1972 Annual Meeting

The Idaho State Bar

JUNE 28 -- JULY 1, 1972

Sun Valley, Idaho

LEGISLATIVE DIGEST

SECOND SESSION

41ST IDAHO LEGISLATURE

BY

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TABLE OF CONTENTS

OUTLINES

and

INFORMATIONAL MATERIALS

1972 ANNUAL MEETING

IDAHO STATE BAR

SUN VALLEY, IDAHO

I N D E X

E

F

H

I

J

L

M

N

O

P

R

S

SIGNIFICANT LEGISLATION

41ST LEGISLATURE

SECOND REGULAR SESSION

STATE OF IDAHO

A.

ACCOUNTANTS

SB 1521 Repeals 54-219, Idaho Code, and amends 54-214 and 54-218, Idaho Code, to authorize the State Board of Accountancy to prescribe, promulgate, establish and amend rules of professional conduct for certified public accountants and to provide for suspension or revocation of license if rules are violated.
ED 7/1/72.

ADOPTION

HB 487 Amends 16-1501, Idaho Code, to remove the limitation that an adult can only be adopted by another adult if the parent relationship has existed for more than 15 years; and amends 16-1502, Idaho Code, to remove the limitation that the person adopting must be at least 15 years older than the person adopted if the adopting parent is the spouse of the natural parent.
ED 7/1/72.

AERONAUTICS

HB 537 Amends Chapter 434, Laws of 1969, to reassign certain funds allocated to the City of Sandpoint for airport construction to the cities of Bonners Ferry, Coeur d'Alene and Lewiston, and to allow certain funds to be used for navigational facilities rather than communication facilities.
ED 2/28/72.

HB 677 Adds new section 36-128, Idaho Code, to authorize the Fish and Game Commission to issue permits or licenses to persons to shoot, capture, harass or kill predatory animals from an airborne aircraft; provides for quarterly reports by licensees and an annual report to the Secretary of the Interior.
ED 4/1/72.

AGE

SB 1311 Criminal Offenses and Procedures.
Amends 2-209, Idaho Code, to change the age requirement from 21 to 18 years of age for serving as a juror.
ED 2/8/72.

HB 521 Drugs.
Amends 37-3102, Idaho Code, to reduce from 18 years to 16 years the age when a person is legally competent to give his consent for treatment of drug addiction without the consent of his parents.
ED 3/17/72.

HB 635 Elections.
Amends 34-104 and 34-111, Idaho Code, to lower the voting age from 21 to 18, and to establish a new election record system known as the combination election record and poll book; and repeals 34-106A, Idaho Code which related to special presidential and congressional electors.
ED 3/31/72.

SB 1556 Liquor.
Amends various sections in Title 23, Idaho Code, to lower the legal age for consumption, purchase, possession, serving as a bartender, etc., of alcholic beverages from 21 to 19 years of age.
ED 7/1/72

HB 500 Marriage.
Amends 32-403, Idaho Code, to lower from 21 to 18 years the age over which a person may obtain a marriage license without a three day waiting period and eliminates the penalty for a county recorder's issuing of a license to a person not competent to marry.
ED 7/1/72.

SB 1301 Marriage.
Amends 32-202, Idaho Code, to change the minimum age for marriage without consent from 21 to 18 for males (18 is presently the legal age for consent for females), and to require consent of parents or guardians if any party is from 18 to 16 years of age and the permission of the Court when any party is under the age of 16.
ED 7/1/72.

HB 647 Minors.
Amends 68-801, 68-804 and 68-807, Idaho Code, to redefine minor as a person who has not attained the age of 18 years.
ED 7/1/72.

AGE (Cont'd)

SB 1557 Wine.
Amends 23-1334, Idaho Code, to lower the legal age for sale, consumption, possession, etc., of wine from 21 to 19 years of age.
ED 7/1/72.

AGRICULTURE

HB 653 Amends 22-3407, Idaho Code, to remove the exemption of state and federal employees and agencies from penalties as provided in the Pesticide Law.
ED 7/1/72.

HB 655 A new act to provide that the Department of Agriculture may perform voluntary laboratory analyses, testing, inspection and similar services, and charge reasonable fees therefor; provided for the handling of funds received for these services.
ED 3/21/72

HB 672 Amends 22-2210, repeals 22-2217 and 22-2230, and adds new sections 22-2230, 22-2231 and 22-2232, Idaho Code, to revise and simplify penalty provisions for violations of regulations relating to commercial sprayers and dusters of pesticides, and provides for procedure to be followed by landowners in filing crop damage reports.
ED 7/1/72.

SB 1604 A new bill creating the Idaho Agricultural Labor Board enumerating its powers and duties; providing for rights of employees and employers; describing unfair labor practices; allowing publicity and providing for collective bargaining and injunctive relief.
ED 4/1/72.

ANIMALS

HB 556 A new act to provide that before a person can maintain a zoo, menagerie or live display of animals, he must first obtain a permit from the Fish and Game Department.
ED 9/1/72.

