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Minutes of the Annual Meeting of the Wyoming State Bar

September 16, 17, 18, 1987

Casper, Wyoming

The 72nd Annual Meeting of the Wyoming Bar Association and the 46th Annual Meeting of the Integrated Bar of the State of Wyoming were called to order by William S. Bon at 9:00 A.M. on September 18, 1987, at the Downtowner Motor Hotel in Casper.

Mr. Bon asked for a motion from the floor to dispense with the reading of last year's minutes. Mr. Jerry Housel moved and Ms. Billie Edwards seconded that the minutes as published in the *Land and Water Law Review* be approved. The motion passed.

Report of the President

As I think you are all aware, most of the activities of the Bar are carried on through committee action with policy and direction furnished or approved by the Board of Commissioners.

This year we had approximately twenty-seven active committees or commissions, plus three or four of an ad hoc variety. Most of them performed in a commendable and productive manner, and I might add without compensation or in most instances reimbursement for expenses.

The committees and members are listed in the back of the Bar Directory and on behalf of the Bar I want to personally thank the chairmen and members of those committees for the time and talent they so freely and generously devoted for our benefit.

I am pleased to report that it was a rare occasion when a request to serve as chairman or member of a particular committee was refused. As a matter of fact, many times I was unable to find a spot for those who indicated a desire to serve. I wish to commend the Bar for the manifested interest I have observed as to Bar purposes and activities.

I hesitate to single out any particular committee for commendation because most of them performed their assigned tasks in a diligent and commendable manner. However, obviously some activities are more visible or interesting than others and I will briefly mention some of them.

I felt the Legislative and Law Reform Committee performed exceptionally well and that the policies and procedures established by the commissioners and committee through the year, although in need of some refinement, worked reasonably well. The consistency in procedure and standards for taking a Bar position that were established will serve the Bar effectively in future sessions. Details are contained in Don Sherard's report which I will ask to be placed in the *Land and Water Law Review*. Of special note was the committee's efforts in defeating the attempt by some members of the Legislature to regulate contingent fees or other attorney's fees and other attempts at regulating and limiting our ability to properly represent our clients. Likewise, considerable time was spent in educating individual legislators and committees in those areas in which the Bar took no official position, such as "tort reform." This is by no means a once a year action committee. Last week members of the committee appeared before the special legislative committee expressing and explaining our opposition to applying state sales tax to legal services.

The CLE Committee, under the chairmanship of Bill Downes, has I think improved and broadened the topical scope and format of our mandatory program. Of special mention is the unique and timely medical-legal symposium jointly sponsored by the Bar and State Medical Society and about which we have received extremely favorable reports from both professions. Essentially, the planning and promotion of that symposium were done by Bill Downes and Ann Rochelle who chaired the Bar's Bicentennial of the Constitutional Committee. I want to also commend the CLE Committee for the excellent program it arranged for us at the Annual Meeting. This has made it possible to fulfill the complete 15 hour requirement during the annual meeting for those who need it.

The constitutional bicentennial celebration gave us an excellent opportunity to enter the public arena and in a positive way bring one aspect of the law to the public's attention, including the part we as lawyers have in preserving and implementing the freedoms expressed in the Constitution and the Bill of Rights.

Ann Rochelle has chaired that committee since its inception over a year ago and has done a remarkable job in fulfilling the Bar's obligations and taking advantage of this rare opportunity to advance the principles of our profession. Much of what Ann and her committee accomplished was too positive and not sufficiently acrimonious to draw the attention of the media, but it has been extremely well received and helpful to the segments of our society that it reached. Her report will be included in the *Land and Water Law Review*. Ann deserves our thanks and congratulations for conducting a very meaningful and rewarding program.

The Insurance Committee, under the leadership of Mike Golden and Glenn Smith, was and still is instrumental in the formation of ALPS, which

is now in its final phase of its formation. That company involves the joint efforts of the lawyers of eight states, and hopefully the mandatory capital requirement of \$3.2 million can be obtained.

