what? It is this: That if the jury were then sent to the jury room to deliberate upon their verdict, they would be compelled to return a verdict for your client.

I cannot understand for myself why some defendants say "Waive the opening statement." I think it is much smarter for them to get up and to say a few words about nothing. At least they can tell them the lawsuit has been brought, and they can ask the jury to carefully watch the evidence, much of it is under the plaintiff's control and just to follow the evidence, a few words like that, because I think when a defendant waives an opening statement, sits there, doesn't tell the jury a word, he

starts off on the wrong foot. Maybe I shouldn't be saying that as a plaintiff's lawyer.

Insofar as witnesses are concerned, we have discussed that. I think every witness should be prepared. I think he should understand that he is to answer only the question, that he is to make the answers in a forthright and direct manner, that he is to be polite at all times, and when he says "Yes," it should be "Yes, sir," and when he says "No," it should be "No, sir." He should have forced upon him the importance of never losing his head. He should have brought home to him the fact that perhaps he will be shown depositions or statements—the depositions might be read to him—and that he should not deny them. He should be familiar with the photographs and with the exhibits, even though he has not been examined upon them on direct examination, so that if on cross-examination he is interrogated about them he will not make himself sound foolish.

In this field of the trial of lawsuits we are losing sight of an important vehicle, and that vehicle is expert testimony. Today many things can be proved by expert testimony. Today a case can be predicated solely around expert testimony. And I am not talking about personal injury lawsuits, but commercial cases, customs and practices in the trade and industry. I don't think lawyers explore that enough. Of course an expert is anyone with experience. He doesn't have to have a formal training. You've got a lot of farmers around here who are probably experts in that field. But we don't dwell upon expert testimony enough.

Again insofar as rebuttal is concerned, frequently there is testimony that a party said thus and so. Then the case goes to the jury and that party wants the jury to believe he didn't make that statement or he made it under different circumstances, yet he has never taken the stand and testified to that effect. And you know when your adversary gets up there and argues and there wasn't any denial of that fact, it really hurts.

There are just a few thoughts and then, gentlemen, you will be delivered from me.

I wanted to talk a few moments about summation. Probably no lawyer or no Judge has a right to talk about summation because the judges of summation are the jurors, and it is they who measure the efficacy of any given argument.

I think it was John W. Davis who said, "I must apologize for being here today to discuss this with you, for who would listen to the wily discourse of the fisherman as to the relative attractiveness of flies if the fish itself could talk?"

So in talking about summation, a lawyer or a Judge is a poor substitute for the fish. But there is a tendency today to believe that summation is unimportant and that a lawsuit is no longer an adversary proceeding. With both of these thoughts we are in hearty disagreement.

A litigant has an absolute right to have his case argued, and that right is as broad and as deep as the learning of his advocate will permit.

Now then we come to this question of limitation of time, limitation of time in argument. I am talking about unreasonable limitations of time. Who does that affect? Whom does that prejudice? It prejudices the party having the affirmative of the issue. Why? Because this particular party has to fuse twelve minds to a given conclusion, twelve minds on all phases of the case so that they arrive at this same conclusion. Again, jurors come without any prior knowledge of the case. They hear evidence. A fact adduced on the first day may not have its significance brought home until the last day, and that again requires time.

A lawsuit is not only facts, it is not only law; every lawsuit has a philosophy running through it. Sometimes if your action is predicated upon a law to which there is a general prejudice you have to overcome that prejudice, and that is what I am talking about when I say a philosophy running through it. For example, in Illinois we have a dram shop law whereby there can be recovery on behalf of those dependent upon the drunkard in an action for loss of support. Many lay persons can't understand that, and it has a certain prejudice in and of itself, and that has to be overcome.

Then a lawsuit has running throughout its warp and woof a certain theme. If it is a death case, the theme which is not often articulated is the sanctity of life. In a contract case the theme is the sacredness of an agreement freely entered into between two parties and broached without reason. And of course those themes, those philosophies, have to be developed.

All lawyers have different methods of arguing cases but I think there are three rules which always all follow. First of all a jury should have brought home to them the sacredness of the ground they occupy. They should be made to realize that today each of them is a judge. And, ladies and gentlemen, I am convinced that when persons get into the jury box, the best of them is brought out and every person, every citizen wants to do the right thing.

Then you should develop the rules which govern the rights and liabilities of the party, the rules of law. Say it is a safety appliance action. They don't know anything about that unless you tell them. You have to explain that to them. Otherwise what meaning can they give to the facts?

Thirdly, the facts: Discuss the facts, the undisputed facts, give significance and give meaning to them. I think insofar as summation is concerned, the object of the advocate is to do the thinking for the jury and at the same time never let the jury know that that is what his object is.

### ADMINISTRATIVE AGENCIES

Lowell C. Davis

Mr. Dow, ladies and gentlemen: I think probably one of the more important bills from the standpoint of practice and procedure which was passed by the last Legislature is L.B. 362.

L.B. 362 is an Act which amends Section 84-901 of the Nebraska Statutes. It is an Act providing for and establishing a minimum uniform procedure for administrative agencies. It affects all state administrative agencies except the Adjutant General's office, the courts, including the Workmen's Compensation Court, and the Legislature.

Provision is made for the adoption of rules, regulations or standards, including the amendment or repeal thereof, *whether with or without prior hearing*, designed to implement or repeal thereof, and to interpret or make specific the law enforced or administered or governing the agency's organization or procedure. In addition to excluding regulations concerning the internal management of the agency not affecting private rights or interests and rate tariffs, *procedures available to the public, permits, certificates of public convenience and necessity, franchises and rate orders* are now also excluded from the provisions of the Act.

In addition to other rule-making requirements imposed by law, each agency is now required to adopt uniform rules of practice and procedure with forms, instructions and descriptive statements of such procedures. Any interested person may now petition an agency requesting the promulgation, amendment or repeal of a rule. Prior to the adoption, amendment or repeal of a rule, notice thereof must be published or circulated, and all interested persons afforded an opportunity to be heard. Any interested person may on petition request, and the agency may issue, a declaratory ruling with respect to the applicability to

any person, property or state of facts of any rule or statute enforceable by it, which ruling is binding between the agency and the petitioner on the state of facts alleged unless altered or set aside by a court on appeal. Without first requesting the agency to pass upon the validity of a rule, the validity thereof may be determined by declaratory judgment proceedings in the district court of Lancaster County if it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. If the court finds that the rule violates constitutional provisions, exceeds the statutory authority of the agency, or was adopted without compliance with statutory rule-making procedures, it is mandatory upon the court to declare such rule invalid.

Contested cases are defined to mean a proceeding before an agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing. In such cases reasonable notice is required stating the time and place of the hearing and the issues involved. If the issues cannot be fully stated in advance of the hearing or if subsequent amendment of the issues is necessary, it is required that they shall be fully stated as soon as practicable. All parties are entitled to be heard and to present evidence and argument.

An official record, including testimony and exhibits, must be taken, but it is not necessary that shorthand notes be transcribed unless requested for the purpose of rehearing.

The agency may administer oaths, issue subpoenas, compel the attendance of witnesses and the production of documents and testimony and may cause the deposition of witnesses to be taken. Oral and documentary evidence may be received, and every interested party is afforded the right of cross-examination and to submit rebuttal evidence. The agency may take judicial notice of judicially cognizable facts or any general, technical or scientific facts within its specialized knowledge, but parties are required—and this seems to be mandatory—to be notified either before or during the hearing of such material to be so noticed, and they are afforded an opportunity to contest such facts so noticed.

In evaluating the evidence, the agency may utilize its experience, technical competency and specialized knowledge and give probative effect to evidence—and this is peculiar—which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Rules of privilege must



be recognized, and incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded.

Informal disposition may be made by stipulation, agreed settlement, consent order or default, but every decision and order adverse to a party to a proceeding must be in writing or stated in the record and be accompanied by findings of fact, consisting of a concise statement of the conclusions upon each contested issue of fact, and conclusions of law.

Parties to the proceeding are notified of a decision or order in person or by mail, and upon request each party or his attorney of record may obtain a copy of the decision and the order and the accompanying findings and conclusions.

This Act specifically does not purport to cover appeals from administrative agencies.

I am advised by the Attorney General's office that there probably will be no attempt to make a single standard uniform set of rules of practice and procedure before the various administrative agencies. Rather it will be a task of having individual rules adopted within the framework of the specific agency with whom the rules will be affected.

The second act which I wish to discuss very briefly is L.B. 67. This is an act of considerable importance, at least to the lawyers of western Nebraska. It is an act creating the Nebraska Oil and Gas Conservation Commission. In some respects the provisions of this Act pertaining to practice and procedure are quite unique. The Act itself authorizes or requires certain procedures, but since this agency is one included under L.B. 362, it is necessary to correlate both Acts in order to determine the extent or limitations imposed upon matters pertaining to practice and procedure before the Nebraska Oil and Gas Conservation Commission.

The Commission may act upon its own motion or upon the petition of any interested persons. Upon the filing of a petition a date of hearing is fixed and notice of hearing given. Such notice may be given either by personal service or by one publication in a newspaper of general circulation in the county where the land affected or some part thereof is situated. The notice must, among other things, specify the time and place of hearing, the purpose of the proceedings and the issues involved. No hearing may be held without at least fifteen days' notice. Emergency orders may, however, be issued without notice or hearing effective for not more than twenty days.

In certain specified proceedings it is required that notice of the hearing must be served upon all "interested parties" in the

same manner as is provided for service of process in civil actions in the district courts.

Answers or other pleadings are not required.

Public hearings are to be held without undue delay, and any interested person is entitled to be heard. Every party has the right to present his case or defense by oral or documentary evidence, conduct cross-examination and submit rebuttal evidence.

The Commission is required to enter its order within thirty days after the hearing, but no order or decision shall be rendered except as such may be supported by and in accordance with "a preponderance of the reliable probative and substantial evidence." Now just what that means, I don't know. This provision as to the quantum of proof necessary to support an order or decision is not found in any other conservation act in the United States. An official record is required, including the testimony and exhibits in each contested case, but it is not necessary to transcribe shorthand notes unless requested.

Amendatory proceedings are contemplated by L.B. 67 in addition to the declaratory rulings provided for in L.B. 362, but rehearings are not permitted.

Any interested person who is dissatisfied with any order or decision may within sixty days after the entry thereof appeal to the district court of Lancaster County or the district court of the county or counties in which the affected real estate is situated. Such person is required to file a petition on appeal and give notice to all interested parties, by personal service or registered mail with return receipt, requiring such parties to answer within thirty days from the date of service. The appeal is to be advanced for trial and determined as expeditiously as feasible.

It is required that the district court hold a trial de novo and determine independently all issues of fact and conclusions of law with respect to the validity and reasonableness of the provision, rule, regulation or order complained of, but the district court is not bound by any findings of fact or conclusions of law made by the Commission.

Appeals to the Supreme Court are authorized under the provisions of the code of civil procedure as in other civil cases.

The district court is authorized to enjoin the enforcement by the Commission of any provision of the Act, or any act done or threatened thereunder, if the plaintiff shows that as to him the act or conduct complained of is unreasonable, unjust, arbitrary or capricious, or violates any of his constitutional rights or that the matter complained of does not constitute or result in waste

or does not in a reasonable manner accomplish the end that is the subject matter of the Act. A bond in such case is required.

If any person is violating or threatening to violate any provision of the Act or any rule, regulation or order of the Commission, the Commission may bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. If the Commission fails to bring such suit within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, such person may in his own behalf bring such suit.

I think for the lawyers of western Nebraska there will be many problems coming up in connection with matters of practice and procedure before this Oil and Gas Conservation Commission which we anticipate will be an agency of some considerable importance to the welfare of the oil and gas industry in Nebraska.

## BILLS OF EXCEPTION

David Dow

You will recall that a year ago we presented to you some thoughts and ideas with respect to the modification and simplification of the procedures for the preparation and filing of a bill of exceptions in cases of appeal to the Supreme Court. At that time with many, many people in this room there was not one single dissent from the proposition that some change was needed, and I dare say that many of you would have put it stronger than that.

You also remember that some of the ideas which were being discussed by the Judicial Council and a special committee of the Judicial Council were presented in the *Nebraska State Bar Bulletin* and the members of the Council received many suggestions after that was published. In any event, the material was finally put into shape in the form of L.B. 460, which repealed all of the old statutory procedures outlined in Sections 25-1140-1140.09 and gave specific authority to the Supreme Court to provide by rule for procedure covering bills of exception.

These rules were then adopted by the Supreme Court of Nebraska substantially in accordance with the recommendations of the Judicial Council, and they were published in the reissue of the Revised Rules of the Supreme Court of the State of Nebraska for 1959, which is in this light green book, and you must have

this book or you won't be able to practice law intelligently in Nebraska.

The specific rules covering bills of exception will be found in Rule 7, and the pertinent provisions of that rule went into effect on September 28, 1959. Although the book itself indicates that these rules were in force on June 1, 1959, there is a specific notation to the effect that these particular rules, 7c I believe it is through 7h, did not go into effect until three months after the close of the Legislature because L.B. 460 did not carry the emergency clause.

The following is a step-by-step outline for you of the new procedure as it is provided for by statute and rule.

You must first file a praecipe in the office of the clerk of the District Court within the time for filing a notice of Appeals (Section 25).

It is not necessary for civil cases that the praecipe either precede or follow—it may be either one—the notice of appeal.

This request for the bill of exceptions, and I call your particular attention to this because it was a knotty problem for the persons who were considering what the rules should be to decide, the request for the bill of exceptions includes everything offered at the trial *and* at any hearings before trial, unless the praecipe itself requests less than all, *and* the written consent of all other parties is endorsed on or attached to the praecipe (Rule 7c).

This gives you the complete simplification of the old rules for getting a short record. It is perfectly possible to get a short record; you just have to get a stipulation of agreement in advance of the filing of the praecipe for a bill of exceptions.

The clerk delivers a copy of the praecipe to the court reporter *and* to the clerk of the Supreme Court (Rule 7c).

The court reporter must deliver the bill of exceptions prepared in accordance with the provisions of Rule 7a and 7b of the Supreme Court to the clerk of the District Court within two months from the filing of the praecipe (Rule 7d). The time limits here I think you must take careful notice of, as of course you always have and should. This bill of exceptions is certified accurate by the court reporter.

If the reporter fails to file a bill of exceptions within two months, any party may make application for an extension of time. This shall be made to the Supreme Court within one month after the time already permitted has expired. However, the Supreme Court may permit an application to be filed after that time.

It must be accompanied by a "proper showing." The time will then be extended as the Supreme Court determines and under such conditions as the Supreme Court may determine.

Now these may be conditions I presume which acts to the court reporter.

I interpolate here my own private thought as to what those words "proper showing" probably will be taken to mean. Presumably the showing should include the date when the bill should have been filed, that it was not filed, and the reasons for the delay, couched in such a way and for the purpose of permitting the Supreme Court to set a sensible time for the completion of the bill and to attach reasonable conditions to it (Rule 7f). That is my own idea.

The next step: The clerk of the District Court files the bill of exceptions certified to be accurate by the court reporter and delivered by the court reporter to the clerk. The clerk files it. He then notifies all parties or their attorneys of record and the clerk of the Supreme Court that the bill of exceptions has been filed.

The bill of exceptions as thus filed is then the "official bill of exceptions in the case" (Rule 7d).

You now have a bill of exceptions.

It may then be physically withdrawn from the files of the District Court by any party or by any attorney of record, subject to the rules and orders of the District Court (Rule 7e). That is, you may then use it as you would normally use a bill of exceptions for the preparation of your brief and appeal.

Next, it may be amended. It may be amended by a written stipulation of all the parties to the appeal which may be attached or should be attached to the bill of exceptions, and this may be done at any time prior to the time the case is submitted to the Supreme Court (Rule 7e).

If you cannot get a stipulation for amendment, and amendment includes here additions, changes, then you must operate by a hearing before the District Court. Any person wishing to propose such an amendment must propose it to the District Court, the District Court must give a notice of the hearing thereon, and this is the extent of the notice as within the discretion of the District Court. The hearing is held, there is then an order deciding whether or not the amendment as proposed should be made, and this order or copy thereof attached to the bill prior to the time that the case is submitted to the Supreme Court.

This proceeding for amendment to the bill of exceptions is to be heard before the Judge who tried the case, and it may be heard in chambers and it may be heard anywhere in the State. We do not have that problem confronting us.

If that Judge who heard the case is out of office, if he is disabled, or if he is absent from the State, then the amendment proposal is to be heard by the clerk of the District Court (Rule 7e).

Let me again personally digress a moment. Last spring in the case of *Bell v. Crook*, 168 Nebr. 685, as I read that case the Supreme Court held that the Judge who heard the motion for a new trial properly settled the bill of exceptions under the old statute, because that was what the appeal was from, with the order on a motion for a new trial. I have a question in my own mind if the same should or will apply as to proposed amendments under the new rule which relate to the proper recording of what happened at the trial itself.