SB 1299 Amends 18-1302, Idaho Code, to provide that theft of a captured or domestic animal shall constitute a felony of the third degree.
ED 2/10/72.

ATHLETIC COMMISSION

SB 1515 Amends Chapter 4, Title 54, Idaho Code, to create the office of State Athletic Director and abolish the State Athletic Commission and to provide for powers, duties, rules and regulations for the director.
ED 7/1/72.

ATTORNEY GENERAL

SB 1411 Amends 67-1401, Idaho Code, to require the Attorney General to annually compile all written opinions rendered by his office, and make them available to the public.
ED 7/1/72.

B.

BANKS & BANKING

SB 1388 Amends 57-601, Idaho Code, to allow political subdivisions and taxing districts to invest moneys from sinking funds in time certificates of deposit of public depositories.
ED 3/17/72.

SB 1389 Amends 50-1013, Idaho Code, to allow the city treasurer to invest funds in time certificates of deposit of public depositories.
ED 3/17/72.

SB 1546 Amends 67-2739 and 57-128, Idaho Code, to provide that the State Treasurer needs only to adjust the proportionate share of demand deposits between state depositories once a month and only every six months for time deposits.
ED 3/17/72.

BEANS

HB 652 Amends 22-2914, Idaho Code, to include a Broker of Beans in the term "dealer" as used in the Bean Commission Law. Amends 22-2921, Idaho Code, defining conditions which would make the grower responsible for the entire tax.
ED 7/1/72

BEER

HB 477 Amends 23-1029, Idaho Code, to eliminate the requirement that the Commissioner of Law Enforcement, when receiving a notice of price change from a beer wholesaler, dealer or brewer, notify all other licensees of this change.
ED 7/1/72

BEER (Cont'd)

SB 1383 Amends 23-1003, Idaho Code, to provide that a beer wholesaler may only sell within a definite geographical territory agreed upon between the dealer or brewer and the wholesaler.
ED 7/1/72.

SB 1387 Amends 23-1033, Idaho Code, to allow a beer wholesaler to furnish certain specified equipment to a retailer on an initial installation or a changeover.
ED 7/1/72.

SB 1559 Amends various sections in Title 23, Idaho Code, to lower the legal age for selling, consumption, possession, etc., of beer to 19 years of age and allows 18-year-olds to enter premises in places where liquor by the drink is sold.
ED 7/1/72.

BIRTHS

HB 416 Amends 39-258, Idaho Code, to revise the time required for filing certificates of deaths and stillbirths.
ED 7/1/72.

BOATS AND BOATING

SB 1382 Amends 49-218, Idaho Code, to provide a pro-rata license fee for pleasure boats being licensed in Idaho for the first time.
ED 3/17/72.

BOATS

SB 1392 Amends 49-220, Idaho Code, to provide for issuance of pressure-sensitive registration stickers for boats to replace the present metal plates.
ED 1/1/73.

BONDS

SB 1466 Amends Chapter 196, 1970 Session Laws, to provide for a state loan of $1,500.000 to meet the costs of water pollution control, and to provide for the issuance of refunding bonds to repay the loan.
ED 3/17/72

C.

CEMETERIES

SB 1479 Amends Chapter 4, Title 27, Idaho Code, to include family religious or fraternal cemeteries within the definition of "cemetery authority"; to provide new powers of the Commissioner of Finance regarding cemetery authorities, to require that a trustee of cemterey funds by any federally insured financial institution, and to revise the regulatory fee charges for cemetery authorities.
ED 7/1/72.

CITIES

HB 516 Amends 50-222, Idaho Code, to eliminate the provision that no territory could be annexed to a city within 91 days of a general election; and amends 50-411, Idaho Code, to allow residents of a newly annexed territory to vote in a city election if they have lived in the newly annexed area for at least three months immediately preceding the election.
ED 7/1/72.

HB 597 Amends 50-1017, Idaho Code, to alter and set out the wording to be used by a claimant in all claims against a city.
ED 7/1/72.

SB 1420 Amends 50-1002, Idaho Code, to exclude funds accumulated under Section 50-236, Idaho Code (Capital Improvements Fund) as revenue to support the annual budget.
ED 7/1/72.

CODE COMMISSION

HB 650 Amends 73-204, 73-213, 73-214, 73-216, 73-221, Idaho Code, to increase the per diem payment to members of the Idaho Code Commission from $20 to $25; to provide that tax levies for the benefit of the Code Fund be increased from $2.00 to $4.00; to add regulation for funding of "Code Fund Treasury Notes" and interest thereon at lawful rate, and increasing the maturity time from 10 to 20 years.
ED 7/1/72.

COMMISSIONS

HB 517 Amends 19-5102 and 19-5108, Idaho Code, to increase the membership on the Idaho Law Enforcement Planning Commission

COMMISSIONS (Cont'd)

from 9 to 11 members, prescribes membership, etc.
ED 7/1/72.