While ALPS is a lawyer owned and operated company, we have by no means deserted or ignored the commercial casualty companies which are presently writing for us in this state. I want to particularly thank the Home Insurance Company and its underwriting managers, Bayly Martin & Fay, for the effort it has gone to during the past two years in providing our profession with broad coverage at a reasonable rate. I want to make it clear that our participation in the formation of ALPS is by no means an effort to drive the commercial casualty companies from the professional liability insurance market, but rather the committee's efforts were directed to providing additional competition in that field in an effort to insure a competitive and reliable choice for us. For specific answers to questions you may have, I recommend you contact Glenn Smith who is the Wyoming Director on the ALPS board.

A major committee which deserves our thanks and perhaps condolence is the Grievance Committee. Much has been said about professions which attempt to police their own members, and I believe the manner in which our committee has performed is proof that it can be effectively and fairly performed. I am convinced that the Grievance Committee of the Wyoming State Bar has performed admirably in a comprehensive, detailed, and fair manner throughout the year. I know of no committee that worked harder or more effectively. Not only did the committee handle some 120 complaints throughout the year, but studied and drafted the new rules of professional conduct which became effective by order of the Supreme Court in January of this year. Our congratulations and thanks go to Ray Hunkins and Dave Palmerlee, who assumed the chair from Ray last March.

A problem has arisen in that area, and because of perceived conflicts of interest and state budget constraints, the Attorney General has indicated he will no longer prosecute the complaints. A delightful problem for the new Board of Commissioners to solve.

One of our ad hoc committees to whom we are greatly indebted was the Survey Committee chaired by Dave Carmichael. This committee worked long and hard in formulating a meaningful questionnaire to be sent to each member and I believe was successful in presenting one that was sufficiently comprehensive and yet not one so burdensome as to be discarded. We had over a 70% response from the Bar which we are told by ABA is the highest percentile rate of return of any reported survey. The survey was extremely helpful in determining the nature and makeup of our membership and will serve and assist the Board of Commissioners in modifying existing or establishing future programs and procedures which you have indicated are desirable.

The Bar Foundation is a complete and separate entity composed of individual lawyers who are interested in the advancement and improvement of the profession and administration of justice. Although the officers

of the Bar are a part of the Board of Directors of the Foundation, the commissioners do not control its activities in any technical or actual fashion. We have from time to time referred matters to it, particularly in areas of law school scholarships, educational programs, and public relations.

Adequate funding of the Foundation is, has been, and always will be a major stumbling block to these programs, and this year we referred the Iolta program to the Foundation for study and recommendation. The Foundation did draft a rule concerning Iolta which involves non-mandatory investment of lawyer trust funds which is presently under study by the Supreme Court. I am personally hopeful that the Supreme Court will adopt the rule or one similar to it so that we may join the Bars of the other 47 states who have adopted and are maintaining successful programs.

The Civil Jury Instructions Committee has been working hard on a new set of pattern instructions which I am told will be ready for us in a few months.

At the beginning of my servitude as your President last September, the officers and commissioners felt there were two specific areas of our profession that needed special attention. One had to do with the Bar's relationship with the public, and the other involved intra-Bar relationships. We determined that one of the best ways to approach the problem was through improved communications.

I believe the greatest improvement was noted in the intra-Bar communication area. During the past three years during which I had the privilege of serving as an officer of the Bar, I was surprised and amazed to discover and observe the tremendous amount of work and problem solving that took place, and the vast amount of manpower and time required to carry on the routine day-to-day administration of the activities of 1400 lawyers that make up our Bar. The problem was that other than those actually involved in Bar activities and work, the general membership appeared to be unaware of what was going on. In an effort to correct that situation, we did take steps to upgrade and enlarge the role of the *Wyoming Lawyer*, our official publication. I think we have had some success in that regard, principally due to an increased and more effective effort on the part of our executive director and the employment of Tony Lewis, a professional journalist whose services we were able to procure last spring. I believe some improvement has already been noted and anticipate it will become even better in the future. Hopefully this will enable us all to become more aware of what the various committees are doing and keep in touch with Bar activities and problems.

We have also attempted to increase communication and consequently relations between the Bench and the Bar, and I am pleased to report that the Bench/Bar Committee chaired by Al Taylor has a number of projects planned which will help enhance and maintain the good relationship we have always enjoyed between our judges and lawyers.

An effort is also being made to bridge the gap between more experienced members of the Bar and the newer members of the Bar. In that regard we are presently establishing a lawyer/lawyer relation program whereby younger lawyers will have access to older heads for the resolution of the frustrating and perplexing problems which we all experienced as young lawyers.