The clerk of the District Court is required to send the bill to the Supreme Court when directed to do so by the clerk of the Supreme Court.

That is the conclusion of the proceedings for the preparation and filing of the bill of exceptions in a civil case.

It is also specifically provided that the same procedure shall apply with respect to all other tribunals where specific provisions therefor are not otherwise made by law. This, I suppose, would apply to city planning boards, city councils and all such kinds of proceeding as well as to what we normally think of as tribunals either judicial or administrative.

The reporter who takes down the proceedings before the tribunal must, by the new statute, be approved by the officer, board or tribunal (Section 25-1140.08. Rule 7g).

Similarly, another bill, to-wit, L.B. 453, Rule 7h, which modifies Section 29-2020, provides that the same procedure as is followed in civil cases shall be followed in criminal cases for the preparation of a bill of exceptions.

There are some special situations in connection with criminal cases which I do not propose to go into. They deal with some unusual cases, particularly where they are an appeal for an indigent defendant or where the County Attorney wishes to appeal on a matter of law.

However, there is one distinction between the civil and criminal cases which is made by the statute. The bill of exceptions in a criminal case must be ordered *before* the petition in error

is filed in the Supreme Court (Section 29-2020 as amended by L.B. 453, Rule 7h).

These are the modifications which were put into effect by the Legislature and by the Supreme Court acting under the rule. Let me add a few general comments.

The foregoing outline of the steps which are now to be taken in preparing a bill of exceptions I think makes it clear that the process has been substantially simplified, although no attorney can avoid the necessity of checking the bill to make sure it is accurate. The formal responsibility has been placed upon the regular officers of the courts, and it is our hope that this will mean that minor errors will not fall upon the parties.

Moreover, the procedure is no longer solidified in statute, and it is now happily expected that counsel will no longer lose the right to present a ground of appeal because of a technical failure to abide by the strictures of a complicated statute.

I do not believe anyone is convinced that everything is perfect with the system as it is now written into rule. I can only say that it represents a good deal of thought, that those who worked on it proposed and debated and rejected many other ideas. They tried to make it easy to understand, they tried to build into it certain flexible provisions, and when it is found out what doesn't work well it can be readily re-examined and changed by rule of Court.

I should also like to call your attention to some things that were *not* accomplished at the last session of the Legislature which we tried to accomplish but were prevented from doing so by the Governor's veto of L. B. 454. L. B. 454, which was passed by the Legislature but not signed, sought to require what arguments of counsel had to be reported when requested by either side. You may recall it is now discretionary with the Judge whether he will have his reporter report the arguments.

We also sought to provide that the proceedings could be reported by some means other than stenographic reporting. It now is still required that a stenographic report be made.

We sought to protect the reporter by requiring that his fees be paid before he was required to file a bill of exceptions. Therein we failed.

We sought to distinguish between the fees that reporters might charge for a simple transcript of proceedings and for a formal bill of exceptions. The fees now still remain at fifteen cents a hundred words. None of these things, however, was accomplished, and Sections 24-340 to 342 are still in effect.

There is some doubt in my mind whether there may not be a slight discrepancy between the published rules and Section 24-342. You may recall that Section 24-342 was held in the second half of the Pueppka case (166 Nebr. 203) to apply to bills of exception.

The statute requires the reporter to deliver the bill of exceptions, as I thus read it, "to the party requesting it or his attorney of record." That is the statute, whereas the rules require the reporter to deliver the bill to the clerk of the District Court.

I have a personal feeling that this is a mighty small, picayune difference, but I merely suggest that a stickler for accuracy might wish to cover this in some way, as by a written waiver of the statutory requirement.

This completes my discussion of the provisions for a bill of exceptions. May I sincerely impress upon you the necessity for reading them as amended and changed before you appeal a case.

## OTHER NEW LEGISLATION

**Joseph H. McGroarty**

The first bill that I would like to discuss is No. 450, the bill that provides for the time in which an act shall be done. This bill amends Section 25-2221. The old Act in substance provided that if you had something to do with any proceedings, as to the time limit the first day didn't count or was not included, but the last day was included. Now on account of this situation where the courts are closed on Saturdays and other holidays, the Legislature passed this Act, which is very short. I will read it to you:

"Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceedings shall be computed by excluding the day of the act, event, or default, after which the designated period of time begins to run. The last day of the period so computed is to be included [here of course is the difference] unless it is a Saturday, a Sunday, or a day during which the offices of the courts of record may be legally closed, as provided in this section, in which event the period runs until the end of the next day on which the office shall be opened."

In other words, if you have to file an appeal from a bad decision on a Saturday, your time runs out on a Saturday or a Sunday or a holiday, as later is mentioned here, then you have until the end of the next day following.

Included in this same Act they have enumerated the holidays. They repealed Section 24-316, which was the old provision regard-



ing holidays. They go on to say: "Notwithstanding any other provision of the law, all courts and their offices" — now get this — "*may* be closed on Saturdays, Sundays, and these holidays: January 1, February 12, February 22, May 30, July 4, Labor Day, Veterans' Day, Thanksgiving, and December 25. If any such holiday falls on Sunday, the following Monday shall be a holiday. Court offices shall be open on all other days."

I think you will recall that the old Section 24-316 had about five holidays — New Year's, the Fourth of July, Thanksgiving, Christmas and one other day — Memorial Day. But there are nine here.

An interesting thing with regard to this particular bill, the boys out in the home county of our illustrious President, Mr. Tye, wrote to the Attorney General and they wanted apparently to lower the boom on these Sunday drivers, so they wanted to know if they could hold court on Sundays. The Attorney General in an opinion said, "Yes, you can hold court on Sunday." The opinion is very lengthy and it won't serve any purpose to go into it, but his opinion does seem to make sense. In this opinion he points out that the language of the Act now is that the courts *may* be closed. Section 24-316 provided that no court should be open for the transaction of any business except very limited business on Sundays or on any holidays. So under the opinion of the Attorney General our courts can hold court on Sundays and transact all business on these legal holidays, with the exception of police magistrates; I think there is a specific section that was not involved in this case. That, in substance, is one.

The next section that I would like to discuss, and I must get along here because, frankly, not only do I not have much to say but I want my friend, Mr. Maupin, to get his chance.

As maybe some of you folks who are in the active practice know, it costs \$25.00 now to file a lawsuit. That has been the rule since September 28. In case you don't know it, if you have a lawsuit to file in the District Court under this new fee schedule, Bill 462, the Court costs are \$25.00. You pay the \$25.00 when you file the action.

There are certain other services which the clerk is entitled to be paid for. A complete record costs you \$10.00. Of course the Judge's retirement fund is charged, and under the opinion of the Attorney General the clerk of the District Court may charge for a transcript of any pleading. But in substance that is about all he is entitled to charge for. So when you file your lawsuit in the District Court, you pay \$25.00 and your \$1.00 retirement fund. That is all. That is the cost, other than the complete record.

The defendant pays nothing. He gets his pleadings all filed for free. Then of course when the case is finally wound up, the plaintiff is entitled to recover his costs depending on the outcome or the agreement of the parties.

It is interesting to note also that in this new fee schedule, for example, for your transcript of a judgment for a lien the fee is now \$5.00, and you pay \$1.00 retirement fund, so that is \$6.00.

This is a very interesting arrangement. It will stop some of us boys from appealing these \$25.00 lawsuits from the lower courts to the District Court.

The appeal from any inferior court is \$25.00 plus the judge's retirement fund, so it would cost \$26.00 to file an appeal from the municipal court or the county court or a justice court. The filing and docketing of cases under the juvenile act is also \$25.00. Appeal from the criminal division of the lower courts is \$15.00. That in substance is the new fee schedule.

I notice that the opinion of the Attorney General says there are many problems still involved, but an interesting thing is that in a recent opinion he did hold that when the Act became effective on September 28 it did away with all court costs in pending cases.

For example, if a case was started before the 28th day of September and an answer was due or a motion was due after the 28th, according to the opinion of the Attorney General there is no charge for those services because there was no saving clause in the Act, and it is his opinion that there is no charge for those services even though the action was commenced.

I must hurry along. There is another bill here and I don't even remember the number of it, but I will tell you the substance of it. If you are an attorney of record in a case, you must now leave your address with the clerk of the District Court. The bill in substance provides that whenever service is made upon an attorney of record representing a party, the service is good by either mailing the notices that are required, or if the notice or pleading is left with the clerk in charge of the office it is good. You must leave that address, and if you have no address of doing business then you must leave your home address. The bill also provides that if the party to the lawsuit is not represented by an attorney, he must leave his address so that all notices may be sent to or served upon his last known address.

There is just one other bill that I was to discuss. The Legislature has now taken care of the situation where you have unincorporated association. The new act provides that if there is no place of doing business or no general agent appointed, the unincorporated association must file a certificate with the Secretary of State and name an agent for the purpose of process.

**OTHER NEW LEGISLATION****Murl M. Maupin**

The first bill that has been assigned to me is L. B. 289 — and I am going to go through these just as quickly as I can, the ones that are for me, so that I do finish, or at least I quit whether I do finish or not, at noon.

This is a provision requiring foreign corporations to comply with Sections 21-1201 to 1211 before, as the language of L. B. 289 reads, they can maintain an action in the courts of Nebraska. The Act provides that any foreign corporation failing to comply with Chapter 21, etc., and amendments thereto cannot maintain any suit or action, either legal or equitable, in any of the courts of this State upon any demand, whether arising out of contract or tort, while the requirements of Chapter 21, etc., and amendments thereto have not been complied with.

As you know, 21-1201 requires the appointment of a resident agent, and so far as I can see in a hasty perusal of it, more or less requires the domestication, as it were, of a foreign corporation before it can maintain an action under this bill in the courts of Nebraska. That raises the question in my mind as to whether or not it would not be a necessary allegation when a petition or complaint is filed by a foreign corporation of compliance with those provisions, and also suggests a field day in my thought for constitutional lawyers as to whether or not that bill will stand up.

The next one I have is L. B. 356, and the following L. B. 357, have to do with municipal courts. For a country lawyer who never knew there was a municipal court until he read this Act, I do not pose as an expert upon what you might have to do with your municipal courts in Omaha and Lincoln. L. B. 356 increases the jurisdiction to \$2,000; I presume it was \$1,000 before; in an action in a municipal court the amount involved cannot exceed \$2,000.

In connection therewith, though, Professor Dow pointed out to me in handing me this bill that in amending the old Section, 26-117, and in increasing the jurisdiction of the municipal courts there was no change made in the sections of the statute that have to do with attachment and garnishment in municipal courts, and without taking the time to run through that statute, as I read it, and without the Legislature having amended that provision of the statute which provided if you got in an attachment or a garnishment proceedings a return showing that the amount involved was in excess of \$1,000 the matter was immediately transcribed and carried over to the District Court. That has not been changed.

So that poses a question in my mind that if you get into an attachment or garnishment in the municipal courts in connection with an action which you bring where the return exceeds \$1,000, you may have your action removed to the District Court. I am merely suggesting the question. I wouldn't know what would happen to it even though the court does have a jurisdictional amount of \$2,000.

Here is another one, 357, having to do with municipal courts. I read that one with interest because it provides that on appeal from a municipal court to the District Court the amounts sought to be recovered by the petition or the cross-petition, if any, shall not be changed so as to exceed the jurisdictional limit of the municipal court.

My thought on that one was that some disappointed appellant's lawyer had moved on up to the District Court and got hooked a little more there than he was down below and so he had the Legislature attempt to take care of that one.

The next one I have is L. B. 451. That is a procedural act having to do with replevin actions, and without taking any time on it, it refers to replevin actions in JP courts, county courts, district courts. To my mind that seems to be a bill that does two things, and that is to make the practice in replevin proceedings the same in any court that you might now be in, with a further provision in the bill that a defendant "whose property has been replevied shall be entitled to seek such relief without submitting his person to the jurisdiction of the court."

In other words, when one of these finance companies comes out and takes your automobile away from you, I guess you can go in and attempt to get it back without personally going before the court in so doing. At least that would be the way I would look at it.

L. B. 458 was a bill to provide for service upon a resident operator of a motor vehicle who has subsequently removed from this State and to provide for venue of such actions. Heretofore, as you know, if we had a resident of this State involved in a motor vehicle accident who subsequently removed from this State, you could not get service upon him under the nonresident motor vehicle process statute. This then corrects that, and it provides in that bill for the fixing of venue in accordance with 25-530, which as you know was the nonresident motor vehicle process statute, and so by the following bill L. B. 459 they have amended 25-530 by providing in it, or the amendment to it, for the venue provision. That section of the bill reads: "The action against such nonresident may be brought in any county in this State where damages or loss to a person or property occurs arising out of the use or oper-

ation of a motor vehicle over or upon the streets, highways, or any other place in such county by a nonresident of the State of Nebraska or his agent."

Heretofore there has been some considerable dispute, and it has been the subject of *Law Review* articles by Mr. Beatty, and it has caused a lot of people trouble. Now they have attempted to fix the venue in the county where the cause of action arose.

It has one other provision in it that should be pointed out, and the new statute, just excerpting the language of the amendment, further provides that such service or process for the use and operation by a nonresident was "over or upon the streets, highways, or any other place within this state" resulting in damages or loss to person or property.

By adding those words in there "or any other place within the state," plaintiff's lawyers have robbed defendant lawyers of their defense in cases where a truck gets out in the wheat field and sets the farmer's wheat on fire, and he gets on out of the State before he gets service on him. So we will have to go to trial on the merits I suppose now, even if he is using a truck in the wheat field instead of on a public highway. That has been taken care of.

L. B. 533 is the one that provides for a sixty-day delay in the hearing of a divorce action. That bill provides that no suit for divorce shall be heard or tried until after service has been had or perfected on the full statutory period provided by law for answering plaintiff's petition shall have expired, but in no event shall such suit be heard or tried until sixty days after the filing of plaintiff's petition.

The only caveat that I can think of in connection with that is that a petition that was filed before the effective date of the bill, which was September 28, now should not be heard until that sixty-day period has run.

L. B. 653 has to do with stays and mortgage foreclosure proceedings, and the change that has been made in that is a little complicated. I don't understand it very well. But if you have an area involved in a foreclosure with a certain type of a maturity upon your indebtedness, and if the landed area covers a lot or lots or any part thereof in a regular platted subdivision or a partial residential property not exceeding three acres in area, the stay shall be three months. In other words, they have cut down the old statutory stay under certain provisions, certain types of indebtedness, where the area involved is limited, as I have described it, to three months instead of nine months. That bill won't become of very much importance until the depression again hits us, probably.

L. B. 693 is simply a statutory provision. Instead of your having to give notice where service has been made by publication or whatnot, they have attempted to clarify that by saying this: "It shall not be necessary to serve the notice prescribed by this section upon any competent person, fiduciary, partnership, or corporation who has waived notice in writing, entered a voluntary appearance, or who has been personally served with a summons or notice in such proceedings."

In other words, if you have got personal service over the parties, as I understand it, you don't have to make the affidavit of similar service.

**FRIDAY AFTERNOON  
SECTION ON TAXATION**

**John C. Mason, Esq.**  
Chairman

**NEBRASKA PROPERTY TAXES**

A discussion of some typical problems and pitfalls about which lawyers should be prepared to advise their taxpayer clients.

1. Situs of Personal Property as Affecting Taxability  
in Nebraska at Local and State Levels  
Business situs — movable property — goods in  
transit — trust assets — receivables — bank ac-  
counts .....Homer G. Hamilton, Esq.  
Assistant Attorney General of Nebraska
2. Taxability of Some Particular Types of Property  
Interests  
Life insurance — “credits” — beneficial interests  
in trusts — trading accounts with stock broker —  
foreign and domestic stocks — leasehold interests  
— building and loan stocks .....Richard E. Hunter, Esq.  
Member, Madgett & Hunter, Hastings
3. Returns, Valuations and Equalization Problems  
Tax Commissioner regulations — obsolescence fac-  
tors — income tax inventory figures — book values  
v. market values — rights to be “equalized” within  
county .....Charles E. Oldfather, Esq.  
Member, Cline, Williams, Wright & Johnson, Lincoln
4. Penalties and Enforcement  
1959 legislation—failure to file schedule—omitted  
property — application of penalties to decedent’s  
estates — discovery rights of assessor and tax  
commissioner .....Edmund D. McEachen, Esq.  
Member, Young, Holm & Miller, Omaha
5. Remedial Procedures to Protect Taxpayer  
Hearings before County Board of Equalization —  
appeals to District Court — burden of proof —  
evidence of value — State Board of Equalization  
procedures .....John C. Burke, Esq.  
Tax Attorney, Douglas County Attorney’s Office, Omaha

## SITUS OF PERSONAL PROPERTY AS AFFECTING TAXABILITY IN NEBRASKA

Homer G. Hamilton

The location or situs of personal property has not always been a factor in determining its taxability by a particular state.

For many years the taxing officials and the courts relied on the ancient maxim of "mobilia sequuntur personam," or movables follow the person. However, as business practices became more complicated and far-flung and because of various statutes designating the tax situs of personal property, that rule now has limited application both as to tangible and intangible property.