SB 1609 Provides for an eight member Bicentennial Commission to be appointed by the Governor that will plan and develop Idaho's participation and observance of the Bicentennial of the American Revolution during the years 1972 to 1983.
ED 3/27/72

CORPORATIONS

HB 688 Amends 30-602, Idaho Code, to provide for a $3.00 fee for processing annual statements of nonprofit corporations.
ED 7/1/72.

SB 1396 Amends 30-141, Idaho Code, to provide that if the board of directors consists of less than three persons, any of the offices may be combined in one person.
ED 7/1/72.

SB 1539 Repeals 30-605, and 30-606, Idaho Code, and amends 30-601, Idaho Code, to provide that the annual statement of a corporation shall include its mailing address, whether the corporation was actively engaged in business within the state, the principal business activity, the fiscal year of the corporation, whether the corporation filed an income tax return, and, if not, an explanation thereof.
ED 7/1/72.

COUNTIES & MUNICIPALITIES

HB 596 Amends Chapter 20, Title 50, Idaho Code, to include off-street parking facilities in urban renewal projects; to eliminate moving and property loss as the only reimbursement to a displaced person in a renewal area; and to provide that a sale of bonds by an urban renewal agency can be private as well as public.
ED 3/17/72.

HB 700 Amends 49-1210A, Idaho Code, to increase the allocation of motor vehicle fuels excise tax to cities that build and maintain streets from 1/7 to 1/6 of the motor vehicle fuels excise tax moneys received by the State Treasurer.
ED 4/1/72.

COUNTIES & MUNICIPALITIES (Cont'd)

HB 730 Amends 50-1803, Idaho Code, to authorize a city to sell or lease stock it holds in a canal or irrigation company that has been supplying water to the city if a new system has been constructed which will replace the supply from the canal or irrigation company.
ED 3/27/72.

HB 738 Amends 31-3113, Idaho Code, to provide for an increase in salaries for the prosecuting attorneys in the following counties: Ada, Benewah, Blaine, Donner, Canyon, Cassia, Clearwater, Elmore, Fremont, Gem, Gooding, Jerome, Kootenai, Latah, Lemhi, Minidoka, Nez Perce, Payette, Power, Shoshone, and Twin Falls.
ED 1/1/73.

HB 739 Amends 31-104, Idaho Code, to provide for an increase in salaries for county commissioners in the following counties: Ada, Benewah, Bingham, Blaine, Camas, Canyon, Clearwater, Elmore, Fremont, Gooding, Idaho, Jerome, Kootenai, Latah, Lewis, Minidoka, Payette, Shoshone and Washington.
ED 1/1/73.

COURTS

SB 1441 Amends 19-2804, Idaho Code, to provide new regulations for the state in appealing decisions in criminal cases.
ED 7/1/72

SB 1481 Amends 5-310 and 5-311, Idaho Code, to provide that the parents of a minor child (married or unmarried) may bring an action for injury or death in certain cases, and to provide that actions for wrongful death of persons other than listed above may be brought by heirs or personal representatives.
ED 7/1/72

HB 364 Amends 18-2202, Idaho Code, to provide that a court may suspend execution of judgment during the first 120 days of sentence and place the defendant on probation.
ED 1/26/72

HB 365 Amends 18-2307, Idaho Code, to remove the provision that defendants under the age of 22 must have a pre-sentence investigation prior to sentencing after conviction of a crime.
ED 1/26/72

COURTS (Cont'd)

HB 368 Amends 9-203, Idaho Code, to provide that communications between children and their parents,guardians or legal custodians shall be privileged and immune from disclouure (the same as a lawyer-client communication) except in certain criminal actions or crimes of violence.
ED 1/1/72.

HB 439 Amends 31-3201A, Idaho Code, to provide that no court fees shall be assessed in criminal cases of the indigent where counsel is appointed by the court.
ED 7/1/72.

HB 441 Amends Chapter 10, Title 32, Idaho Code, by the addition of a new section 32-1008, Idaho Code, to provide that grandparents who have established a substantial relationship with a minor child shall not be denied reasonable visitation rights.
ED 7/1/72.

HB 484 Amends 19-503, Idaho Code, to define "magistrates" by eliminating obsolete references to probate judges, justices of the peace and police magistrates.
ED 2/28/72.

HB 485 Amends 1-2208 and 1-2210, Idaho Code, to provide that magistrates may be assigned all misdemeanor actions by eliminating the present limitation of actions that have a maximum fine of $1,000 or one year jail sentence.
ED 2/28/72.

HB 567 Establishes and confirms the salaries of District Court Reporters at $11,400 as the intent of the last session of the legislature; and amends 1-1102, Idaho Code, to increase that salary to $12,600 effective 7/1/72.
ED 7/1/72.

HB 753 Amends 1-2203, Idaho Code, to revise the regulations and provisions regarding membership on the District Magistrates Commission.
ED 3/31/72.