We have also continued our efforts to increase communication and relations between other state bars. Although criticism by some is directed to these functions as purely pleasure functions, I have found it most important and rewarding to discuss mutual problems and share possible solutions with other state bar leaders.

Public relations has and forever will be a vexating problem for lawyers and always in need of improvement. The nature of the practice and to a large extent the propensity of lawyers to become involved in complex areas of disagreement of both legal and non-legal nature makes us usually unloved and unlovable.

I also agree with Eugene Thomas, Past President of ABA, that the pervasive public attitude toward the Bar stems largely from dissatisfaction with law itself. I am convinced that educating the public to the nature of the adversary proceedings and the mechanics of dispute resolution will reveal the part we are supposed to play in this society and help to enhance our public image.

Consequently, we have undertaken to plan and promote programs which will give the public a greater awareness as to what lawyers do and their limited part in overall delivery of justice. Hopefully, this positive approach will improve our public relations.

One of the major facets of Tony Lewis' position as communications director will be to establish such programs. We have already established a procedure as to the drafting and coordination of news releases which may tend to cause the media to dwell more on the positive rather than the negative aspects of what lawyers do. Tony Lewis is also working on educational programs for both TV and radio, such as the "Ask A Lawyer Series." As usual, however, the best public relations are made and maintained through our individual professional conduct, both in and out of the legal arena.

We have not ignored our relationship with other professions. In particular, the Medical Society/State Bar Liaison committee is in the process of formulating an inter-professional code which will establish workable guidelines we believe will enable us to avoid some of the problems which arise between our two professions.

All of these improvements which I have noted both in the day-to-day administration of the Bar's activities and in our dealings with the public are not all gratuitous in nature. As we seek to improve established services and develop new programs which you have indicated you desire from the Bar, so must we consider an increased budget. We are fortunate to

have had over the last four or five years a reasonable surplus which has enabled us to in many instances develop and adopt desirable programs and services which were unbudgeted. Over the past several years we have been operating on a deficit budget in an effort to find an acceptable financial level on which we can operate and maintain the type of services we feel are desired and necessary. According to our research, our dues structure is less than that of any of the surrounding states and our budget probably the lowest of any state in the union. This may result in the next year or so in an increase in the annual dues. I don't think this will take place next year or maybe even the following year. However, by exploring new programs and from time to time including non-budgetary programs, I believe we will be able to find a level of operation which is acceptable to the Bar and within our financial means as dues paying lawyers.

In closing, let me say in all sincerity that the success or failure of any organization is merely a reflection of the time, talent, and energy devoted to it by its members. I believe we have had a good year and if that is true, I must give credit to those individuals who have so generously given of their time and talent to the administration and towards the improvement of the Bar.

Specifically, but by no means exclusively, I want to recognize Dave Carmichael, your President Elect, John Daly, your Vice President, Eric Alden, your Secretary Treasurer, and Mary Beth Senkewicz, our hard working Executive Director, and her excellent staff.

Last but not least, I cannot say enough about your Board of Commissioners. The Board of Commissioners establishes Bar policy, approves most of the appointments, and is officially and in actuality the administrative arm of the Supreme Court. This year, their attendance record was astounding and necessitated traveling long distances and many hours away from practices and families. We did have some enjoyable times, but generally it involved long travel, long meetings, and no pay. Your commissioners for this year were Jerry Statkus, John Scott, Tim Beppler, Stu Healy, Lynn Garrett, Stanley Sheehan, Dick Day, Dennis Coll, and Randy Boyer. When you see them, thank them for their efforts because they are deserving of your acknowledgement and thanks.

I personally want to thank you for the honor of serving as your President. It was a most interesting and exciting time for me.

Address of the Chief Justice

Justice Richard V. Thomas addressed the members of the Bar in the absence of Chief Justice Brown, who was recuperating from illness.

Justice Thomas reported that the docket filings in the Supreme Court have remained about the same over the last year. He indicated that there was some docket control problem in the Supreme Court and the Court had implemented a "no argument" docket. It was felt that such a docket would furnish some protection regarding a case filing in the Wyoming Supreme Court.