In view of the new and heavy penalties enacted by the last Legislature for failure to list personal property, especially intangibles, which will be discussed by another member of this panel, it behooves every lawyer to become familiar with certain fundamental rules pertaining to proper tax situs if he is to properly advise his clients as to what personal property is or is not taxable in Nebraska.

If you will pardon reference to a personal experience, only last week a gentleman in Lincoln called our office to inquire whether he should have listed a certain bank account and securities owned by him and located in Colorado. He was under the impression that since he spent about three months of every year in that State, he did not need to list them in his Nebraska personal property schedule. This gentleman is subject to payment of a penalty of approximately 75 mills on the actual value of these omitted intangibles. The importance of being in a position to give proper advice as to taxability of personal property in relation to its location cannot be overemphasized under existing penalty statutes.

This part of the discussion will be limited to particular types of personal property which may be subject to taxation in Nebraska although located in some other state.

### *Tangible Personal Property*

Ordinarily the situs for purposes of taxation is the domicile of the owner, but one state cannot extend its taxing authority into another state to reach personal property permanently located in that state. However, if the property is in the state only temporarily on assessment date, the state of domicile does not lose its right to tax such property.

This rule is illustrated by the recent case of *Ainsworth v. County of Fillmore*, 166 Neb. 779, 90 N.W.2d 360. In that case the



plaintiffs alleged that the wheat in question was outside the state on assessment date. Defendants demurred on the ground that the petition failed to state a cause of action. On appeal from an order overruling the demurrer, the Supreme Court reversed the ruling and stated that the plaintiff was required to allege that the property was permanently outside this State.

The following portions of the opinion state the rule:

In order to have rendered this wheat nontaxable in Nebraska on March 1, 1957, it must not only have been on that date without the jurisdiction but also the situs must have had the character of permanency.

The rule is stated as follows in 51 Am. Jur. Taxation, Section 457, p. 470, as follows: "The domicile of the owner is the taxable situs assigned to tangibles where an actual situs has not been acquired elsewhere. That state is the situs for the purposes of taxation of tangible personal property temporarily in another state, but not permanently located there."

Under this rule, as is pointed out by the cases which have been cited, on the trial of a case, unless the property has acquired a permanent situs in the state where it is located, it becomes the duty of the court to adjudicate unfavorably to a contention that tangible property outside the state of the residence of the owner is not taxable to the owner in the state of his residence.

In this light it becomes necessary to say that permanent situs outside the State of Nebraska on March 1, 1957, was a fact essential to the right of plaintiffs to the relief prayed in this action. This essential fact has not been pleaded directly or by reasonable inference in the petition. The allegation of this fact was essential to the statement of a good cause of action. The decisions of this court from early times down to the present make this clear.

*This case clearly establishes that mere absence from the State on assessment date is not sufficient to declare the property immune from taxation. There must be a permanent detachment from the State of domicile of the owner.* Grain was involved in the Ainsworth case, and it is no longer taxed on an ad valorem basis, but the rule would be applicable to any type of tangible personal property.

Some instances which have come to our attention where we know that some lawyers have been involved have been with regard to motor boats, grain, various types of equipment and machinery, and particularly with cattle. In the counties bordering on Wyo-

ming, Colorado and North Dakota it often happens that cattle are temporarily located in one of more of these states on assessment date and are voluntarily assessed in those states. The difficulty arises when they are returned to the home ranch in Nebraska or are returned for purposes of sale and are then put on the tax rolls by the local assessor. Taxation by the Nebraska authorities in such cases is proper and legal, and the net result is that the owner often pays taxes in both states.

The determination of whether tangible personal property has obtained a permanent situs or business situs outside the State necessarily involves the determination of factual questions, which will be discussed in more detail in dealing with intangibles. It is clear that no hard and fast rule can be stated which will apply to all cases, but it can be said here that the lawyer who is assisting in making personal property returns should inquire from his client as to the ownership of tangibles located in another state which could properly be assessed in this State.

#### *Property in Transit*

Some confusion exists as to the authority of a state to tax goods while in the process of shipment. The law is clear that goods actually in interstate commerce cannot be taxed by any state while being transported as such. See *Freeman v. Hewitt*, 329 U. S. 249, 91 L. Ed. 265. However, all goods being transported or being designated as "in transit" do not always fall into the category of interstate commerce, or the shipment may lose its identity as interstate commerce while in transit.

In *U. S. Cold Storage Corp. v. Stolinski*, 168 Neb. 513, one objection made to the reporting by warehouses to local assessors of all goods in storage was that most of the goods were in interstate commerce. The Court stated:

The correct rule in such cases has been stated as follows:

"It is universally agreed that personal property actually in transit in interstate commerce is protected by the commerce clause of the Federal Constitution from local taxation in the states through which it passes. Where, however, the interstate transit is broken or interrupted in a particular state, the question arises whether the property may thereupon be subjected to local taxation therein. In this situation the principle has been adopted by the Supreme Court of the United States and adhered to by the lower Federal courts and the courts of the various states that if the break in the interstate journey was caused by the exigencies or conveniences of the chosen means

of transportation, considerations of the safety of the goods during transit, or natural causes over which the taxpayer has no control, the continuity of the transit remains unimpaired, and the immunity of the goods from state or local taxation is consequently unaffected; but if the interruption in the journey occurred for purposes connected with the business convenience or profit of the taxpayer or the owner of the property, then the continuity of the transit must be regarded as having been so disturbed as to destroy the immunity of the property from local taxation." Annotation, 171 A. L. R. 284. See, also, *Independent Warehouses, Inc. v. Scheele*, 331 U. S. 70, 67 S. Ct. 1062, 91 L. Ed. 1346; *Minnesota v. Blasius*, 290 U. S. 1, 54 S. Ct. 34, 78 L. Ed. 131.

Whether the property involved in the present case is in interstate commerce while stored in plaintiff's warehouse, or whether it has acquired a tax situs because the interruption of its movement in interstate commerce was for *the convenience of the taxpayer or owner*, is a question to be determined in the first instance by the taxing authorities. [emphasis supplied]

In that case the court held Section 77-1226, R. S. Supp. 1957, to be invalid because those warehouses storing used furniture were exempt from reporting to the assessor. This was held to be an unreasonable classification, but the statute was approved in all other respects. The 1959 Legislature then enacted L. B. 552 (Ch. 366, 1959 Session Laws), which contains substantially the same provisions as to reporting by warehousemen to the assessor of goods stored, with the following notable exception: "Goods, wares, and merchandise stored in transit in interstate commerce need not be so listed or reported."

The term "in transit" should not be confused with interstate commerce. "In transit" generally refers to a rate privilege extended to the shipper. For instance, goods are often shipped from western Nebraska to points in the eastern part of the State, in order to be nearer to probable final points of destination. At the time of shipment and storage the ultimate consignee and destination are not known, although it is intended that they will ultimately be shipped out of the State. The rate advantage comes into being on final shipment. If goods are shipped from Scottsbluff to Omaha for storage and then ultimately delivered to Chicago, the shipper is entitled to the through rate from Scottsbluff to Chicago rather than the combination rate applied to the two separate shipments. *In such cases the goods are not in interstate commerce while they are being stored in Nebraska.*

The general rule is stated in Annotation in 11 A. L. R. 2d, page 939, as follows:

It is well established as a broad general rule that the mere fact that property is intended or destined for removal from a state does not impress it with the character of interstate or foreign commerce, so as to render it immune from local taxation by virtue of the operation of the commerce clause (Art. 1 Sec. 8) of the Federal Constitution, and that such immunity attaches when, but not until, the property has been actually started toward its destination outside the state in a movement which is intended to be continuous except for such delays as are incident to the particular mode or means of transit. *As frequently stated, goods do not cease to be part of the general mass of property in a state, subject, as such, to taxation therein in the usual way, until they have been shipped or started upon transportation to another state or country in a continuous route or journey [emphasis supplied].*

A case almost identical as to facts is *Independent Warehouses, Inc. v. Scheele*, 331 U. S. 70, 91 L. Ed. 1347. The case involved the payment of a license fee on a warehouse in which coal was stored in the manner and under the same type of "in transit" conditions as just described. The storage was for the purpose of moving the coal closer to the ultimate market, and when the buyer was determined it was shipped to other states, although there was some local distribution. The Court there said that it was immaterial in the determination of the validity of the regulation whether a tax or a license was involved. It was held that storage at an intermediate point as part of a transit privilege does not destroy the right of the state to tax or license the storage of the goods. It was stated that where the goods are not rebilled until the owner asks that they be released from storage, this fact shows that the final destination was not known when they were first shipped. It was further held that the controlling factor in determining whether the goods have come to rest in the state sufficiently to allow a state tax is not what ultimately happens to them or where they finally go, but the occasion and purpose of the storage. To the same effect is *Empresa Siderurgica v. County of Merced*, 337 U. S. 154, 93 L. Ed. 1276.

*It thus appears that L. B. 552 did not relieve the local assessors from the duty of assessing such property in storage if it is exercising only in-transit rate privileges and is not actually being transported on assessment date in interstate commerce, and your clients should be so advised.*

It is interesting to note that the Legislature also adopted in 1959 L. B. 724 (Ch. 239, 1959 Session Laws), proposing a constitutional amendment which, if adopted, would exempt from taxation all goods so stored, whether actually in interstate commerce or merely being stored for future shipment in interstate commerce.

Situations may arise where there is some question as to whether goods located in this State have started an interstate journey and thus become immune from taxation in this State or whether they are properly taxable. Such a situation existed in *State v. T. W. Jones Grain Co.*, 156 Neb. 822, 58 N. W. 2d, 212. There grain had been sold by a Nebraska firm to a Kansas City buyer and had been billed and loaded in the car ready for shipment on assessment date. It was contended by the elevator operator that the grain was part of an interstate movement. The Court held:

... However, the fact that property is intended or destined for removal from a state does not impress it with the character of interstate commerce so as to render it immune from state taxation by virtue of the operation of the commerce clause of the Federal Constitution. Art. I, Sec. 8, Constitution of United States. *The immunity attaches when, but not until, the property has been started towards its destination outside the state in a movement intended to be continuous, except for such delays as are incidental to the kind of transit selected.* If the interstate movement has not begun, the mere fact that such a one is contemplated or that the property has been partially prepared for the purpose does not withdraw it from the power of the state to tax it. It is not enough that there is an intent to move it interstate or a plan that involves exportation from the state of its situs to another state or that there are an integrated series of events that will end with it. The tax immunity runs to the process of interstate transportation. It requires commerce among states. *Empresa Siderurgica v. County of Merced, supra; Independent Warehouses, Inc. v. Scheele*, 331 U. S. 70, 67 S. Ct. 1062, 91 L. Ed. 1346; *Minnesota v. Blasius*, 290 U. S. 1, 54 S. Ct. 34, 78 L. Ed. 131; *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237; *Champlain Realty Co. v. Brattleboro, supra; Bacon v. Illinois, supra; Coe v. Errol, supra; Tredway v. Riley, supra* [emphasis supplied].

#### *Intangible Personal Property*

Where a resident of this State owns intangible property, the evidence of which is also located here, there is no question as to the taxability of such property in this State. It is only where the

securities or other form of intangibles are located in another state that questions sometimes arise as to the right of the state of domicile of the owner to impose a tax. Prior to *Curry v. McCannless*, 307 U. S. 357, 83 L. Ed. 1339, there had existed some doubt in the minds of the courts as to the legality of both the state of domicile of the owner and the state in which the intangibles were located to impose a tax thereon. That case involved a situation where the testatrix was domiciled in Tennessee and created a trust in which both the assets were held and the trustee domiciled in the State of Alabama. She had retained a power of appointment as to the trust assets. The question was whether both states could impose death benefits on the transfer of the intangibles involved. It was there held that the Fourteenth Amendment to the Constitution of the United States did not preclude both states from levying a tax. The basis of the holding is shown in the following part of the opinion:

... But when the taxpayer extends his activities with respect to his intangibles, so as to avail himself of the protection and benefit of the laws of another state, in such a way as to bring his person or property within the reach of the tax gatherer there, the reason for a single place of taxation no longer obtains, and the rule is not even a workable substitute for the reasons which may exist in any particular case to support the constitutional power of each state concerned to tax. Whether we regard the right of a state to tax as founded on power over the object taxed, as declared by Chief Justice Marshall in *M'Culloch v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579, *supra*, through dominion over tangibles or over persons whose relationships are the source of intangible rights, or on the benefit and protection conferred by the taxing sovereignty, or both, it is undeniable that the state of domicile is not deprived, by the taxpayer's activities elsewhere, of its constitutional jurisdiction to tax, and consequently that there are many circumstances in which more than one state may have jurisdiction to impose a tax and measure it by some or all of the taxpayer's intangibles . . . .

*Greenough v. Tax Assessors*, 331 U. S. 486, 91 L. Ed. 1621 (1947) is an illustration of the extent to which states are allowed to tax intangibles located in another state. That case involved a trust, and there were two trustees. One lived in New York where all evidences of the trust were located and the other lived in Rhode Island. A personal property tax of \$50.00 assessed by the City of Newport, Rhode Island, against one-half of the value of the corpus of the trust, was the subject of controversy. The tax was

held to be legal, and the decision was based on the following findings and conclusions:

1. The rule that a state cannot tax tangibles permanently beyond its borders does not apply to intangibles.
2. Intangibles are difficult to discover and if not taxed at the domicile of the owner, probably will escape taxation.
3. If the location of the evidence of intangibles were controlling, their transfer out of the state would defeat the right of the domiciliary state to needed revenue.
4. Intangibles are controlled by and have a close relationship with the owner, and the state of his domicile furnishes him with the benefits and protection inherent in his citizenship in that state, and the right to control such intangibles. This benefit and protection may not be exercised by the owner, but the state of his residence is "ready, willing and capable of furnishing either, if required."

*The decisions just discussed clearly establish that trust assets in the form of intangibles, bank accounts, receivables, mortgages on real estate located in another state (see Pierson v. Faulkner, 134 Neb. 865, 279 N. W. 813) and all other form of intangibles which may be located outside the State are taxable in Nebraska if the owner resides herein.*

Two Nebraska cases should be considered in determining tax situs of intangibles. The first is *Massey-Harris Co. v. Douglas County*, 143 Neb. 547, 10 N.W.2d 346. Open accounts, dealers' notes and conditional sales contracts were involved. The corporation had its home office in Wisconsin, with a branch office in Omaha which paid minor miscellaneous expenses connected with operations in Nebraska. All notes and contracts were payable in Racine, Wisconsin, and when received by the Omaha office were immediately sent to the home office. All cash received by the Omaha office was deposited to the account of the home office with no authority to check thereon. All salaries and major expenses were paid from the office in Racine. All supplies, advertising material, personnel decisions and other matters of policy were directed from the home office. The Court held that these intangibles did not have a tax situs in this State and were, therefore "not in this State" for purposes of taxation and were not taxable.

*International Harvester Co. v. Douglas County*, 146 Neb. 555, 20 N.W.2d 620, also involved a foreign corporation, with three branch offices in Nebraska, and the property consisted of notes, secured and unsecured, book accounts, judgments, choses in action

and contracts for cash. All notes and accounts receivable were payable in this State and were kept here for collection. All cash on hand was subject to withdrawal by the branch manager in Omaha. The taxpayer relied on the Massey-Harris case in its claim of tax immunity, but the Court distinguished the two cases on the basis that in the first case the intangibles did not have a tax situs here, and that the facts in the second case showed that the intangibles of the nonresident were located in and subject to taxation in this State. In the International Harvester case it was said that all intangibles in this State must be returned, assessed and taxed, without regard to whether the owner is a resident or a nonresident. These cases are important to the practicing attorney who may have nonresident clients doing business in Nebraska. Their intangibles may or may not be subject to taxation here, depending on the manner in which such business is conducted in this State.

#### *Business Situs*

Both tangible and intangible property can acquire what is generally termed a "business situs" outside the state of domicile, and where the factual situation establishes such a condition, the state of residence of the taxpayer is precluded from the imposition of taxes on such property. This rule is illustrated by *Standard Oil Co. v. Commonwealth*, 311 S.W.2d 372 (Ky.). That decision is based to a large extent on *Wheeling Steel Corp. v. Fox*, 298 U. S. 193, 80 L. Ed. 1143. Those cases and similar cases appearing in the annotation in 79 A. L. R. 344 apply the principal of business situs outside the state to intangibles when the facts show that the property involved is so used as to have become "an integral part of the business" located in another state. The facts usually show that the foreign business is conducted independently of the home office. The executive decisions and contracts are usually made by representatives not located in the home office and without its approval. Where funds are involved, they are kept in foreign banks and are used exclusively in the business in the foreign state. They are usually not subject to transfer or control by local officials.

#### *Tax Situs within the State*

Those who operate farms or businesses in more than one taxing district within a county or in more than one county are sometimes confused as to the proper place to list personal property. Where the proper tax situs is not correctly determined in advance, there is a probability of having it assessed in two places. In such cases the taxpayer is subject to inconvenience and expense in correcting



the erroneous assessment and is sometimes forced to pay the tax in both places.