HB 755 Amends 1-2210, Idaho Code, as amended by section 2, Chapter 36, Laws of 1972, to provide that attorney magistrates may try criminal proceedings where the punishments exceeds that for a misdemeanor.
ED 3/27/72.

CREDIT UNIONS

SB 1303 Repeals Chapter 21, Title 26, Idaho Code, and enacts a new code to license and regulate credit unions.
ED 3/1/72.

CRIMINAL CODE

HB 492 Repeals Chapters 1 through 23, Title 18, Idaho Code, which repeals the Criminal Code enacted by the First Regular Session of the Forty-first Idaho Legislature.
ED 4/1/72

CRIMINAL OFFENSES & PROCEDURES

HB 366 Amends 19-851, Idaho Code, to provide that any person accused of any misdemeanor or a petty misdemeanor in which an extended term is charged shall have the right to counsel.
ED 2/28/72.

HB 367 Amends 18-104 and 18-105, Idaho Code, to bring within the definition of "classes of crime" any offense of any statute whether a statute of the state of Idaho or not.
ED 2/28/72.

HB 486 Amends 18-1802, Idaho Code, to provide that willful failure to pay a fine levied by a court shall be a petty misdemeanor.
ED 3/6/72.

HB 539 Amends 18-1807, Idaho Code, to provide that an escape from a jail shall be a felony of the third degree.
ED 7/1/72.

HB 546 Amends 18-802, Idaho Code, to strike the words "a substantial distance" from the definition of kidnaping.
ED 7/1/72.

HB 550 Amends 18-1407, Idaho Code, to make it a misdemeanor for a person to have a stolen credit card in his possession.
ED 7/1/72.

HB 552 Amends 18-1311, Idaho Code, to provide that willful concealment of goods is a misdemeanor if the value of the goods is in excess of $25, and a petty misdemeanor if value is less than $25.
ED 7/1/72.

SB 1311 See AGE, supra.

CRIMINAL OFFENSES & PROCEDURES (Cont'd)

SB 1421 Amends Chapter 6, Title 19, Idaho Code, by adding a new section 19-625 which authorizes judicial officers to order that particularly described individuals may be detained for a period up to three hours for the purpose of obtaining evidence of identifying physical characteristics if such evidence cannot otherwise be obtained.
ED 7/1/72.

SB 1603 Provides for the reenacting of the criminal laws of the State of Idaho as they existed prior to January 1, 1972, when the "New" Criminal Code took effect.
ED 4/1/72.

SB 1626 Provides for extensive amendments and revisions to the "Old" Criminal Code which is reenacted by SB 1603, as reported in our bulleting of March 10, 1972.
ED 4/1/72.

SB 1627 Amnnds 34-1714, Idaho Code, as enacted by Section 3 of the House Bill 574, to strike the wording "of the third degree", and provides that the offenses in the act which relate to recall elections shall be felonies, and will thereby conform to the "Old" Criminal Code.
ED 7/1/72.

SB 1628 Amends Section 7 of the House Bill 556 to strike the word "petty", and provides that the offenses in the act which relate to maintenance of a private zoo or menagerie shall be misdemeanors, and will thereby conform to the "Old" Criminal Code.
ED 9/1/72.

SB 1629 Amends Section 9 of the House Bill 472 to strike the word "petty" and provides that the offenses in the act which relate to factory-built housing shall be misdemeanors, and will thereby conform to the "Old" Criminal Code.
ED 4/1/72.

SB 1630 Amends Section 19-851, Idaho Code, as amended by Chapter 27, laws of 1972, to provide that the Right to Representation to Counsel shall extend to any offense which has a possibility of confinement for more than six months or a fine of more than $300 and will thereby conform to the "Old" Criminal Code.
ED 3/31/72.

CRIMINAL OFFENSE AND PROCEDURE (Cont'd)

SB 1631 Amends Section 14 of Chapter 67, Laws of 1972, to strike the wording "of the third degree", and provides that the offenses in the act which relate to false entries by officers of a credit union shall be felonies, and will thereby conform to the "Old" Criminal Code.
ED 3/31/72.

SB 1636 Amends Section 23 of House Bill 466 of the Second Session of the 41st Legislature (HB 466 relates to the Subdivided Land Disposition Act) to strike the words "of the third degree" and makes a violation of the Act a felony.
ED 7/1/72.

D.

DEATH

HB 417 Amends 39-200, Idaho Code, to enact new regulations regarding the filing of certificates by morticians of burials, cremations, transportation of bodies out of state, etc.
ED 7/1/72.

HB 418 Amends 54-1120, Idaho Code, to provide that dead bodies received for transportation shall be embalmed and be accompanied by a permit for disposition from the registrar of the district where the death occurred.
ED 7/1/72.

DISTRICTS

HB 473 Amends 40-3001, Idaho Code, to define a single county-wide highway district as a "body politic of this state"; and adds 40-3012A, Idaho Code, to define "Highway Users' Fund Bonds" as those bonds from dissolved city street systems, highway or good road districts.
ED 1/1/72.