Justice Thomas reported that the Court is still apprehensive to a certain extent that nothing will be done regarding appellate structure until the Court gets five years behind. He indicated that that had been the experience in Utah, and of course something should be done to control the appellate caseload before such a serious problem occurred.

Justice Thomas reported that a county court computer system had been installed in Carbon County. He indicated that one of the judges there was initially a skeptic, but was now an enthusiastic advocate of the computer system. The Court is convinced that the computer system will assist in the management of docket volume in courts of limited jurisdiction. As soon as the money is available, the computer system will be expanded to all county and justice of the peace courts.

With respect to the Grievance Committee, he reported that the Attorney General thinks it is not appropriate to provide counsel in contested cases. The Justice stated that given an integrated Bar, it may be appropriate to seek public funds to prosecute cases of misconduct rather than using Bar dues.

With respect to the celebration of the Bicentennial of the Constitution, Justice Thomas indicated that he is convinced that scholars will attribute the longevity of the Constitution to the genius of the founding fathers in structuring an independent judicial branch of government. He stated that the independence of the judicial branch is fragile and needs to be guarded. He perceives the independence of the judiciary to be subject to a subtle and not so subtle pressure from outside sources. For instance, the question of who decides court costs in misdemeanor courts is illuminative: that the Supreme Court should be sensitive to the power of the purse as vested in the legislature is a frightening concept.

Justice Thomas then reported on the County Court Planning Committee. He pointed to the dichotomy which exists between the county courts and the justice of the peace courts. Originally, the Court had asked that the Judicial Planning Committee be reestablished and asked for a small amount of money to fund the Committee. The legislature seized on it, and instead of reappointing the Judicial Planning Committee, the legislature appointed a County Court Planning Committee, appointed members, and gave them some money to work with. Justice Thomas stated that the issues are beginning to evolve and come into focus. He stated that members of the Bench and the Bar with the support of interested citizens will be able to address the concerns regarding functioning of the judicial branch of government.

Justice Thomas closed his address by commending the President, other officers, commissioners, and executive director of the Bar for an outstanding convention.

Mr. Bon thanked the members of the Wyoming Supreme Court for their help in working on the mutual problems of the Bench and the Bar.

Address of the Dean of the Law School

Dean Richard J. Morgan thanked the President for the opportunity to appear before the Bar. He indicated that he had only been in the State of Wyoming for a short while, but was looking forward to his tenure as Dean of the University of Wyoming College of Law. He indicated his willingness to travel around the state to meet with members of the local Bar.

Dean Morgan reported that the law school is in good, even excellent, shape, thanks to the past work of Peter Maxfield, George Rudolph, and Frank Trelease. He indicated that he wants to work with alumnae of the law school to make it even better.

He indicated that the present student body is composed of 210 students, two-thirds of which are men. The first year class is 81, which is a larger class than usual. The LSAT median is 33, which is in the 60-65 percentile. He indicated that Assistant Dean Debra Madsen has been quite helpful through the admissions process.

He indicated there was support for the law school from the legislature and the University but that there were budget problems. He indicated that there were both faculty and staff salary problems. He indicated that private funding might be necessary to augment expenditures.

Dean Morgan indicated he was working on federal funding with our congressional delegation with respect to a Constitutional Law Excellence Center.

Dean Morgan also indicated that a comprehensive curricula review will be undertaken. He indicated that there did not seem to be anything particularly wrong with the curriculum, but a comprehensive review should be undertaken every so often.

Dean Morgan indicated that the College of Law was trying to upgrade its placement services.

Dean Morgan indicated that he wished to provide better service by the law school to the Bench, the Bar, and the legislature. He indicated there are lots of talented people employed at the law school and we should utilize their services. With respect with service to the Bar, Dean Morgan indicated that he would try to be in touch with members of the Bar regarding the affairs of the law school. He indicated that he welcomes comments, suggestions, and criticisms regarding the operation of the law school. He will also continue his newsletter to members of the Bar, approximately three or four times a year. Also, he indicated that he would be working with the State Bar to provide continuing legal education courses in conjunction with the law school.