Tax situs of personal property is largely governed by statute, and by the general rules previously discussed. The particular statutes which should be examined are Sections 77-1202, 77-1204, 77-1205, 77-1206 and 77-1210. The Legislature has recognized that statutes cannot govern every conceivable situation and has provided a method of determining tax situs, as between taxing districts and between counties. Section 77-1216 provides that questions as to tax situs between districts in the county shall be decided by the County Board of Equalization, and if there is a dispute between counties, the matter is to be decided by the State Board of Equalization. Such decisions are as binding as if fixed by statute, and the decisions made will not be disturbed in the absence of a clear showing of abuse of discretion.

The important consideration from the standpoint of an attorney is that if there is any doubt as to the proper place for your client to list property, it is advisable to obtain a ruling from either the County Board of Equalization or the State Board, as the case may be, in order to avoid the possibility of inconvenience and expense to your client, in the event of an improper listing.

#### **TAXABILITY OF SOME PARTICULAR TYPES OF PROPERTY INTERESTS**

**Richard E. Hunter**

Mr. Chairman and members of the Tax Section: I am sure everyone in the room is well aware of the fact that the Constitution and the statutes of the State of Nebraska require that all types of property, tangible and intangible, which are not specifically exempt are liable for taxation. And yet there are several particular kinds of property that for one reason or another have not in the past or are not now being returned for taxation. Because of the renewed interest in property taxation which has been generated largely by the more severe penalties which are in effect, some of these particular kinds of property have recently come up for discussion, and that is what we want to dwell on for a few moments this afternoon.

The problem was illustrated to me a short time ago when I happened to attend a hearing held by the State taxing authorities concerning the omission of some intangible property. One of the taxpayers who was attending this session involving his own return got into the question of the taxability of his accounts receivable. He said to the taxing authority, "I didn't return any accounts

receivable because my accounts payable exceeded them." He said, "It certainly isn't necessary to do that."

The taxing authority said, "You might be surprised to learn there is a great deal of respectable authority in this State which agrees with you."

The taxpayer responded by saying, "I'm not surprised a bit. You don't have to be a lawyer to know that you can't tax property twice."

This seems to be a rather common opinion among most laymen and lawyers. Of course there is no constitutional objection to taxing property twice so long as it doesn't amount to confiscation. There are a great number of instances where there may be in certain situations a double tax, if you choose to call it that. But most of them that we are going to deal with, it is not really a question of the same individual paying a tax on the property twice; it is a question of two different individuals paying a tax on what really amount to two different types of property, although you might call it the same thing.

For example, this question of credit, the question of offsetting accounts payable or money that you owe against accounts receivable or money that someone else owes you. For a great number of years this has been a debatable question in Nebraska, and I understand there are at least some counties in Nebraska where this practice is permitted; that is, of offsetting your accounts receivable by your accounts payable.

It all started back with a statute in 1901 which specifically provided that in the case of bills receivable you could offset it by money that you owe. It was, however, limited to this particular thing, what amounts to accounts receivable.

In 1903 they changed the statute by providing that the word "credits" meant "every demand for money, labor, or other valuable thing, whether due or to become due." Under this 1903 statute we had a series of Supreme Court cases which are cited to you in the outline commencing with the case of *State v. Fleming*. In this case they called to Court's attention that in 1901 the Legislature specifically said you didn't have to report these if there was an offset, or rather allowing an offset against them. The Court said, "Well, in spite of the fact that they have changed the definition and have eliminated the specific deduction of accounts payable, we think that the Legislature intended to mean 'net credits' rather than 'gross credits.'" This is where the difficulty began.

That case was followed by a series of four or five cases, the important ones being those which I have cited, which ended with the Nye case in 1918. During this period of time the definition

of the word "credit" remained the same, the one that I just gave you.

There are two other statutes. I am really talking, in the history of how this thing arose, about three statutes: one, the statute that is now 77-707, which is the definitions, defining the word "credits"; 77-701, which we might call the taxing statute — that's the one that says intangible property is subject to tax; and the third, 77-1201, which we might call the listing statute since it requires you to list certain types of property on your return.

In the case of *Oleson v. Cuming County* a farmer sold a farm and took back a note and mortgage for \$3,500. He later purchased the farm and gave a note in mortgage for the same amount, \$3,500. When it got to the Supreme Court the Court said, "This is ridiculous. This is a fiction! The Legislature never intended you to tax something that doesn't even amount to property, and when you've got \$3,500 that you owe on the one hand and \$3,500 that someone owes you on the other hand, there is no property in anyone's hands. Therefore the individual doesn't have to report it. What the Legislature meant," they said, "was 'net credits' and not 'gross credits.'"

Through the McDonald case which involved accounts receivable and the Nye-Schneider-Fowler case, this same definition was upheld, although there was no such terminology in the statute as "net credits."

In 1919, which was just one year after the Nye-Schneider-Fowler case, the Legislature specifically held that they meant "gross credits" and they used that term of "gross credits" rather than simply "credits" alone.

From that time until the revision of the statutes in 1943 the term "gross credits" appeared. There are to my knowledge no later cases than this 1918 Nye case, so there are no cases after the Legislature changed it to "gross credits."

Then the reviser came along in 1943 and eliminated the term "credits," "gross credits" or anything else. He eliminated the specific terminology which had been used in the taxing statute — that's 701 — and simply said "all intangibles." That is the way the statute now reads substantially, "All intangibles must be reported," and defined intangibles in two categories, Class A and Class B.

Prior to 1959 there still remained the term "credits" in Section 77-1201. Remember, that is the one that says you must list all of your money credits, money loaned, bank corporation stocks, and so forth. That was the only place remaining in which the

word "credits" appeared. In 1959 in L. B. 68 the Legislature changed that section, and they now say you must return, you must list all of your intangibles as they are defined in Section 77-106.

Well, the Legislature "goofed," it seemed to me, rather badly on that one because 77-106 simply defines "money"; it doesn't define "credits" or any other intangibles. It defines "money" only. So the statute now reads you must list all of your intangibles which are defined in a certain section, which in effect says you must list all of your intangibles which are defined as money — period.

I understand the Attorney General has issued an opinion that that is not what the Legislature meant; they meant Section 107 which defines "credits" as the list that I have on page 1, corporate stocks and so forth. Now this is the only place where "credits" appears in the statutes. That is under the definitions in 107. It says that credits shall mean corporate stocks and so forth, the list that you have there.

Nowhere in any of these cases, however, did the Court ever say or ever extend this to any other type of intangible property other than accounts receivable. They specifically held in these cases that it did not apply. In other words, that as to money loaned or invested or as to corporate stocks or bonds, you could not deduct any debts that you had against it. So at no time have we ever had any decisions which pertain to anything more than accounts receivable. It seems to me that there is simply nothing left in the statute or in any decision because the decisions are all under the statutes which were a great deal different from what they are today, so there is simply nothing left on which you can hang your hat to say that the Legislature meant to tax only net credits. It seems to me that in spite of the fact that, as I understand it, there are some counties that are not requiring that gross credits be returned, this is an untenable position in view of the existing statutory law.

Now going to this question of life insurance policies, probably most of us never realized that there is really any problem here, and if you weren't worried about it you don't have to listen to this because I am not going to tell you anything to start you worrying about it.

Here is what the situation is. It has come up recently. To my knowledge the cash surrender or reserve values of life insurance have never been taxed in this State. There is a very good reason for it. That is this case of *In re Laub* which I cite in the outline. In this case the Court said — this was a question of whether or not a taxpayer who had a cash value of a policy, and it is stated

in the opinion of some \$6,000, whether or not that was intangible property which he had to return for taxation. The interesting thing I think about this decision is the fact that some of the rules that they laid down may be applicable to other situations. In fact, as I shall show you in a moment, at least the Attorney General has so considered this case to apply to other situations.

In the first place they said this: "The Constitution of the State of Nebraska requires that all property be returned for taxation, but this is not self-executing. You've got to have a statute which carries it out."

Now they had a statute at this time which said, as it does today, in effect that all intangible property must be reported. The Court said, "This is not enough. You've got to go further and tell people how to report it." They said, "The tax commissioner makes up the assessment schedules. There is nothing in there about life insurance. We are going to give a great deal of weight to these administrative holdings, and besides that they didn't tell you how to value it."

Well, of course in this particular case the policy itself told you how to value it. The value is there and the Court told you in the opinion what the value was.

I think the key to the whole thing, though, as far as insurance is concerned is the fact that the Court said, "It is obvious that public policy is dictated that insurance ought to receive favorable consideration." They said, "If people take out insurance and they die and leave money by that means to their beneficiaries, then these beneficiaries are not going to be paupers and won't be a burden on the State, so there is some public policy consideration here."

The general rule, however, is universally that there is nothing illegal about taxing cash values of life insurance, but you've got to have a specific statute to do it. We don't have such a statute in Nebraska.

However, we do have a statute, 77-107, you will see the list there if you get down to Item K, which does specifically tax annuities. Annuities of course are a little different form of property. It is interesting to observe that there is no statute in Nebraska which tells you how to value annuities. The Supreme Court said in the Laub case, "You can't value the cash surrender value of life insurance unless they tell you how to do it." However, as far as I know annuities are being taxed, at least whenever they are aware of them.

A more interesting question probably arises when you've got a life insurance policy which is matured. Now in the Laub case

this was merely the question of the cash value of the policy. The insured was still alive. He had the right to borrow on it or to cash it in. There are any number of cases, and I have cited some A. L. R. general annotations here about the taxability of the rights of the insured or the beneficiary under a matured policy. In a number of states which have statutes about the taxation of intangibles generally similar to Nebraska's, or at least the way we used to have it where it said "credits," other states have held this includes the value of this contract with the insurance company which has matured. To my knowledge there has never been any attempt in this State to tax this feature of a matured life policy.

One of the things about which I have heard a number of discussions recently since all this publicity about intangibles, a number of lay people have said, "Well, if you take all of your property, all of your stocks and bonds and remove it from the State of Nebraska, you don't have to pay any tax on it." In other words, what you've got to do is to set up a margin account or a trading account with a broker in Chicago or New York. Most of you know what these actually are. You open an account, the broker loans you money within the margin requirements, the stock certificate is issued in the street name and held by the broker.

I think under any rule that I have been able to find that those margin accounts are taxable, and they are taxable in full at the value of the stock. And of course under my previous opinion that you cannot deduct offsetting indebtedness, you cannot deduct it here either, so you are going to have to report it on the full market value of the stock without deductions for the amount that is owed to the broker on a margin account.

Leaseholds have had a rather peculiar history. Most of it is now statutory. I shall only comment on it to this effect. As a general rule the value of real estate is taxed to the owner of the real estate and you do not separate between the two unless there is some statute to the contrary. In Nebraska as far as exempt public lands is concerned there is a statute, Section 77-1209, which says you will tax the value of the improvements on leased public lands to the lessee, and you shall include the value of the lease. In the following Section 1209.01 which relates to leased privately owned lands, there is no such statement, and to my knowledge there is no requirement in this State that the tenant must report the value of his lease — I am not talking about the improvements but the value of his lease on privately owned lands, although as exempt lands I think there is some authority.

I have cited a case there, I think it was largely dictum, but they said in that case where the owner of the real estate was ex-

empt from taxation, privately exempt, the Court said the existence of a lease for years on certain property in the suit suggests an interest in land properly the subject of an independent assessment as the property of the lessee.

Now, as I say, the statute does require it in the case of leased public land; it does not require it in the case of leased private lands.

The value of the improvements — I think that is going to be touched on later. They are taxable. There is a new procedure under L. B. 68 which sets it out.

Building and loan stocks have also had an interesting history. For a number of years right on the assessment schedule it said, "Report your stocks and deduct ten per cent." That is a question of valuation which I am not going into except to call to your attention that it is no longer on the schedules. You've got to actually determine the actual amount of value which the Building and Loan Association has reported for taxation otherwise, mortgages, real estate and intangibles. This is determined by the state tax commissioner.

There is an interesting opinion of the Attorney General. The statute you may be aware of says the building and loan stocks of *foreign* corporations, of foreign building and loan associations shall be taxed only if the association is doing business in Nebraska. The Attorney General has ruled that they are going to hook you two ways. They are going to hook you under that if you are doing business in Nebraska, which is a question of fact, and simply under the general rule that all intangibles are reported for taxation even though there is no specific statute on it; you must report it for taxation just as you would any other intangible in which the assets were located outside of the State of Nebraska but where the owner of the intangible is domiciled in the State.

This question of the beneficial interests in trusts has come up in several instances. There is a recent Attorney General opinion which holds that they are not taxable. The general rule is that the assets of a trust are naturally taxable to the trustee, but what we are talking about is a foreign trustee which may or may not be taxed in the state of his domicile but the owner of the beneficial interest resides in Nebraska. Here again the Attorney General has ruled, based on this Laub case, which is the life insurance case, that because the Legislature has never seen fit to determine a method of apportioning the value or of evaluating the value of the beneficial interest, they are not subject to taxation in Nebraska. This is in accord with the general rule.

There are some states which have attempted by statute to apportion it or to carve out of the value of the corpus the value of the beneficial interest. Florida is one of them. Incidentally, a series of Florida cases on this problem cites the Laub case, the life insurance case, as their authority.

The entire question probably has turned in most states on the question of whether or not you are talking about a property tax or an income tax. If the beneficiary has the right to some control over the corpus or the principal, the right to invade it, the power of appointment, the right to revoke it, etc., at least in some states under a statute they have taxed the interest on the ground that this is a property interest. But where it is an income right only, Florida has raised the question under a constitutional provision down there prohibiting an income tax, that this is an income tax in effect and therefore illegal.

It is my conclusion — at least I agree with the Attorney General, although for somewhat different reasons — but the general rule is that until we have some specific legislation which taxes these beneficial interests, they are not going to be taxed under a general statute which simply says “all intangible property is subject to tax.”

## RETURNS, VALUATIONS AND EQUALIZATION PROBLEMS

Charles E. Oldfather

Because the title of my remarks is broad, it will be impossible to cover the field in a comprehensive manner in the allotted time. Therefore, the taxation of real estate and the property taxation of railroads, insurance companies, franchises, motor vehicles and grain and seed will be excluded.

### *Assessor's Regulations*

Since 1921 the Tax Commissioner has had some authority to make rules pertaining to the assessment and valuation of property. Section 77-303 (2),\* as amended by L. B. 42, now provides:

The Tax Commissioner shall formulate and promulgate rules and regulations pertaining to the valuation and assessment of property which shall have the force of law and be binding on all taxpayers and taxing officials unless and until changed

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\* All references to statutes are from Revised Statutes of Nebraska, 1943, as amended.



by the Legislature, declared invalid by a court of competent jurisdiction, or set aside by the provisions of Sections 84-901 to 84-908. The Tax Commissioner shall have authority to adopt rules and regulations, not inconsistent with law, pertaining to the administration of the revenue laws of the state.

Tax Commissioner Herrington has prepared such rules, entitled "Rules and Regulations for the Assessment of Property, 1959." Under the authority given in Section 84-907, Governor Brooks on February 26, 1959, waived public hearing and the rules were certified to the Secretary of State on April 6, 1959, and are now considered to be in full force and effect.

Commissioner Herrington has indicated that some of these rules will be revised before the 1960 assessment date.

Because these rules do "have the force of law" every lawyer who handles personal property tax matters should secure from the Tax Commissioner's office a copy of these rules, which are available in mimeographed form.

One of the Commissioner's rules, No. 203, provides in general that tables, resolutions or schedules of values adopted by the Nebraska Assessors Association, or any part thereof, *may* become a part of the rules and regulations of the Tax Commissioner. It is my understanding that to date none of these items from the Assessors Association have been incorporated into the Commissioner's rules.

The Commissioner's rules are given additional teeth by Section 77-303.01 which provides that if, after hearing, the Governor finds that any county official has violated the rules, the Treasurer shall withhold the gas tax to which the county is entitled until corrective action is taken.

#### *Assessment and Return Dates*

L. B. 48 and L. B. 704 have amended the various sections of our statutes which set forth dates for the reporting and assessing property for taxation. Commencing with 1960, property will be assessed as of January 1 at 12:01 A.M. and returns must be filed with the county assessor on or before March 1.

For the first time, the Legislature has made provision for extension of time for filing returns under some circumstances. In regard to tangible personal property Section 77-1229, as amended by L. B. 704, provides that:

On an application made prior to March 1 showing hardship, or impossibility of meeting such date for reasons beyond the

control of the applicant, the Tax Commissioner, the county assessor or county clerk, as the case may be, may extend the time for compliance, but not beyond the first day of the regular meeting of the county board of equalization.

Section 77-713, as amended by L. B. 48, contains the same provision relative to intangible personal property. The meaning of "impossibility . . . beyond the control of the applicant" is apparently left to the county assessor, and it will be incumbent upon every taxpayer seeking such an extension to satisfy the assessor of his grounds.