HB 643 Amends 31-4316, Idaho Code, to add golf courses to the type of facilities that may be operated by a recreation district.
ED 3/21/72.

SB 1312 Adds 40-1636, Idaho Code, to grant Highway Districts the power to create local improvement districts for construction and maintenance of streets, roads, curbs, gutters, sidewalks, etc.
ED 7/1/72.

DRIVER TRAINING

HB 600 Amends 33-1707, Idaho Code, to decrease from $55 to $50 the amount paid to a school district from the Driver Training Fund for each student entrolled in driver's training.
ED 7/1/72.

SB 1332 Amends 33-1704, 33-1706- and 33-1708, Idaho Code, to require a school district to obtain prior approval for its driver training program from the State Board of Education as a condition for reimbursements of the cost and authorizes the State Board of Education to hire a full-time employee to supervise the program.
ED 7/1/72.

DRUGS

HB 521 See AGE, supra.

SB 1467 Amends various sections of Title 37, Idaho Code, to add additional substances and to provide for more extensive regulations and restrictions of controlled substances (drugs).
ED 7/1/72.

SB 1635 Amends 37-2733, Idaho Code, and amends 37-2732, 37-2734 and 37-2744, Idaho Code, as they were amended by Chapter 133, Laws of 1972, to provide clarification as to the degree of offense for any violation of the Act, and substitutes the word "distribution" for "sale".
ED 7/1/72.

DRUNKENNESS, LOITERING

HB 374 Amends 18-2005 and 18-2006, Idaho Code, to make public drunkenness, incapacitation because of drugs and loitering or prowling a petty misdemeanor.
ED 2/15/72.

E.

EDUCATION

HB 431 Amends 33-2004, Idaho Code, to provide that a school district contracting with another district or private institution for the education of "exceptional children" shall pay the tuition cost of the student.
ED 7/1/72.

EDUCATION (Cont'd)

HB 442 — A new act to establish an executive agency of the State Board of Education to be known as the State Department of Education; and provides that the State Superintendent of Public Instruction is the executive officer.
ED 7/1/72.

HB 657 — Amends 63-105L, Idaho Code, and adds new section 63-105AA, Idaho Code, to remove the requirement that educational property must be used exclusively by the owner to be exempt from taxation and to define "exclusive" as including any one or more or any combination of exempt purposes as provided by law.
ED 1/1/72.

HB 664 — Amends Chapter 10, Title 33, Idaho Code, to revise the formula for distributing state moneys under the foundation program to each public school district of Idaho.
ED 7/1/72.

HB 665 — A new act to provide that children of servicemen who are prisoners of war or missing in action can attend institutions of higher education or vocational-technical schools within Idaho without payment of tuition and provides $100 per education period for books, equipment and supplies. Benefit time shall not exceed 38 school months, and student must meet entrance requirements.
ED 6/1/72

HB 754 — Amends 33-2001, Idaho Code, to require that each public school district provide education for exceptional children; and to eliminate the provision that such education must be within the various school districts of the state.
ED 7/1/72.

SB 1340 — Amends 33-2006, Idaho Code, to eliminate the word "unmarried" from the reference to School Districts having to provide instructions to expectant and delivered mothers under the age of 21.
ED 7/1/72.

SB 1356 — Amends 33-2403 and 33-2407, Idaho Code, to give the State Board of Education authority to require correspondence and private schools to establish a refund policy to applicants and to revoke their certificate for misrepresentation in their application, and increases the bond for such schools from $1,000 to $10,000.
ED 7/1/72.

EDUCATION (Cont'd)

SB 1497 Amends 33-1205, 33-1251, 33-1252 and 33-1255, Idaho Code, to rename the Professional Practices Commission the "Professional Standards Commission", to provide for a membership of not less than five members (reduced from eight); to provide for additional educational agencies to nominate members for the commission; and to provide that hearings be conducted by a panel where majority holds the same position of employment as the accused.
ED 7/1/72.

SB 1498 Amends 33-1107, Idaho Code, to require that any bond issue by a school district must have the approval of the State Superintendent of Public Instruction.
ED 3/10/72.

SB 1482 Amends 33-102 and 33-102A, Idaho Code, to remove the Executive Director as a member of the State Board of Education and the Board of Regents of the University of Idaho.
ED 7/1/72.

ELECTIONS

HB 456 Amends 50-703, Idaho Code, to eliminate obsolete and outdated language concerning the election of councilmen during the interim period before the present law became effective.
ED 7/1/72.

HB 574 Repeals 50-502 through 50-517, Idaho Code, and repeals and reenacts Chapter 17, Title 34, Idaho Code, to change the requirements for a recall election in cities, counties, districts or state; to define the public officers who are subject to recall; to set out the forms and procedures, etc.
ED 7/1/72.