General

Mr. Bon then recognized Mr. R. Stanley Lowe, Wyoming's State Bar Delegate to the American Bar Association. Mr. Lowe reported that he wanted reflected in the minutes how well Mr. Jerry Housel had done as

Wyoming's delegate to the ABA over the years, and what a great reputation he has in the ABA. Mr. Housel then mentioned that it had been a pleasure to serve under President Eugene Thomas, immediate past-president of the ABA, and how unusual it was to have a president of the ABA from a small neighbor state, Idaho.

Mr. Bon recognized that both Mr. Lowe and Mr. Housel were well-thought of by the ABA delegates, staff, and officers. Mr. Bon indicated that Wyoming was well represented in the ABA by these two able individuals.

Mr. Bon then recognized Mr. Lowe, who introduced his resolution regarding the county court system. Mr. Lowe then read the following resolution:

RESOLVED, that the Wyoming State Bar reaffirms its earlier endorsements of the county court system and its expansion statewide and urges that the system be implemented in the remaining eleven counties of the state, either through actions by the Boards of Commissioners in conformity with existing law and with funding granted by the Legislature, or, in the alternative, by legislation expanding the system statewide and changing the name to characterize more properly the system and to underscore the fact it is a state judicial system of Wyoming.

Mr. Lowe moved, and Mr. Dennis Coll seconded that the resolution be adopted. After discussion, the motion carried.

Mr. Bon then recognized Mr. Terry W. Mackey.

Mr. Mackey indicated that he wished to introduce a resolution regarding the federal sentencing guidelines. He indicated that no study had been done to compare the effect the new sentencing guidelines would have on the populations of the federal penitentiaries. He urged that the Wyoming State Bar adopt the following resolution:

WHEREAS, the criminal sentencing guidelines contained in 18 U.S.C. 3551 *et. seq.* implement sweeping changes in federal criminal sentencing; and

WHEREAS, the new guidelines virtually eliminate discretion in sentencing from judges who traditionally have had that discretion; and

WHEREAS, the federal court in Wyoming has strongly protested the implementation of a guideline approach to sentencing; and

WHEREAS, no study has been implemented which will gauge the potential adverse impact the new guidelines will have on the population of the various federal penitentiaries and on the criminal justice system in general;

THEREFORE, BE IT RESOLVED, that the Wyoming State Bar, through its members at its Annual Meeting on September 18, 1987 in Casper, Wyoming recommends to the Congress of the United States of America that implementation of the federal sentencing guidelines be delayed.

The parliamentarian, John Daly, noted that a motion to waive the rules would be required since the rules required that resolutions be submitted prior to the convention. Mr. Charles Kepler moved, and Mr. Jerry Housel seconded, that the rules regarding submission of resolutions be waived. After discussion, the motion carried.

Mr. Jack Gage moved, and Mr. Vince Ross seconded, that the resolution proposed by Mr. Mackey be adopted. Ms. Sylvia Hackl of the Attorney General's office indicated that the federal sentencing guidelines might pose problems in the future and perhaps the matter should be studied. She did note that the United States Probation Officer, Mr. Robert Bonham, had indicated some concern. She wanted to note, however, that she did not totally believe that dire consequences would be the results if the guidelines were implemented, but she agreed the matter should be studied. After further discussion, the motion carried.

The Election Committee reported that the election for the Judicial Nominating Commission had been won by Mr. Dan R. Riggs. The Committee further reported that there was no contest for the following offices and these individuals should be deemed elected: John M. Daly, President-Elect; Richard M. Davis, Jr., Vice-President; and Eric M. Alden, Secretary-Treasurer. David H. Carmichael will automatically succeed to the office of President. Mr. Stan Lowe moved, and Mr. John Masters seconded, that the report of the Election Committee be adopted. After discussion, the motion carried.

It was then moved, seconded, and passed that the following resolution be adopted:

BE IT RESOLVED that the members of the Wyoming State Bar are deeply grateful to Mr. William S. Bon for his dedication to his job as President and thank him for the remarkable job he has done, and wish him Godspeed and good health.

It was further moved, seconded, and passed that the members of the Wyoming State Bar thank Mr. Greg Greenlee and his Convention Committee for the fine job done for the Annual Meeting in Casper.

There being no further business before the Bar, the meeting was adjourned at approximately 11:30 A.M.

Respectfully submitted,
MARY ELIZABETH SENKEWICZ
Executive Director