#### *Preparation and Filing of Returns*

The Tax Commissioner has the duty to furnish to the county assessors all schedules necessary for preparing personal property tax returns. All schedules and other materials used in connection with personal property taxation must be approved by the Commissioner by December 15 of each year and the same shall be uniform throughout the counties as far as possible. See Sections 77-304 and 77-305 as amended by L. B. 48.

In family situations the question sometimes arises as to which member should report personal property. Intangible personal property owned by a wife may be reported either by her separately or jointly with her husband. See Section 77-713. The tangible personal property of a wife, however, must be reported by the husband, if of sound mind, and if not, by the wife herself. Section 77-1201 (5). Tangible personal property of a minor should be reported by his guardian, and if none, by his father, or if his father be deceased, by his mother, and if both are deceased, by the person having such property in charge.

In the case of joint tenancy property, each joint tenant has the duty of determining that the property has been returned for taxation, except in the case of tangible personal property where the joint tenants are husband and wife, in which case the husband has the duty of returning the property. The Attorney General indicates that joint property should be assessed against the person making the return, but when no return is made, assessment may be made against any or all of the joint tenants. See Opinion of Attorney General dated October 2, 1957.

The person responsible for making the personal property tax return for the property of estates, trusts, receiverships, corporations, partnership and other entities is set forth in Section 77-1201.

Although the last Legislature added to and amended many of our statutes on personal property taxation, it also relieved us of some of the provisions and requirements we formerly had.

Section 77-1230, which required the taxpayer to put "none" after each item on the schedule which he did not possess, was repealed by L. B. 68.

Formerly the signature on personal property tax returns was required to be acknowledged before the county assessor or a notary public. Under Section 77-1233, as amended by L. B. 68, this requirement has been removed, although returns must now be signed by the taxpayer or his agent under penalty of perjury.

L. B. 68 also repealed Section 77-1231, which required that certain interrogatories be answered by the taxpayer.

One of the problems frequently facing the attorney in completing tax returns, particularly of a business, is the question of the extent of itemization necessary. We have no statute specifically covering this question, but the Tax Commissioner's Rule No. 301 provides as follows:

Whenever the value assigned to property not itemized exceeds \$10,000, the taxing official accepting such schedule *shall* verify the accuracy of the value assigned by examining the books of the taxpayer making the schedule, and whenever the value assigned to property not itemized is less than \$10,000, the taxing official accepting such schedule shall verify the accuracy, if in his discretion he believes examination to be practicable. The examination of the books provided for by this regulation must be completed before the following assessment date.

There is some indication that there will be a modification of this rule by the Tax Commissioner. Even if this rule is modified, taxpayers will be well advised to make some reasonable itemization.

With the increased emphasis on personal property taxation, county assessors will undoubtedly be watching more closely for incomplete schedules. The assessors for some time have had the power to add omitted property under Section 77-412, but we have never had a statute dealing with incomplete returns. This is now covered, however, under Tax Commissioner's Rule No. 304, which provides as follows:

No incomplete schedule shall be accepted by any taxing official:

(1) When no schedule has been tendered or an incomplete schedule has not been corrected, the county assessor or his assistant shall demand tender of a complete schedule from the person, firm, association, organization, society, or corporation which has not tendered a schedule or has tendered an incomplete schedule.

(2) Whenever any person, firm, association, organization, society, or corporation refuses to comply with the demand made in accordance with this regulation the county assessor shall make a complete schedule for the offending taxpayer and shall notify the county attorney of the situation.

### *Problems of Valuation*

The basic statutes covering valuation of property are short and comparatively simple. Section 77-201, which applies to all tangible property, states:

All tangible property and real property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued at its actual value which shall be entered opposite each item and shall be assessed at thirty-five per cent of such actual value. Such assessed value shall be taken and considered as the taxable value on which the levy shall be made.

Valuation of intangible property is covered in Section 77-201.01, which provides:

All intangible property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued and assessed at its actual value.

Actual value is defined in Section 77-112 as follows:

Actual value of property for taxation shall mean and include the value of property for taxation that is ascertained by using the following formula where applicable:

(1) Earning capacity of the property; (2) relative location; (3) desirability and functional use; (4) reproduction cost less depreciation; (5) comparison with other properties of known or recognized value; and (6) market value in the ordinary course of trade.

This definition has been accepted and approved by our Supreme Court in several recent cases, including *Neuman v. County of Dawson*, 167 Neb. 666.

The application of the foregoing statutes to a given item of property is probably the most troublesome problem in the property taxation field.

### *Statutory Provisions Covering Specific Intangibles*

Because of the limitation of time no attempt will be made to cover the following categories of intangible property except to

note the pertinent statutory provisions and in some instances the opinions of the Attorney General and leading Nebraska cases relating thereto:

1. Stock of domestic and domesticated corporation: 77-706
2. Stock of domestic building and loan associations: 77-707; Op. Atty. Gen. dated June 30, 1959
3. Stock of banks, industrial loan companies and trust companies: 77-708 to 77-711; *Omaha National Bank v. Heintze*, 159 Neb. 520, 67 N.W. 2d 753.
4. Installment loan licensees: 77-712; 77-712.01
5. Foreign corporations: 77-721; 77-722
6. Federal farm loan corporations: 77-721; 77-722
7. Production credit corporations: 77-726 to 77-728
8. Mutual investment companies: 77-729
9. Pension and profit-sharing trusts: 77-730; Op. Atty. Gen. dated December 26, 1957
10. Purchasers of installment paper: 77-731; 77-732; Op. Atty. Gen. dated July 17, 1958

### *Tangible Personal Property*

We have very little authority in Nebraska relating to valuation of tangible personal property. This is probably true because in the past there has been no particular emphasis placed on this field by taxing authorities and because our current definition of "actual value" is just over two years old. With the new interest shown in the property taxation field, we can probably expect more cases in the near future.

### *Inventories*

The monthly averaging statutes applying to merchants and manufacturers, Sections 77-1202.01 and 77-1202.02, which in the opinion of the Attorney General were unconstitutional, were repealed by the last Legislature in L.B. 68.

Section 77-1231.01 enacted by the 1957 Legislature provides in substance that in every business return the taxpayer must set forth on a separate page the dollar amount of inventory as shown on his last Federal income tax return, the method used in determining that value and the date of the last physical inventory. This section has created much consternation because inventory figures used for computation of Federal income tax many times bear little or no relation to "actual value" as defined by our law.

Although our Court has not construed this section, the Attorney General in an opinion dated May 6, 1959, has stated:

It should also be noted that Section 77-1231.01 requires only that certain information from the Federal return be furnished, and a statement made as to the method used at arriving at the value of the inventory. There is no indication that the processes followed in the Federal return or the information contained therein would be determinative in arriving at the actual value of an inventory, and it must be assumed that the information given in the statement is to be used for comparative purposes and as an aid in the discovery of omitted or undervalued property.

Because of this informational requirement, comparison of the income tax figure and the actual value figure should be made, because if there is substantial difference there is a real risk that the assessor will raise the inventory valuation, which will place the burden of sustaining the actual value figure on the taxpayer.

In connection with inventory obsolescence, Tax Commissioner's Rule No. 303 provides:

No greater obsolescence of inventory shall be allowed on the personal property return than is shown on the Federal income tax return, unless the taxpayer shall prove to the satisfaction of the taxing official that a greater obsolescence actually occurred.

In *K-K Appliance Company v. Board of Equalization*, 165 Neb. 547, our Court held that obsolescent inventory must be included in the tax return to the extent that it has "actual value" as defined in Section 77-112.

Section 77-1236, as amended by L.B. 68, gives the assessor the right to inspect a merchant's inventory, his books for the preceding year and insurance policies on his stock, and provides that upon refusal to allow such inspection, contempt proceedings can be brought against the taxpayer.

Because of this right and the duty to furnish income figures, the distinction between book value and actual value has become very important and should be given serious consideration by all taxpayers owning inventories.

For household goods, machinery equipment, livestock and many other taxes of tangible personal property there is no rule of thumb for valuation available except the suggested schedules of values approved annually by the County Assessors Association. However, as indicated above, these schedules do not have the force of law and need only be considered as guides.

The following categories of personal property will not be specifically discussed but are listed, together with statute and case citations, since we do have specific law relating thereto.

1. Improvements on leased land:
  - a. Public lands: 77-1209; *Offutt Housing Company v. County of Sarpy*, 160 Neb. 320, 70 N.W. 2d 382
  - b. Private lands: 77-1209.01 as amended by L.B. 68.
2. Personal property of motion picture distributors, sugar manufacturers and oil dealers: 77-1222 to 77-1224
3. Goods in warehouses: 77-1226; 77-1227; *United States Cold Storage Corporation v. Stolinski*, 168 Neb. 513
4. Nursery stock: 77-1228
5. Air transportation carriers: 77-1244 to 77-1250
6. Seed and grain: 77-1251 to 77-1261

*The Problem of Equalization of Taxation of Tangible Property  
Among Taxpayers Within the County*

Probably the most difficult principle of taxation to apply within the county is that imposed by Section 1, Article VIII of the Constitution of Nebraska: “. . . Taxes shall be levied by valuation uniformly and proportionally upon all tangible property . . .” County assessors are particularly apt to ignore this principle, probably because application is very difficult. This difficulty of application has been recognized by our Court which stated in *Collier v. County of Logan*, 169 Neb. 1, as follows:

. . . Substantial compliance with the requirements of equalization and uniformity . . . is all that is required, and such provisions are satisfied when designed and manifest departures from the rule are avoided.

Perhaps the best statement of our Court regarding this constitutional requirement is in *S. S. Kresge Co. v. Jensen*, 164 Neb. 833, where Judge Carter said:

Both the county board of equalization and the State Board of Equalization and Assessment, however, must give effect to the constitutional requirement that taxes must be levied uniformly and proportionately upon all tangible property. It is evident that actual value and a uniform and proportionate value may not always result in identical results. In dealing with such a situation arising in this State, the Supreme Court of the United States said: “This Court holds that the right of the taxpayer whose property alone is taxed at 100 per

cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340, 28 A.L.R. 979. It could well be added that the application of this principle to the findings of the county board of equalization makes it possible for the State Board of Equalization and Assessment to fairly equalize between counties without doing injustice to individual taxpayers.

This case is important from a procedural standpoint and will be covered later by another speaker.

From a practical standpoint, the tangible personal property taxpayer is not going to be equalized with other tangible property taxpayers within the county unless he makes some attempt to equalize himself when he completes his return. It is a rare or unheard-of occasion when a county board of equalization will, on its own motion, lower the valuation on an individual personal property return for the purpose of equalizing that property with other tangible real or personal property in the county.

In fact, Tax Commissioner Rule No. 402 states that a county board cannot lower a valuation without checking the books and property of the taxpayer and stating reasons for the reduction in the board's minutes.

It is often impossible for a taxpayer to equalize his valuation of tangible personal property with the tangible personal property of other taxpayers in the county because of the lack of facts and proof. However, there are statistics available which show the relationship of the assessed value of real estate to sale prices of real estate in a given county or area. The Nebraska Citizens Council compiles such statistics from the records of property transfers certified to the Tax Commissioner by the various county registers of deeds in accordance with Section 77-1320.

The Council reports that for Lancaster County in 1958, 427 properties were sold in arm's length transactions which had a total assessed valuation of \$1,628,000 and a total sale value of \$6,849,000. By dividing it can be determined that the assessed value of these properties is approximately twenty-four per cent of market or sales value. This means that the "actual value" of these properties



is only about sixty-nine per cent of sales value. In order to equalize taxation of tangible personal property with real property, which in the Lincoln School District constitutes seventy-eight per cent of the taxable property, approximately thirty-one per cent should be deducted from the true value of such tangible personal property to reach its "actual value." If this adjustment is not made, the owner of tangible personal property will pay approximately one-third more in taxes than the owner of real estate of the same true value.

If the taxpayer makes such an adjustment, he runs the risk of the assessor raising his valuations, in which event he will have to either concede or seek recourse from the board of equalization and possibly the District and Supreme Court. Whether proof of the nature of the statistics in the Nebraska Citizens Council report will be accepted by courts remains to be seen.

#### PENALTIES AND ENFORCEMENT UNDER NEBRASKA PERSONAL PROPERTY TAX LAWS

Edmund D. McEachen

Thank you, Mr. Chairman. Members of the Tax Section: Before I start I would like to correct a printing error in my outline at 3.C. on the second page. That should read Article III, Section 18. Also in considering 3.E., add *Fromkin v. State*, which is fully cited at 2.F.

A friend of mine, knowing that I am a rabid Nebraska football fan, asked if this was going to be a talk on football penalties. I will be talking about clipping of taxpayers, offensive and defensive holding of schedules, possible passing of a return, and I certainly am going to be talking about the possibility that the Legislature has been guilty of an offside or an illegal procedure.

L.B. 51, containing the emergency clause, was approved April 17, 1959, and contains the new provisions for taxation of personal property not reported by the taxpayer and the penalties for failure to so report. Briefly, it amends Section 77-318 concerning discovery by the county assessor of failure to report personal property by deceased persons, the failure having occurred during their lifetime.

Section 77-413 is also amended. That concerns discovery by the county assessor of such omissions by living persons.

Section 77-716, concerning discovery by the State Tax Commissioner of omissions of intangible property only, is also amended.

In amending Sections 77-318 and 77-413, L.B. 51 omits the provision formerly contained in those sections directing the county

assessor to assess for the three taxing periods preceding the taxing period in which the discovery is made, as to both deceased persons and living persons.

Therefore, there seems to be no question that the section eliminates any statute of limitations on the assessment of tax and penalty for failure to report in any year starting with the year 1959. There are some questions of interpretation concerning prior years which I shall discuss later.

L.B. 51 provides that upon discovery of failure to report intangibles during 1959 or any subsequent year, such intangibles are first taxed for such year just as if returned. Second, and I quote because the exact language is, I think, necessary, the specific provision is as follows: "To such tax shall be added a penalty computed by multiplying the actual value of such omitted or not returned property" — referring to intangibles — "by the total rate for tangible property as fixed at the time of the last preceding levy for the taxing districts in which such property should have been returned." There is a proviso that if the omission is found by the assessor, upon the approval of the tax commissioner, to be an innocent mistake and could not in any way be deemed to be the result of an intent to avoid the filing of a lawful return, then the penalty is reduced by one-half.

It is something like saying that if you pick up an overcoat in a restaurant intentionally they will cut off both your hands; but if they find that it was an omission and you mistook it for your own coat, then they just cut off one.

L.B. 51 provides that omitted tangibles are to be taxed precisely as though returned, to which tax there shall be added interest from the date that the tax would have been due had it been properly returned, and a penalty of fifty per cent of such tax and the interest.

The future of L.B. 51 unquestionably lies in the Supreme Court. There is no direct authority on the interpretation or validity of the bill. All we can do is suggest approaches.

I want to warn you. This outline of mine is really a natural child. It cites cases which I think bear on your thinking concerning the constitutionality and interpretation of this statute. The citations are not necessarily citations in support of the proposition stated in the outline. Some of these suggestions in the outline are in my opinion unsound. However, I have raised them and pointed out my thinking and the basis of my thinking because they are suggestions which are being considered by members of the Bar. I think when you are dealing with a new statute of such a revo-

lutionary effect, any idea properly developed may be of great assistance.

The first question of interpretation of L.B. 51 (and I have been told I am "all wet" on this — that there is no question about it) is what is meant by the words "total rate for tangible property" in computing the penalty for omissions of intangibles?

The pertinent wording of the statute is as follows: "A penalty computed by multiplying the actual value of such omitted or not returned property by the total rate for tangible property as fixed at the time of the last preceding levy for the taxing district in which such property should have been returned."

Does "rate" mean total levy in that taxing district or the rate at which tangibles are taxed in relation to actual value? There is no question about the interpretation made by the taxing authorities. They compute the penalty by multiplying the actual value of the intangible by the total levy for tangible property for the taxing district in which the property should have been returned. That is the formula stated in the Attorney General's Opinion No. 125, dated August 19, 1959, and I think that is the interpretation followed by all assessors at this time.

Under this interpretation, in Omaha, where we have a mill levy of approximately 64 mills, the penalty for omission of \$1,000 worth of Class B intangibles (corporate stocks for instance) would be \$4.00, and the penalty would be \$64.00, a total of \$68.00 for one year. Note that there is no mention of interest in the intangible portion of this tax statute. There is mention of interest in the tangible provisions.

This \$68.00 figure compares with a \$22.40 tax on tangible property properly reported in Douglas County and \$33.60 plus interest on tangible property which was omitted and subsequently found to be omitted by the assessor and subjected to the penalty.

However, it appears to me that there is an alternative interpretation of the word "rate" to mean rate at which tangibles are taxed in relation to the actual value of the tangibles. In other words, tangible property is taxed at a rate of the levy times thirty-five per cent of actual value. It can be argued that the words "rate" and "levy" being used in the same sentence of this section must have different meanings, and that had the Legislature meant "levy" when it used the word "rate," it would have used the word "levy." Against this argument I have cited in the outline a number of sections of the statute which refer to rate of taxation, not "rate" but "rate of taxation," and seem to equate rate of taxation with the total levy in the taxing district. Sections 77-201, 77-512, 77-514 and 77-1603 et seq., R. R. S. 1943.