HB 576 Amends 34-301 and 34-304, Idaho Code, to reduce from three to two the minimum number of precincts in a county and to change the duties regarding poll watchers and challengers from election judges to the county clerk.
ED 3/15/72

HB 577 Amends 34-624, Idaho Code, to reduce the residency requirement of precinct committeemen from one year to six months next preceding their election.
ED 3/13/72

ELECTIONS (Cont'd)

HB 605 Repeals 34-2429 and 34-2430, Idaho Code, and amends 34-2405 and 34-2427, Idaho Code, to require that county commissioners consult with the county clerk, as chief election officer, before procuring any voting machines, and to provide that the machines may or may not be used in precincts, nor in all elections.
ED 3/13/72.

HB 606 Amends 34-1002 and 34-1005, Idaho Code, to eliminate the right of an absentee elector to have his ballot delivered by an agent and extends the time an absentee ballot must be returned to issuing officer to 8:00 p.m. on election day.
ED 3/17/72.

HB 607 Amends 34-904 and 34-907, Idaho Code, to eliminate the special ballot in general and primary elections for presidential electors, senators and congressmen.
ED 3/13/72.

HB 608 Amends 34-209, Idaho Code, to provide that the county clerk in procurement of voting machines or vote tally systems shall do so in accordance with provisions of section 34-2405, Idaho Code.
ED 3/13/72.

HB 609 Amends 34-704, 34-711, 34-712 and 34-715, Idaho Code, to require state chairmen to certify names of presidential candidates and electors to the Secretary of State before September 1, to require the Secretary of State to provide sample ballots 40 days prior to primary election; and to provide for filling of vacancies occurring after primary election.
ED 3/31/72.

HB 627 Amends 31-704, Idaho Code, to eliminate the provision that no voting precinct shall be divided when a county is being divided into commissioners' districts.
ED 7/1/72.

HB 634 Amends Chapter 11, Title 34, Idaho Code, to provide that polls need only remain open from 12 noon to 8 p.m. for special elections unless changed by election officials, and establishes regulations for the new "combination election record and poll book."
ED 3/31/72.

ELECTIONS (Cont'd)

HB 635 See AGE, supra

HB 642 Amends various sections of Title 34, Idaho Code, lowering the age of qualified presidential electors from 21 to 18; providing that a precinct registrar be appointed before March 1 preceding each general election; providing for obtaining absentee ballots up to seven days prior to election, allowing an elector who has moved out of state within 30 days of an election to vote by absentee ballot; and removing registration cards from public inspection.
ED 4/3/72

HB 659 Amends 34-1204, 34-1205 and 34-1211, Idaho Code, to provide that the combinational election record and poll book be transmitted in a suitable container; to provide that the county board of canvassers shall meet within 10 days after a primary or general election and that the State Board of Canvassers shall meet within 15 days after a primary election.
ED 3/21/72.

HB 669 Amends 34-404, Idaho Code, to provide that electors must register before being able to vote in any election in Idaho but eliminates the provision that other registration requirements can be established by law.
ED 3/21/72.

SB 1379 Amends 34-623, Idaho Code, to eliminate the requirement that a Prosecuting Attorney must reside in the county for one year preceding his election.
ED 7/1/72.

SB 1404 Amends various sections of Title 34, Idaho Code, to provide that justices shall be elected at primary elections rather than general elections subject to the provisions of section 34-1217, Idaho Code.
ED 2/28/72.

SB 1569 Amends 34-716, Idaho Code, to provide a method for filling a vacancy for a judicial office where the candidate was elected by receiving a majority of votes at the primary election, and a method of filling a vacancy occurring after the primary election when no candidate received a majority and a run-off at the general election is required.
ED 3/27/72.

ELECTRICAL CONTRACTORS

HB 387 Amends 54-1007, Idaho Code, to increase from two to four years

ELECTRICAL CONTRACTORS (Cont'd)

the time period which an apprentice electrician must serve before becoming eligible to become licensed as a journeyman electrician.
ED 7/1/72

EMPLOYEES & EMPLOYMENT

HB 397 Proposes to amend Chapter 13, Title 72, Idaho Code, to update the Idaho Employment Security Law to conform to the "Employment Security Amendments of 1970" as adopted by the 91st Session of the United States Congress and recommended by the United States Department of Labor.
ED 3/31/72.

HB 660 An act to define volunteer and provide that any state agency, department or unit may accept volunteers and may reimburse them for reasonable and necessary expenses; and to provide that civil service law and requirements will not apply to volunteers.
ED 7/1/72.

HB 736 Amends 65-506, Idaho Code, as amended by Chapter 51, Laws of 1972, to provide that the additional points added to an earned rating of a veteran shall be used only for the purpose of initial appointment and not for the purpose of promotions.
ED 7/1/72.

SB 1485 Amends various sections of Title 67, Idaho Code, to bring all state employees (except elected officials) under the same accrual rate for vacation leave by eliminating the term "classified employees" and to provide for a lump cash payment upon separation of service for unused vacation leave.
ED 7/1/72.

