

M E M O R A N D U M

The following memorandum consists of a brief citation of authority in support of the contention that the raising of the hand by one taking an oath is merely a technical formality, the omission of which does not detract from the binding quality of the oath.

John's American Notaries, 4th Edition:

Page 88: - "If the oath is properly administered it cannot be evaded because of some slight deviation from the form used, or because of some irregularity. The mere failure to raise the hand has been held an irregularity which did not invalidate the oath.

State v. Day - 121 N.W. 611, 108 Minn. 121:

The defendant was convicted of perjury in having falsely made a statement under oath, when applying to the Clerk of a County Court for a marriage license, that the girl he proposed to marry was of the full age of 18 years when in fact he knew her to be of less than 16 years. The defendant submits that there was no evidence of perjury inasmuch as the statutory formality of raising the hand was not complied with by him. There was a Minn. statute to the effect that "the mode of administering an oath commonly practiced in the place where it is taken shall be followed, including in this state the ceremony of uplifting the hand". Another section provided that it should not be a defense to a prosecution for perjury to show that the oath was administered in an irregular manner.

The court said: "The essential thing is that the party taking the oath shall go through some declaration or formality before the officer which indicates to him that the applicant consciously asserts or affirms the truth

of the fact to which he gives testimony. - - -
The failure to raise the hand must be held to
be a mere irregularity."

Means v. State - 244 S.W.149-92 Tex.

Cr. 323. The defendant was convicted of unlawfully carry-
ing on his person a pistol and was fined \$100.00. He
appealed from the conviction on the ground, among
others, that the affidavit supporting the information
was not properly sworn to in view of the fact that
the officer giving the oath testified that he did
not remember asking the affiant to raise his hand.

The court said, "We do not regard the fact
that the maker of the affidavit did not uphold
his hand when sworn of such materiality as would
invalidate the complaint."

46 C. J. 843.

"While the uplifting of the hand is formal
enough to make an oath legal and binding, the holding
up of the hand is not necessary. " McCain v Bonner,
122 Ga. 842, 51 S.E. 36 - Cox v. State, 13 Ga. A. 687,
79 S. E. 909; Atwood v. State, 146 Miss. 662, 111 S
865.

It is submitted that in view of the above authorities, one
can be prosecuted for perjury even though, at the time he took the
oath, the notary who administered the oath failed to instruct him
to raise his hand.