However, we may be aided in this interpretation by a strict construction of the statute. As you know, where ambiguity exists, penal statutes are to be strictly construed and remedial statutes are to be liberally construed. 82 C. J. S., Statutes, Section 389, page 922 et seq.

For many purposes the Court has held that a taxing statute is not to be considered as penal and the penalty provisions of a taxing statute are not to be considered penal. In *School District v. Adams*, 147 Neb. 1060, 26 N.W. 2d 24, the Court held that the statute providing penalties for failure to report personal property is remedial, not penal, for the purpose of determining whether the penalties go to the school district under the constitutional provisions therefor, or follow the tax. However, the Court there indicated that as to the party who has to pay the penalty — the taxpayer — the penalty provisions are “penal.” I think from that it may be possible to obtain a strict construction of this statute. If the Court finds that there is an ambiguity in this word “rate,” then I think it is possible that the penalty will be interpreted to be the actual value times thirty-five per cent of the aggregate levy on tangibles, which is actually the rate at which tangible property is taxed in Nebraska.

The next question of interpretation concerns sections of the statutes not expressly affected by L.B. 51. L.B. 68, approved with the emergency clause February 26, 1959, before approval of L.B. 51, provided a penalty for failure to make out and deliver to the county assessor a personal property schedule. The statute provides in such an event the county assessor shall proceed to assess the articles of property and shall add to the value thereof fifty per cent.

The Attorney General has issued his opinion, dated August 19, 1959, that Section 77-1235 as amended by L.B. 68 was repealed by implication by L.B. 51. Thus the penalty provided in Section 77-1235 as so amended, under the Attorney General's opinion, would not be added to the penalties computed under the sections amended by L.B. 51, in the event of a failure to file a schedule. There might be some disagreement with this opinion. I am sure it is subject to some debate, at least, but I think we should count our blessings and let the subject die.

Incidentally, you will note that all of us have mentioned the Attorney General's opinions, and they are glorious things if they are in your favor. The assessors have great confidence in them and follow them, as they should, and they are of great assistance.

A good example is in the case of decedents' estates, where there is another question of interpretation. The examples are

found at 2.C of the outline: (a) Taxpayer dies before assessment date, inventory filed during assessment period, no schedule filed; (b) no executor or administrator named during assessment period; (c) taxpayer dies after assessment date but (1) before end of assessment period or (2) after assessment period.

In each of these cases the Attorney General, by his opinion which came out last Tuesday but is dated September 24, 1959, indicates that there is no penalty. He comes to the conclusion that Section 77-518 is the exclusive method of listing a decedent's personal property during the entire year in which he dies, that under Section 77-518 there is no penalty provision, and that no penalties are applicable in any of those cases.

Time is short, and without going into that Attorney General's opinion further and without further discussion of other construction problems suggested in the outline, we should get to the constitutionality of this statute.

At first blush it might appear that L.B. 51 is unconstitutional as a remission of taxes under Article VIII, Section 4, of the Nebraska Constitution, which prohibits any remission of taxes.

Simultaneously with the adoption of L.B. 51, the Legislature adopted Resolution 26, which reads in part as follows:

WHEREAS, it is the intent of the Legislature in the enactment of the said statutes to encourage full disclosure by taxpayers for tax years after 1958 and in no way to create a deterrent to such full disclosure by threat of penalties relative to tax years prior to 1958, and

1. That it is the expressed intention of this Legislature in enacting Legislative Bill 42 and Legislative Bill 51 to prescribe and impose penalties for willful omission of property from tax returns of taxpayers only prospectively and not retroactively, it being the considered opinion of this Legislature that it is to the best interests of the state and the residents and taxpayers thereof that every encouragement be given to the full and complete return of property by taxpayers for the tax year 1959 and thereafter without fear of imposition of penalties in connection with returns made prior to the year, 1959.

Based upon this Resolution, the repeal by L.B. 51 of the former Section 77-318 and 77-413 (the old provisions for assessment of tax for three years beyond the year of discovery of omission) and the prospective wording of L.B. 51, the Attorney General issued his Opinion No. 73 that no tax or penalties may be assessed for omission of tangibles or intangibles in years prior to 1959.

In *Tukey v. Douglas County*, 133 Neb. 732, 277 N.W. 57, the Court held that penalties and interest based on failure to report personal property for taxation are not part of the "tax" within the meaning of Article VIII, Section 4 of the Constitution, and may be remitted or released by the Legislature without violation of that constitutional provision. However, if L.B. 51 were held to remit the taxes properly payable on personal property not reported prior to 1959, the Act would appear to be unconstitutional under this section. The Court might possibly hold that L.B. 51 does abolish any power to assess taxes on property not returned in years prior to 1959, for those years (consistent with the Attorney General's Opinion), that this constituted a remission of taxes (inconsistent with the Attorney General's Opinion) and that the Act therefore is unconstitutional. However, it is my opinion that the Court would interpret its way out of holding the statute unconstitutional on this basis, by holding that taxes for such omissions are still collectable.

Article VIII, Section 1 of the Constitution provides for uniformity in taxation, and it has been suggested that L.B. 51 is unconstitutional under this provision because penalties for omissions of intangibles will vary in the various taxing districts. Both *Steinacher v. Swanson*, 131 Neb. 439, 268 N.W. 317, and *Tukey v. Douglas County*, 133 Neb. 732, 277 N.W. 57, hold that penalties and interest are not considered part of the tax for the purpose of Article VIII, Section 1. It is therefore extremely doubtful that the Act would be held unconstitutional under this Section.

However, lack of uniformity as required under Article III, Section 18, not Article VIII, Section 1, is the ground upon which this Act is quite likely to be held unconstitutional, in my opinion. Article III, Section 18 is concerned with special laws and is the provision of the Constitution under which statutes lacking uniform or proper classification are generally held unconstitutional.

Let's examine the effect of this statute on individuals in different taxing districts. Under Sections 77-702 and 703 intangibles are taxed at a uniform rate, not at a different levy in all districts, but at a uniform rate of 2.5 mills on Class A and 4 mills on Class B as applied to actual value. Under Section 77-704 the intangible tax is apportioned in fixed fractions to various taxing districts: 1/6 to state general fund, 1/6 to county general fund, 1/3 to city or village general fund, 1/3 to school district unless there is no city or village, in which case the school district receives 2/3 of the intangible tax.

Under *School District of Omaha v. Adams*, 147 Neb. 1060, 26 N.W. 2d 24, it is held that penalties and interest for failure to

return personal property follow the tax. They aren't divided proportionately among those taxing districts, the levy of which makes up the total levy. They will be distributed to the designated taxing districts under 77-704 in the fixed fractions provided.

The total levy in most of the City of Omaha for the year 1960 is roughly 64 mills. I am informed that levies in Lincoln, Kearney, Scottsbluff and other localities in the State are even higher, while levies in less populated areas are less than half of that levy. Let's assume that a Cherry County rancher is paying a 32 mill general levy compared to a 64 mill levy on an Omaha resident. The Omahan would pay a penalty of \$6,400.00 for omission of \$100,000.00 worth of intangibles in his 1959 schedule. The Cherry County rancher would pay a penalty of \$3,200.00 for his omission of precisely the same intangibles. Because the penalty is not divided proportionately among all of the taxing districts whose levies make up the general levy on tangibles, the Omaha resident would pay twice as much penalty to the State. Where school districts overlap two counties or, as is the case of Omaha, overlap part of the City and part of the County, persons living in the same school district would pay different amounts of penalty to the State, the County and the school district for the same omissions. In fact it would be mere happenstance if the penalty for failure to report intangibles, under L.B. 51, is the same in any two school districts in the State. This could happen only if the aggregate general levy in two different school districts by coincidence happened to be the same. Thus, there is slight chance that residents of any two school districts in the State would pay the same amount of penalty to the State General Fund or the County, for omission of the same stock or other intangible.

In *Steinacher v. Swanson*, 131 Neb. 439, 268 N.W. 317, the Court held that a statute waiving penalties for nonpayment of taxes was valid against attack under the uniformity of taxation provision of the Constitution, but the Court held the same Act invalid under Article III, Section 18 of the Constitution which prohibits special laws. The court said the general rule is:

A law which is generally uniform throughout the state operating alike upon all persons and localities of a class or who are brought within the relations and circumstances provided for is not objectionable as wanting uniformity of operation. A classification must be reasonable and not arbitrary.

In *State v. Hall*, 129 Neb. 669, 262 N.W. 835, it is held that a legislature may make a reasonable classification but it must be based upon the purposes of the Act and must be based on actual circumstances affecting the situation. It is difficult to see how

a difference in place of residence is a logical classification or a classification pursuant to the purposes of the Act, which justifies a difference in the rate of penalty for failure to report the same intangibles. It therefore would appear quite likely that L.B. 51 will be held unconstitutional under Article III, Section 18.

My time is up. I will not have time to discuss the possibility that L.B. 51 may be unconstitutional under Article I, Section 1, the equal rights clause, or Article I, Section 3, the due process clause, although lack of provisions for notice and hearing make the due process attack quite interesting. The citations in the outline should be sufficient to indicate why I feel that attack of this statute on the basis of excessive fines and cruel and unusual punishment under Article I, Section 9, or Article I, Section 15, requiring penalties proportionate to the nature of the offense, would not be successful. Suffice it to say that in my opinion attack of the constitutionality of the statute under Article III, Section 18, the special laws provision, is most likely to be successful.

Time does not permit discussion of some of the other interpretive problems suggested in the outline. One more problem should be suggested, however: If the portion of L.B. 51 dealing with intangibles is invalid, is the portion of this Act concerning tangibles still effective? Thank you.

## REMEDIAL PROCEDURES TO PROTECT TAXPAYERS

John C. Burke

For the purposes of this discussion it will be assumed that the county assessor has not concurred in the finely spun theories advanced by the taxpayer's lawyer, with the result that the taxpayer's property is assessed in excess of its actual value or is not fairly equalized with similar property in the county.

### *Illegal Assessment*

Before discussing the subject of "excessive" assessments, I would like to touch on the subject of "illegal" assessments and the remedies available to the taxpayer.

It is true that the terms of 77-1727, R. R. S. Neb. 1943, restrict the use of the remedy of injunction against the collection of taxes, but the law seems to be well settled that injunctive relief against the enforcement of a tax will be granted where the tax is levied or assessed for an illegal or unauthorized purpose. *Best & Co. v. City of Omaha*, 149 Neb. 868, 33 N.W.2d 150; *Crane v. Douglas*



*County*, 112 Neb. 365, 199 N.W. 791; and *Brown v. Douglas County*, 98 Neb. 299.

Further, it is now settled law in this State that the Declaratory Judgment Act is applicable to questions involving state taxation where a taxpayer has an actual justiciable controversy with justiciable issues affecting his legal rights. *Miller v. Stolinski*, 149 Neb. 679, 32 N.W.2d 199; *Moeller, McPherrin & Judd v. Smith*, 127 Neb. 424, 255 N. W. 551; 54 A. L. R. 2d 992.

#### *Excessive Assessment*

A taxpayer seeking relief against an excessive assessment, as distinguished from an illegal assessment, must request a hearing before the County Board of Equalization. The hearing before the Board of Equalization is a quasi-judicial proceeding.

In the case of *Morgan v. United States*, 304 U. S. 1, Mr. Chief Justice Hughes set down the requirements of due process as applied to proceedings before a quasi-judicial tribunal. He stated:

The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one.

In concluding his opinion he remarked:

The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.

It seems to me that many lawyers consider the hearing before the County Board of Equalization only as a "necessary evil" in order to perfect their appeal to the District Court. It is my opinion that this is a serious mistake. If the case is worth appealing to the District Court in the event of an adverse ruling, it is worth the effort and expense of calling competent witnesses to testify as to value and having a court reporter make a complete record of the proceeding. If the Board then acts arbitrarily on the evidence presented, the taxpayer is in a much better position on

appeal. Otherwise, when it comes to proving in District Court that the Assessor or the Board acted in an arbitrary manner and disregarded the evidence presented, the taxpayer is confronted with presumptions which are difficult to rebut.

*Procedure before Board of Equalization*

L. B. 55 amended 77-1502, R. R. S. Neb. 1943, as amended by Section 25, L. B. 48. L. B. 55 was approved April 10, 1959, and controls over L. B. 48 which was approved February 26, 1959.

Section 77-1502 now provides that the Board of Equalization shall hold a session of not less than three nor more than sixty days commencing April 1 of each year and ending on May 30. Heretofore the Board of Equalization was required to hold a session of not less than three nor more than forty days commencing on the third Monday in May.

Written protests, in triplicate, may be filed with the Board from April 1 to May 10, but a written statement of the reasons why the requested reduction in assessment should be made must be attached to each copy of the protest or the protest will be automatically dismissed. Therefore, although the period within which the Board may be in session has been increased by twenty days, the period within which a protest may be filed remains the same. Now, if the Board receives protests in the dying days of its session, it will have twenty days to study the protests before adjournment.

Section 77-1510, as amended by L. B. 55, now provides that appeals may be taken to the District Court from any action of the Board of Equalization within forty-five days after adjournment of the Board in the same manner as appeals are now taken from the action of the County Board in the allowance or disallowance of claims against the county. Heretofore, an appeal could be taken only "within twenty (20) days after entry of such action on the records of the county by the Court Clerk . . ." This change allows the busy lawyer ample time to lodge his appeal.

Inasmuch as the manner of taking an appeal to the District Court is the same as appeals taken from the action of the County Board in the allowance of claims against the county, it is apparent that three steps are necessary to perfect your appeal:

1. Serve notice of appeal and bond on the County Clerk within forty-five days after the *adjournment* of the Board. If the party appealing the action of the Board has only an indirect interest in the matter, he must serve notice of appeal and bond on the County Clerk within ten days after the Board adjourns. (23-136)

2. Next, a transcript of the proceedings must be filed with the Clerk of the District Court within thirty days after the notice of appeal and bond have been served on the County Clerk. *Nebraska Conf. Ass'n of Seventh Day Adventists v. County of Hall*, 166 Neb. 588, 90 N. W. 2d 50, 23-135, 23-137, 27-1303.

3. Finally, a petition must be filed with the Clerk of the District Court within fifty days of filing the notice of appeal and bond. *City of Seward v. Gruntarod*, 158 Neb. 143, 62 N. W. 2d 537; *Jensen v. Omaha Public Power District*, 159 Neb. 277, 66 N. W. 2d 591; 27-1306.

In addition to the right of appeal granted by the Legislature, it appears that the remedy of petition in error would also be available to the taxpayer. *Webster v. City of Lincoln*, 50 Neb. 1, 69 N. W. 394; *Waltham v. Mullally*, 27 Neb. 483; 25-1901.

### *Judicial Review*

Under the provisions of 77-1511 as amended by L. B. 55, the District Court shall hear appeals as in equity and without a jury. The cause must be tried on the same issues that were raised before the Board of Equalization. *K. K. Appliance Co. v. Bd. of Tax Eq. of Phelps County*, 165 Neb. 547, 86 N. W. 2d 381; *Reimers v. Merrick County*, 82 Neb. 639, 118 N. W. 113. For example, you cannot raise a constitutional question for the first time in District Court. In view of the fact that the taxpayer must now attach a written statement of the reasons why the requested reduction in assessment should be made, it is important that he list *all* of the applicable reasons present, such as improper equalization, assessment in excess of actual value and any relevant constitutional issues.

Section 77-1511, as amended by L. B. 55, provides that the action of the Board must be affirmed by the District Court unless evidence at the trial establishes that the Board action was "unreasonable or arbitrary." It appears that this amendment is merely declaratory of the case law on the subject as pronounced by the Supreme Court.

For example, there is a rebuttable presumption that the Board faithfully performed its duties and acted upon sufficient evidence in reaching its decision. *Weller v. Valley County*, 141 Neb. 69, 2 N. W. 2d 606; *Ahern v. Board of Equalization of Richardson County*, 160 Neb. 709, 71 N. W. 2d 307.

This presumption does not obtain if the Assessor has not personally inspected the property; nevertheless, the burden is still on the taxpayer to prove that the assessment is excessive. *Adams*

*v. Bd. of Eq. of Hamilton County*, 168 Neb. 286, 95 N. W. 2d 627; *Lucas v. Board of Equalization*, 165 Neb. 315, 85 N. W. 2d 638.

To meet his burden of proof, the taxpayer must prove that the assessment is grossly excessive or is the result of arbitrary or unlawful action. A mere showing of an error in judgment does not meet the burden of proof. It is for this reason that I earlier emphasized the need for a good record before the Board of Equalization. *State, ex rel Bee Building Co. v. Savage*, 65 Neb. 714, 91 N. W. 716; *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N. W. 2d 455.