SB 1493 Amends 33-1216, Idaho Code, to provide that a school district may grant a one year leave of absence to any certified employee who has been elected president of a professional educational organization and that the school district will be reimbursed by the professional educational organization for any compensation paid to the employee while on leave of absence.
ED 7/1/72.

EMPLOYEES & EMPLOYMENT

SB 1541 Amends 59-1302, Idaho Code, to clarify the meaning of "employer" by providing a definition of the term "Governmental Entity."
ED 3/23/72.

SB 1608 Amends 59-503, 67-2010 and 67-2011, Idaho Code, to provide that salaries of state employees shall be paid on or before the 10th of the month following the month for which they are due, and to provide that vouchers for services and supplies need not be certified.
ED 7/1/72.

ENVIRONMENT

HB 555 Amends Chapter 24, Title 54, Idaho Code, to change the words "sanitarian(s)" to "Environmental Health Specialist(s)" and the Board of "Sanitarian" to the Board of "Environmental Health Specialist" and to provide for licensing and examination of Environmental Health Specialists.
ED 7/1/72.

HB 610 Repeals Chapter 1 and 29, Title 39, Idaho Code, and adopts a new act creating a Department of Environmental Protection and Health, providing for the transfer of powers to the new department; and establishing the powers, duties and regulations for the new department.
ED 7/1/72.

ESTATES

HB 403 A new act to provide for the administration of community property and/or separate property of a decedent to the surviving spouse as sole legatee or devisee.
ED 7/1/72.

F.

FINANCE

HB 408 Repeals 67-3513A, Idaho Code, which required legislative bills that require an expenditure of money or raise revenue to have a fiscal note attached explaining the impact.
ED 1/28/72.

FIREMEN

SB 1362 Amends 72-1429Q, Idaho Code, to provide that if a fireman terminates his employment after two years, he shall be entitled to receive 100% of his contributions into the Retirement Fund, rather than the 50% now available.
ED 7/1/72.

FISH & GAME

HB 536 Amends 36-404, and 36-801, Idaho Code, to take out unnecessary wordage regarding hunting licenses, to provide new regulations for hunting turkey and bear; and to revise the regulations for sale of bear, bear hides and elk.
ED 1/1/73.

SB 1320 Amends 36-408, Idaho Code, to allow a $75 annual license to trap fur-bearing animals to nonresidents only if their state of residence reciprocates by allowing a similar nonresident license.
ED 7/1/72.

FORESTS & FORESTRY

SB 1358 Amends 38-1203, Idaho Code, to provide that two of the four members of the Board of Scaling Practices shall be appointed from the membership of the Associated Logging Contractors of Idaho, one member from the northern part of the state and one from the southern part of the state.
ED 7/1/72.

SB 1436 Amends sections 38-201, 38-204 and 38-206, Idaho Code, to strike the word "chiefly" whenever it appears in reference to the use of forest lands in order to bring all lands valuable for growing forests under the act.
ED 7/1/72

FORESTRY

SB 1448 Repeals and reenacts Chapter 1, Title 38, Idaho Code, to provide a new comprehensive recodification of the "Idaho Forestry Act" dealing with the management of the state forest lands.
ED 7/1/73

FUELS

HB 636 Amends 49-1227, Idaho Code, to increase the privilege tax on aircraft engine fuel from 2½ cents per gallon to 3½ cents;

FUELS (Cont'd)

repeals 49-1227A, Idaho Code, which related to a special privilege tax of 1 cent per gallon of aviation fuel.
ED 4/3/72

HB 649 Repeals 49-1214, Idaho Code, and amends 49-1213, Idaho Code, to authorize the State Tax Commission to waive a dealer's penalty for late payment of motor fuels tax if late payment was due to circumstances beyond dealer's control, and to provide that the Tax Commission may use procedures in the Income Tax Act to enforce collection of penalties.
ED 7/1/72.

FUNDS

SB 1318 Amends Chapter 7, Title 57, IdahoCode, to allow the State Investment Board to hire "Investment Managers" for the Investment of state endowment funds.
ED 3/3/72

HB 415 Relating to the employment security fund changing the time limit from 14 months to 24 months regarding the money credited to the State of Idaho account in the unemployment trust fund.
ED 3/17/72

H.

HEALTH

HB 519 Amends various sections of Title 39, Idaho Code, to strike out the words "ionizing" and "radiological" as they are now used to define types of radiation and to newly define the word "radiation"; and to provide for licensing of any person installing or repairing sources of radiation.
ED 7/1/72.

HB 623 Amends 39-411 and 39-413, Idaho Code, to remove the limitation that no more than four members of the Board of Health shall have the same political affiliation and eliminates the requirement that a District Health Director must be a doctor of
ED 7/1/72.