A review of the most recent decisions of our Supreme Court indicates that the taxpayer has been more successful in attacking the arbitrary action of the County Assessor or the Board of Equalization than he has been in attempting to prove improper equalization.

In the following five cases the taxpayer was granted some relief against an excessive assessment:

*Aurora Hotel v. Bd. of Equalization*, 140 Neb. 511, 300 N. W. 419. (Taxpayer established *prima facie* case; county introduced no proof of value.)

*Matzke v. Board of Equalization*, 167 Neb. 875, 95 N. W. 2d 61. (Board of Equalization used arbitrary depreciation formula.)

*Omaha Paxton Hotel Co. v. Board of Equalization*, 167 Neb. 231, 92 N. W. 2d 537. (Assessor never inspected property and failed to conform to formula provided by 77-112.)

*Adams v. Board of Equalization*, 168 Neb. 286, 95 N. W. 2d 627. (Assessor used replacement cost less arbitrary six per cent depreciation.)

*K. K. Appliance Co. v. Board of Equalization*, 165 Neb. 547, 86 N. W. 2d 381. (Yardstick employed by assessor purely arbitrary and lacked vital elements for determining actual value.)

In *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N. W. 2d 455, the taxpayers in an effort to support their claims of discrimination and improper equalization, introduced valuations of seventeen "comparable" properties. The Court, in holding that other evidence produced at the trial refuted the accuracy of the valuations placed on the "comparables" by the taxpayer, referred to *Daniels v. Board of Review*, 243 Iowa 405, 52 N. W. 2d 1, in which the Iowa court stated:

On the claim of inequality of assessment the taxpayer's burden is not met by testimony that his property is assessed at a

higher proportion of its actual value than *some* other property. The claim of inequality requires proof of assessments of similar property. And again this testimony must rise higher than a mere difference of opinion between the witnesses as to values. In short, it must be such as to show the assessor and board did not do their duty.

In *Newman v. County of Dawson*, 167 Neb. 666, 94 N. W. 2d 47, the taxpayer introduced evidence of fifteen "comparables" to prove inequality of assessments. The Court held that several of the properties were not similar and none of them was shown to have a known or fixed value.

Inasmuch as no two pieces of property are identical, no positive rule can be laid down to fix definitely the degree of similarity required to prove inequality of assessments. Whether the properties are sufficiently similar to be used in comparing assessments must necessarily rest in the sound discretion of the trial court.

### *Evidence*

There are several basic points of evidence with which the lawyer should be familiar when he is preparing his case for trial.  
*Inadmissible Evidence*

A decree of court fixing value of real estate on a previous assessment not competent evidence in subsequent suit affecting assessment values.

*Devore v. Board of Equalization*, 144 Neb. 351, 13 N. W. 2d 451. Alleged offer of a particular price as tending to show market value is improper.

*Sump v. Omaha Public Power District*, 168 Neb. 120, 95 N. W. 2d 209.

A twenty-year average of farm sales in county is too remote to be competent evidence of actual value of farm lands.

*Laflin v. State Board of Equalization and Assessment*, 156 Neb. 427, 56 N. W. 2d 469.

### *Admissible Evidence*

Sales of comparable properties where sufficient foundation laid.

*Lynn v. City of Omaha*, 153 Neb. 193, 43 N. W. 2d 527; *Papke v. City of Omaha*, 152 Neb. 491, 41 N. W. 2d 751.

Adaptable use of property may be shown.

*Mendelman v. Stanton-Pilger Drainage District*, 155 Neb. 518, 52 N. W. 2d 328.

Sale price of property admissible but is not conclusive of actual value of property.

*Collier v. County of Logan*, 169 Neb. 1, 97 N. W. 2d 879.

*State Board of Equalization*

The function of the State Board of Equalization and Assessment was assigned to me for discussion also, but I note that this subject was covered in an excellent paper given by Clarence A. H. Meyer, Deputy Attorney General, and may be found in 34 N. L. R. 332. It would serve no useful purpose to cover this matter again.

However, a potential pitfall is present each year as a result of the powers of the State Board of Equalization and Assessment, and I feel that this problem should be brought to your attention.

This potential hazard is best illustrated by examining the facts in the cases of *First Nat'l Bank v. Weld County*, 264 U.S. 450, and *S. S. Kresge Co. v. Jensen*, 164 Neb. 833, 83 N. W. 2d 569.

In the Weld County case the taxpayer was required to make a list of its shares, stating their market value, and of its shareholders for the information of the County Assessor, who was directed to assess such shares for taxation in all respects the same as similar property belonging to other corporations and individuals.

The taxpayer delivered to the County Assessor the statements required by law, and the Assessor fixed the value of its shares at their full cash value, but fixed the assessed value of the property of the remaining taxpayers in the county at a lower percentage of actual value for one of the years in question. Subsequently the State Board of Equalization directed a sixty-three per cent raise over the county as a whole. As a result the bank's assets were assessed at an amount sixty-three per cent in excess of their value.

In the Kresge case the taxpayer returned its stock at substantially current cash values and its furniture and fixtures at a flat figure of one-half the original cost. It appeared that Kresge's property was returned at a valuation which was close to actual value. Subsequently the State Board of Equalization ordered a forty per cent increase in the value which the Board of Equalization had placed on business personal property reported in Douglas County. As a result, Kresge's business personal property was assessed at an amount approximately forty per cent in excess of its actual value.

In each of the cases referred to above, the personal property returns were not increased by the County Assessor nor by the

County Board of Equalization. Consequently no complaint was made by the taxpayer to the valuation of its property by the Assessor, and a protest was not filed with the Board of Equalization. The taxpayer had no reason to appeal from the action of the Board of Equalization. After the raises ordered by the State Board were placed on the books, the taxpayers then brought actions attacking the validity of the final assessments.

Both courts held that the taxpayers were not entitled to relief because they failed to exercise their right to a hearing before the County Board of Equalization regarding its individual property valuation. Under the authority of the Supreme Court's holding in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, the taxpayers should have filed a protest with the County Board of Equalization and had their assessments reduced to the percentage of that value at which others were taxed.

It has been argued that the insurmountable difficulty of obtaining sufficient evidence that the taxpayer's property was assessed at a higher percentage of its actual value than the property of other county taxpayers makes its proof wholly impractical, if not altogether impossible.

It seems to me that in the two cases referred to above, the taxpayers ended up with their property valued in excess of its actual value without a practical remedy.

In order to protect your clients against this hazard, it will be necessary for you to file a protest with the County Board contending that your client's property has not been fairly and properly equalized when considered in connection with the assessment of all other property in the county. Then it will be necessary to perfect an appeal to the District Court and stay the trial until after the State Board of Equalization and Assessment adjourns. If the State Board does not order a raise for your county, you may then dismiss your protective appeal. If the State Board orders a raise for your county, you will then be in a position to ask the court to reduce your assessment in an amount equal to raise directed by the State Board.

HOUSE OF DELEGATES  
FRIDAY AFTERNOON SESSION

October 9, 1959

The Third Session of the House of Delegates was called to order at 4:10 o'clock by Chairman Richard E. Hunter.

CHAIRMAN HUNTER: I call to order the Third Session of the House of Delegates, and the first item of business is the report of the Section on Real Estate, Probate and Trust Law by Fred Richards.

REPORT OF REAL ESTATE, PROBATE AND  
TRUST LAW SECTION

Franklin L. Pierce

Mr. Chairman, I am a substitute for Mr. Richards. As substitute for Fred Richards who claims that this is my job, I report for the Real Property, Probate and Trust Section that the new members elected to the Executive Committee will consist of George Skultety and Albert Reddish. The officers elected are Albert Reddish, Secretary; George Skultety, Vice Chairman; and myself as Chairman.

The reports of the committees in the Section were routine, except for two. The Title Standards Committee has a report which requires your consideration, and then the Committee on Conveyancing.

The report of the Title Standards Committee is restricted insofar as consideration of this body is concerned to an addition of a Comment to Standard No. 52, which is the standard to the effect that a quit claim deed may constitute a title transaction for purposes of the marketable title act. The additional Comment as approved by the Section, as reported by the Committee, is:

However, in *Smith v. Berberich*, 168 Neb. 142, 95 N. W. 2d 325, the particular Deed conveying all "my" interest, where the record showed that the Grantor owned only a 1/10 interest, was held to be insufficient within the meaning of the Act. The effect of this case is that the document must purport to convey the land itself, and not merely the Grantor's interest therein. This construction can arise by covenant, Warranty, recital in the Deed itself or even by implication.

I submit for your consideration that addition to the Comment in Standard No. 52.



SECRETARY TURNER: There were no additional Standards adopted?

MR. PIERCE: No. I move the adoption of this additional Comment.

HERMAN GINSBURG: I second the motion.

CHAIRMAN HUNTER: Gentlemen, you have heard the motion which is for the adoption of the Comment to Title Standard 52. Is there any discussion? All in favor of the motion signify by saying "aye"; opposed, "no." The motion is adopted, and the Comment will be added to the Title Standard.

MR. PIERCE: The second matter pertains to the work of the Committee for improvement of conveyancing, of which George Skultety is Chairman, and the forms of deeds.

The Section approved of the forms which are being distributed here, as prepared by the Committee, all but the form on Special Warranty Deed, with the recommendation that such forms be approved as Nebraska State Bar Association Forms. The Section did not undertake to determine how and under what conditions forms should be promulgated.

I move, first, the approval of these forms as submitted here, with the exception of the Special Warranty Deed form, to be forms adopted by the Nebraska State Bar Association.

CHAIRMAN HUNTER: Is there any discussion? If not, all in favor say . . . excuse me. Mr. Ellick!

ALFRED G. ELLICK, Omaha: The question has been asked me by someone else here: Are the forms going to be copyrighted?

MR. PIERCE: That is the next question.

CHAIRMAN HUNTER: Is there any further discussion? If not, all in favor of the motion say "aye"; opposed, "no." The motion is carried.

MR. PIERCE: I am a little hesitant as to how to put this problem, but thus far there has been no unanimity of opinion on how to use them. It has been concluded that it would be the function and the duty and responsibility of this body to determine how they should be used in the interest of the Bar Association members as well as of the public. I might say this: You have on one hand to let the public printers have them, saying they are approved by the Bar; the other would be to consider some method of copyrighting, or in any case limit them to use of members of the Association.

QUESTION: Wasn't there another suggestion, Mr. Pierce, to arrange with the printers who print the Nebraska forms to give

the Association credit by calling them "Nebraska State Bar Approved Forms"?

CHAIRMAN HUNTER: I recall that this matter was discussed, but apparently no final action was taken by the Executive Council when the forms were first proposed. Apparently nothing has been done about it, but I remember Mr. Richards having appeared.

MR. GINSBURG: This may be taken in the wrong way, but it has some merit. Several members of the Real Estate Section told me that what we are doing is just helping the real estate men. Now they can use these forms and tell their clients that these are the forms adopted by the Nebraska State Bar Association, and that's it. Those forms, even though we have taken out a lot of excess verbiage, still require the skilled hand of a lawyer in knowing how to use them. I can see problems that can arise in the indiscriminate distribution throughout the State of forms headed "Approved by the Nebraska State Bar Association" to be used by the public generally.

Since it is a matter that there is no unanimity of opinion on and a matter that would require considerable thought, I move, Mr. Chairman, that the matter of the use to which the forms are to be put and their adoption be referred to the Executive Council for decision.

C. RUSSELL MATTSON, Lincoln: I second the motion.

CHAIRMAN HUNTER: There is a motion and a second that the use of the forms, the manner in which they are printed, be referred to the Executive Council. Is there any further discussion on the matter?

QUESTION: Does that include the determination of whether they should be copyrighted?

MR. GINSBURG: That is my intent.

CHAIRMAN HUNTER: I would assume that is included in his motion. All in favor say "aye"; opposed, "no." The motion is carried.

MR. PIERCE: Mr. Chairman, that completes my report. May I be excused?

CHAIRMAN HUNTER: The next item is a report on the Section on Insurance Law, Al Luebs.

**REPORT OF INSURANCE LAW SECTION****A. J. Luebs**

Mr. Chairman and members of the House of Delegates: The Section on Insurance Law met this morning in the Pax Room. The Committee was very gratified and pleased with the attendance for the entire program. We used all our seating facilities and had many standing in the back of the room.

The first part of the program was a panel discussion on Workmen's Compensation Law. This was under the direction of the Honorable Albert Arms, Presiding Judge of the Nebraska Workmen's Compensation Court, who acted as moderator. Judge Arms spoke first on "Rules of Procedure, Rights and Remedies in Compensation Cases."

He then called on Mr. A. W. Storms of Holdrege, whose topic was "Preparation and Presentation of Evidence in Compensation Cases."

The third member of the panel was Mr. Kenneth Elson of Grand Island. He discussed "Doctrines and Definitions Followed by Nebraska's Compensation Court."

This was followed by questions from the floor. Credit for this program goes to the members of the Buffalo County Bar. The program was first developed and presented at the annual meeting of the Central Nebraska Bar Association in Kearney in August, and we felt that a presentation of that to the entire Bar would be beneficial, and the results have been gratifying.

The second part of the program was a comprehensive and a well-developed presentation by Mr. John E. Dougherty of New York on "Evolution of Gross Negligence Law in Nebraska."

The new Section members elected were Dan Stubbs of Alliance and Fred K. Stiner of Lincoln. Robert Fraser of Omaha was elected Chairman, and T. J. Fraizer of Lincoln, Secretary for the Committee.

CHAIRMAN HUNTER: The report of the Section will be placed on file. The next item is a report of the Section on Taxation, John Mason, Chairman.

**REPORT OF TAXATION SECTION****John C. Mason**

Mr. Chairman, the Section on Taxation conducted the annual Tax Institute from December 8 through 13, 1958. The tax Institute was devoted to subjects of estate planning as affected by Federal

taxation. The Institute was held in the cities of Alliance, Hastings and Omaha. There was a total attendance of 355, which was considerably greater than the year before. We felt that there was sufficient interest in this Institute that it is our anticipation that it will be continued again later in this year of 1959.

The lawyers who participated on the Tax Institute last December were Larry Clinton, Fred Richards, Hale McCown, Jim Ackerman, James J. Fitzgerald, Jr., Flavel Wright and John North. We are very appreciative of their taking their time to present the subjects which they did present.

During the past session of the Legislature the Taxation Section made an attempt to review all of the legislative bills which were introduced which bore on state taxation. In reviewing these bills we called upon some help from some of the younger lawyers in the State and we wish to acknowledge the help of Charles Oldfather, John Gradwohl, Robert Johnson, Pat Mullin, Robert Skochdopole and Donald Erickson, who helped us in that work.

We ran into the same problems which Mr. Ginsburg has previously reported to the House with respect to the difficulty of effectively studying legislation and appearing before the Legislature in time to meet the committee deadlines and be of any usefulness. We do not feel that our efforts were very successful, but we do feel that they could be successful if we organized it more intelligently as a result of the experience which we have had this past year. It is our suggestion that at the next session of the Legislature the Committee, based on the experience we have had, should do this work again; and in addition perhaps it will be possible for us to do some review of the state property tax laws and suggest some corrective or remedial legislation which might be helpful to the Legislature. That is a subject for future action, of course, but I report it for your information.

This afternoon we conducted our Section meeting and devoted the afternoon to a discussion of Nebraska state property taxes. We are indebted to these lawyers who participated in the discussion and gave papers: John Burke, Charles Oldfather, Edmund McEachen, Homer Hamilton and Richard Hunter.

The meeting was very well attended, and we certainly are pleased that these five lawyers would take the time that they took to prepare these interesting papers.

We had an election of two new members of the Executive Committee, and I report that Warren K. Dalton of Lincoln and Frank J. Mattoon of Sidney were the two new members elected

to the Executive Committee of this Section. In view of the fact that we adjourned just prior to this meeting, the Section has not yet had an opportunity to elect officers, and I cannot report the new officers to you at this time.

I think that concludes our report, Mr. Hunter.

CHAIRMAN HUNTER: Thank you, John. The report of the Tax Section will be received and placed on file.

Next is the report of the Junior Bar Section, Ed Cook, III.

SECRETARY TURNER: They have held their meeting during the Institute in Lincoln and have already selected their officers.

CHAIRMAN HUNTER: Mr. Moodie is going to make the report.

### REPORT OF JUNIOR BAR SECTION

Robert D. Moodie

In the absence of Ed Cook, I have been asked to give the report of the Junior Bar Section.

The Junior Bar Section of the Nebraska State Bar Association this year held its second annual seminar sponsored jointly with the University of Nebraska College of Law. The program was held September 18 and 19 at the University of Nebraska campus on the subject of "Nebraska Probate Practice." The reception given it by the Bar was notable. Approximately 350 lawyers from ninety communities attended this meeting.

Pursuant to a change in the Bylaws enacted by the Section and approved by the House of Delegates one year ago, the Junior Bar Section's annual meeting was held at the time of the seminar in Lincoln. The Section resolved to affiliate with the National Bar Conference of the American Bar Association.

Al Blessing of Ord and Nick Caporale of Omaha were elected to three-year terms on the Executive Committee. At a meeting of the Executive Committee, Robert E. Johnson, Jr., of Lincoln was elected Chairman, and Robert D. Moodie of West Point Vice-Chairman. Al Blessing was elected Secretary.

CHAIRMAN HUNTER: Thank you, Bob. The report will be filed.

The next item is the report of the Section on Practice and Procedure, Dave Dow.

**REPORT OF PRACTICE AND PROCEDURE SECTION****David Dow**

The report is short. We held our regular meeting at the morning session on October 9, and the meeting was well attended. I believe the information was accepted by the members present.

The election resulted in the election to the Executive Committee of Robert A. Barlow and Charles Dougherty. No meeting of the Committee has taken place, so the new officers cannot be referred to at this time.

CHAIRMAN HUNTER: Thank you, Mr. Dow. The report will be filed.

The report of the Section on Municipal and Public Corporations, Anne Carstens.

**REPORT OF MUNICIPAL AND PUBLIC CORPORATIONS SECTION****Warren C. Johnson**

Mr. Chairman, I am reporting for Anne Carstens.

This Section held its session yesterday afternoon. Warren C. Johnson spoke on "Investment of City, Village and School District Funds."

There was a change in the program due to the unavoidable absence of one of the speakers. Mr. Harold Salter of the Department of Roads and Irrigation spoke on "Joint Jurisdiction of the State and Cities over Highways Located within Cities and Villages." This presentation included an interesting and informative discussion of the subject with audience participation.

Engineers McMeekin and Polk of the State Department of Roads were present and presented that Department's views and policies in this regard. The Section is deeply indebted to Messrs. Salter, McMeekin and Polk for their excellent presentation.

Many members of the Section expressed a desire that future sessions of the newly reorganized Section, which we understand is to be known as the Section on Corporation Law, be at least partially devoted to municipal law subjects.

The new Section Executive Committee members elected are Ward Minor of Kearney and Bert Overcash of Lincoln. Election of officers will be held at a later date.

CHAIRMAN HUNTER: Thank you.

That concludes the reports of the various Sections. Is there any other Section or Committee of the Association that has any formal matter which they wish to present to the House?

Is there any other unfinished business?

Let me say, gentlemen, that I sincerely want to tell you it has been a distinct pleasure to be in this House for the last four years and to have been your Chairman for the last two. You have been very courteous and kind to me. Thank you very much.

We are adjourned.

[The House of Delegates adjourned at 4:40 o'clock.]

#### GENERAL ASSEMBLY

The General Assembly was called to order immediately by President Tye, who asked if there was any unfinished business to come before the General Assembly. Since the House of Delegates had handled all matters of business, President Tye expressed his appreciation for the cooperation given him by the Bar during his term as President.

There being no further business to come before the Assembly, the Sixtieth Annual Convention of the Nebraska State Bar Association adjourned sine die at 4:45 o'clock.

## NEBRASKA STATE BAR ASSOCIATION

## Statement of Cash Receipts and Disbursements

Year ended September 15, 1959

**Receipts:**

Active members' dues .....	\$38,730.00
Inactive members' dues .....	5,175.00
Reinstatements .....	124.00
Reimbursement for 1958 American Bar Association meeting expenses .....	268.00
Refund of advance to group life insurance plan .....	1,000.00
Reimbursement for football tickets, 1958 season .....	70.00
Interest .....	155.40
Officers' loan .....	1,934.00
	<hr/>
	47,456.40

**Disbursements:**

Salaries and payroll taxes .....	\$ 6,961.91
Printing and stationery .....	648.22
Office supplies and expense .....	235.16
Telephone and telegraph .....	319.35
Postage and express .....	1,007.65
Directory .....	1,255.94
Officers' expenses .....	2,738.41
Executive council .....	706.64
Judicial council .....	762.66
Nebraska Law Review .....	8,924.33
Nebraska State Bar Association Journal ... ..	\$1,890.85
Less receipts for advertising .....	743.00
	<hr/>
Public service .....	7,478.62
Less receipts for pamphlets and racks .....	338.10
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American Bar Association and House of Delegates meetings .....	4,494.61
Annual meeting .....	7,080.13
Less reimbursements and exhibit space .....	1,834.00
	<hr/>
	5,246.13



## NEBRASKA STATE BAR ASSOCIATION

Rocky Mountain Mineral Law Institute ____	268.93	
Committee on inquiry .....	1,041.57	
Institute on new legislation .....	1,082.34	
Committee on cooperation		
with American Law Institute .....	170.01	
Institute on personal damages .....	66.50	
Advisory committee .....	678.58	
Title standards committee .....	328.73	
Real estate, probate and trust law section ____	40.90	
Committee on world peace .....	50.00	
Aid to local bars .....	392.60	
Committee on crime and juvenile		
delinquency prevention .....	34.00	
Tax institute .....	3,317.49	
State ex rel Nebraska State		
Bar Association, Jensen .....	1,241.75	
Equipment purchased .....	36.09	
Auditing .....	189.15	
Insurance .....	76.39	
Membership fees .....	80.00	
Miscellaneous .....	44.45	
Maintenance expense .....	523.41	
Suspension letters .....	102.40	51,354.67
		<hr/>
Excess of disbursements over receipts .....	3,898.27	
Cash balance at beginning of year .....	5,937.47	
		<hr/>
Cash balance at end of year deposited		
in the Continental National Bank of Lincoln .....	\$ 2,039.20	
		<hr/>

Note: The Association owned United States savings bonds, Series H and K, with a cost and maturity value of \$6,000.00 on September 15, 1959.

ROLL OF PRESIDENTS

1. 1900	*Eleazer Wakely	Omaha	31. 1930	*J. L. Cleary	Grand Island
2. 1901	*William D. McHugh	Omaha	32. 1931	*Fred Shepherd	Lincoln
3. 1902	*Samuel P. Davidson	Tecumseh	33. 1932	*Ben S. Baker	Omaha
4. 1903	*John L. Webster	Omaha	34. 1933	*J. J. Thomas	Seward
5. 1904	*C. B. Letton	Fairbury	35. 1934	*John J. Ledwith	Lincoln
6. 1905	*Ralph W. Breckenridge	Omaha	36. 1935	*L. E. Day	Omaha
7. 1906	*E. C. Calkins	Kearney	37. 1936	*J. G. Mothersead	Scottsbluff
8. 1907	*T. J. Mahoney	Omaha	38. 1937	*C. J. Campbell	Lincoln
9. 1908	*C. C. Flansburg	Lincoln	39. 1938	Harvey M. Johnsen	Omaha
10. 1909	*Francis A. Brogan	Omaha	40. 1939	*James M. Lanigan	Greeley
11. 1910	*Charles G. Ryan	Grand Island	41. 1940	E. B. Chappell	Lincoln
12. 1911	*Benjamin F. Good	Lincoln	42. 1941	Raymond G. Young	Omaha
13. 1912	*William A. Redick	Omaha	43. 1942	Paul E. Boslaugh	Hastings
14. 1913	*John J. Halligan	North Platte	44. 1943	*Robert R. Moodie	West Point
15. 1914	*H. H. Wilson	Lincoln	45. 1944	George L. DeLacy	Omaha
16. 1915	*C. J. Smyth	Omaha	46. 1945	Virgil Falloon	Falls City
17. 1916	*John N. Dryden	Kearney	47. 1946	Paul F. Good	Lincoln
18. 1917	*F. M. Hall	Lincoln	48. 1947	Joseph T. Votava	Omaha
19. 1918	*Arthur C. Wakely	Omaha	49. 1948	Robert H. Beatty	North Platte
20. 1919	*R. E. Evans	Dakota City	50. 1949	*Abel V. Shotwell	Omaha
21. 1920	*W. M. Morning	Lincoln	51. 1950	Earl J. Moyer	Madison
22. 1921	*A. G. Ellick	Omaha	52. 1951	Clarence A. Davis	Lincoln
23. 1922	*George F. Corcoran	York	53. 1952	George B. Hastings	Grant
24. 1923	*Edward P. Holmes	Lincoln	54. 1953	Laurens Williams	Omaha
25. 1924	*Fred A. Wright	Omaha	55. 1954	J. D. Cronin	O'Neill
26. 1925	*Paul Jessen	Nebraska City	56. 1955	John J. Wilson	Lincoln
27. 1926	*E. E. Good	Wahoo	57. 1956	Wilber S. Aten	Holdrege
28. 1927	*F. S. Berry	Wayne	58. 1957	Barton H. Kuhns	Omaha
29. 1928	*Robert W. Devoe	Lincoln	59. 1958	Paul L. Martin	Sidney
30. 1929	Anan Raymond	Omaha	60. 1959	Joseph C. Tye	Kearney

ROLL OF SECRETARIES

1. 1900-06	Roscoe Pound	Lincoln	5. 1920-27	Anan Raymond	Omaha
2. 1907-08	Geo. P. Costigan, Jr.	Lincoln	6. 1928-36	Harvey Johnsen	Omaha
3. 1909	W. G. Hastings	Lincoln	7. 1937-	George H. Turner	Lincoln
4. 1910-19	A. G. Ellick	Omaha			

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			

ROLL OF EXECUTIVE COUNCIL

1. 1900-04	R. W. Breckenridge	Omaha	28. 1919-22	Geo. F. Corcoran	York
2. 1900-08	Andrew J. Sawyer	Lincoln	29. 1919-20	L. A. Flansburg	Lincoln
3. 1900-02	Edmund H. Hinshaw	Fairbury	30. 1920-20	W. M. Morning	Lincoln
4. 1903-06	W. H. Kelligar	Auburn	31. 1920-27	Anan Raymond	Omaha
5. 1904-07	John N. Dryden	Kearney	32. 1921-21	Alfred G. Ellick	Omaha
6. 1905-08	F. A. Brogan	Omaha	33. 1921-23	Guy C. Chambers	Lincoln
7. 1907-10	S. P. Davidson	Tecumseh	34. 1922-24	James R. Rodman	Kimball
8. 1908-09	W. T. Wilcox	North Platte	35. 1923-26	E. E. Good	Wahoo
9. 1909-11	R. W. Breckenridge	Omaha	36. 1924-26	Robert W. Devoe	Lincoln
10. 1910-12	Frank H. Woods	Lincoln	37. 1924-24	Fred A. Wright	Omaha
11. 1910-10	Charles G. Ryan	Grand Island	38. 1925-28	Paul Jessen	Nebraska City
12. 1910-19	Alfred G. Ellick	Omaha	39. 1925-27	Clinton Brome	Omaha
13. 1911-13	John A. Ehrhardt	Stanton	40. 1927-29	Charles E. Matson	Lincoln
14. 1911-11	Benjamin F. Good	Lincoln	41. 1927-28	Fred S. Berry	Wayne
15. 1912-15	C. J. Smyth	Omaha	42. 1928-29	Robert W. Devoe	Lincoln
16. 1912-12	William A. Redick	Omaha	43. 1928-30	T. J. McGuire	Omaha
17. 1913-15	W. M. Morning	Lincoln	44. 1928-34	Harvey Johnsen	Omaha
18. 1913-16	J. J. Halligan	North Platte	45. 1929-31	E. A. Coufal	David City
19. 1914-14	H. H. Wilson	Lincoln	46. 1929-29	Anan Raymond	Omaha
20. 1915-17	Edwin E. Squires	Broken Bow	47. 1930-32	Paul E. Boslaugh	Hastings
21. 1916-16	John N. Dryden	Kearney	48. 1930-30	J. L. Cleary	Grand Island
22. 1916-17	Frederick Shepherd	Lincoln	49. 1931-33	W. C. Dorsey	Omaha
23. 1917-17	Frank M. Hall	Lincoln	50. 1931-31	Fred Shepherd	Lincoln
24. 1917-18	Anan Raymond	Omaha	51. 1932-34	Richard Stout	Lincoln
25. 1918-18	A. C. Wakely	Omaha	52. 1931-32	Ben S. Baker	Omaha
26. 1918-22	Fred A. Wright	Omaha	53. 1933-35	Barlow F. Nye	Kearney
27. 1919-19	R. E. Evans	Dakota City	54. 1933-33	J. J. Thomas	Seward
			55. 1934-36	Chas. F. McLaughlin	Omaha
			56. 1934-34	John J. Ledwith	Lincoln

\* Deceased

57.	1935-35	L. B. Day	Omaha	100.	1947-48	Joseph T. Votava	Omaha
58.	1935-37	James M. Lanigan	Greeley	101.	1947-48	John E. Dougherty	York
59.	1935-38	H. J. Requarte	Lincoln	102.	1947-55	Lyle E. Jackson	Neligh
60.	1935-38	Raymond M. Crossman		103.	1948-49	Robert H. Beatty	
61.	1935-40	F. H. Pollock	Stanton				North Platte
62.	1935-41	T. J. Keenan	Geneva	104.	1947-50	Frank D. Williams	Lincoln
63.	1935-39	Walter D. James	McCook	105.	1947-50	Thomas J. Keenan	Geneva
64.	1935-37	Roland V. Rodman	Kimball	106.	1948-51	Laurens Williams	Omaha
65.	1936-36	J. G. Mothersead	Scottsbluff	107.	1949-51	Joseph H. McGroarty	Omaha
66.	1936-36	James L. Brown	Lincoln	108.	1949-54	Wilber S. Aten	Holdrege
67.	1937-39	David A. Fitch	Omaha	109.	1948-49	Abel V. Shotwell	Omaha
68.	1937-39	Raymond G. Young	Omaha	110.	1949-55	Paul L. Martin	Sidney
69.	1937-41	M. M. Maupin	North Platte	111.	1949-55	Joseph C. Tye	Kearney
70.	1937-41	Golden P. Kratz	Sidney	112.	1949-51	Earl J. Moyer	Madison
71.	1938-42	Sterling F. Mutz	Lincoln	113.	1950-	Harry A. Spencer	Lincoln
72.	1938-42	Don W. Stewart	Lincoln	114.	1950-56	Paul P. Chaney	Falls City
73.	1940-46	George N. Mecham	Omaha	115.	1950-59	Paul Bek	Seward
74.	1940-42	Abel V. Shotwell	Omaha	116.	1950-52	Clarence A. Davis	Lincoln
75.	1940-42	Frank M. Colfer	McCook	117.	1951-55	Barton H. Kuhns	Omaha
76.	1941-43	Virgil Falloon	Falls City	118.	1952-57	Thomas C. Quinlan	Omaha
77.	1941-43	Joseph C. Tye	Kearney	119.	1951-52	George B. Hastings	Grant
78.	1941-47	Earl J. Moyer	Madison	120.	1952-53	Laurens Williams	Omaha
79.	1937-37	C. J. Campbell	Lincoln	121.	1953-54	J. D. Cronin	O'Neill
80.	1938-38	Harvey Johnsen	Omaha	122.	1954-57	Norris Chadderdon	Holdrege
81.	1939-39	James M. Lanigan	Greeley	123.	1954-56	John J. Wilson	Lincoln
82.	1940-40	E. E. Chappell	Lincoln	124.	1955-56	Wilber S. Aten	Holdrege
83.	1942-45	Fred J. Cassidy	Lincoln	125.	1955-58	F. M. Deutsch	Norfolk
84.	1941-41	Raymond G. Young	Omaha	126.	1955-	Clarence E. Haley	Hartington
85.	1942-48	Max G. Towle	Lincoln	127.	1955-58	R. R. Wellington	Crawford
86.	1942-42	Paul E. Boslaugh	Hastings	128.	1955-	Alfred G. Ellick	Omaha
87.	1942-45	John E. Dougherty	York	129.	1954-55	Jean B. Cain	Falls City
88.	1942-49	Yale C. Holland	Omaha	130.	1955-57	Hale McCown	Beatrice
89.	1943-45	Robert R. Moodie	West Point	131.	1956-	C. Russell Mattson	Lincoln
90.	1941-45	B. F. Butler	Cambridge	132.	1956-58	Barton H. Kuhns	Omaha
91.	1943-46	Frank M. Johnson	Lexington	133.	1957-59	Paul L. Martin	Sidney
92.	1944-49	Floyd E. Wright	Scottsbluff	134.	1957-	Richard E. Hunter	Hastings
93.	1945-50	John J. Wilson	Lincoln	135.	1957-	John R. Fike	Omaha
94.	1945-48	Robert B. Waring	Geneva	136.	1957-	Thomas F. Colfer	McCook
95.	1944-46	George L. DeLacy	Omaha	137.	1958-	William H. Lamme	Fremont
96.	1945-47	Virgil Falloon	Falls City	138.	1958-	Carl G. Humphrey	Mullen
97.	1945-49	Leon Samuelson	Franklin	139.	1958-	Joseph C. Tye	Kearney
98.	1946-48	Harry W. Shackelford		140.	1959-	Charles F. Adams	Aurora
			Omaha	141.	1959-	Flavel A. Wright	Lincoln
99.	1946-48	Paul F. Good	Lincoln	142.	1959-	Thomas C. Quinlan	Omaha