HB 676 Adds 39-427, Idaho Code, to provide that licensed physicians optometrists, audiologists or other certified persons report to the Department of Health the names of children suspected of

HEALTH (Cont'd)

having severe auditory and/or visual impairment.
ED 7/1/72

SB 1348 A new act to create the Idaho Health Authority for the purpose of issuing revenue bonds to aid nonprofit hospitals; to establish that membership be appointed by the Governor; and to set forth regulations, etc.
ED 7/1/72

SB 1384 Amends Chapter 3, Title 66, and Chapter 2, Title 56, Idaho Code, to transfer the operation and management of the Idaho State School and Hospital at Nampa from the Department of Public Health to the Department of Public Assistance and to redefine mentally deficient or retarded persons and to provide that the Department of Public Assistance, rather than the Department of Public Health, shall have jurisdiction in this field.
ED 2/28/72

SB 1397 Repeals 66-801 through 66-812, Idaho Code, to abolish the State Board of Eugenics (which law regulates sterilization of humans).
ED 7/1/72

SB 1530 Amends Chapter 14, Title 39, Idaho Code, to eliminate the office of Administrator of the Department of Health and to provide that his duties shall be performed by the State Board of Health; to redefine the term "health facilities" to include many existing facilities and programs now under separate identity in the Department of Health; to eliminate present advisory councils for the Department of Health; and to provide that the Governor, with the advice of the Board of Health, may appoint other advisory councils as needed.
ED 7/1/72

HIGHWAYS

HB 429 Adds 34-625 and 34-905A, Idaho Code, to provide for nonpartisan election of Highway District Commissioners.
ED 7/1/72

HB 430 Amends Chapter 30, Title 40, Idaho Code, to give Highway District Commissioners the power to levy taxes; revises the regulations regarding dissolved districts; enacts new section 40-3017, Idaho Code, giving Highway Districts the power to

HIGHWAY (Cont'd)

create Local Improvement Districts; enacts section 40-3018, Idaho Code, establishing the responsibilities of a single county-wide district; and enacts 40-3019, Idaho Code, providing for the organization of a newly created Board of Highway District Commissioners.
ED 1/1/72

HB 561 Amends Chapter 29, Title 40, Idaho Code, to provide that the present provisions for relocating persons displaced by highway construction shall apply to persons displaced by any state or local government program or project.
ED 3/17/72

HB 602 Establishes a Legislative Interim Committee to study with the Idaho Highway Board, the needs of highways, streets and roads in Idaho, and appropriates $5,000 from the Highway Fund to pay for the expenses of the committee.
ED 3/17/72

HB 699 Amends 40-405, Idaho Code, to eliminate the apportionment of state highway funds to incorporated cities and to decrease from 30% to 26% that portion of the highway funds that are allocated to local units of government, excluding cities.
ED 4/1/72

HB 735 Amends various sections of Chapter 28, Title 40, Idaho Code, to provide additional definitions relating to advertising displays, and sets out new restrictions for advertising displays visible from the Interstate and primary systems of highways within the state.
ED 7/1/72

HOUSING

HB 472 A new act to provide regulations, under the Department of Law Enforcement, for factory-built housing; sets forth definitions, duties, powers, etc.
ED 7/1/73.

SB 1407 A new act to establish an IdahoHousing Agency to investigate, provide, etc., low income housing; provides for a seven man commission to be appointed by the Governor, sets forth powers, duties, regulations, etc.
ED 7/72

I.

INSURANCE

HB 395 Adds 41-3014A, Idaho Code, to allow any county mutual fire insurer to acquire and/or dispose of real and personal property necessary to prevent, abate or extinguish fires.
ED 3/17/72

HB 444 Amends 41-726, Idaho Code, to limit eligible investment by a title insurer in its plant investment.
ED 7/1/72

HB 453 Amends 41-402, Idaho Code, to add section 403 of the Internal Revenue Code to those profit-sharing or pension plans exempted from the insurance premium tax.
ED 7/1/72

HB 613 Adds sections 41-2139 and 41-3436, IdahoCode, and amends 41-2203, Idaho Code, to prohibit an insurance company from cancelling health and disability benefits for dependents of a member of a group plan if that dependent is mentally or physically handicapped, even though the dependent reaches the limiting age.
ED 7/1/72

HB 737 Amends 41-1025, Idaho Code, as enacted by Senate Bill 1330, Second Regular Session of the Forty-first Legislature, to provide that the definition of a "resident" insurance agent or broker shall include a foreign corporation if it is qualified to do business in the State of Idaho and maintains a place or places of business only in the State of Idaho.
ED 1/1/73.

SB 1325 Proposes to amend sections 28-34-103 and 28-34-202, Idaho Code, (Consumer Credit Code), and various sections of Title 41 (Idaho Insurance Code), to enact certain "housekeeping amendments" as proposed by the Commissioner of Insurance; to grant the Commissioner new powers to bring an action directly into District Court; to allow the Commissioner to enter an order without a hearing where the hearing is waived or the party fails to appear; and to allow agents, brokers,etc.,to provide service to employees at a discount.
ED 7/1/72

SB 1328 Provides a new Chapter 38, Title 41, Idaho Code, to provide regulation and supervision of the acquisition and control of insurance companies and insurance holding company systems.
ED 10/1/72

INSURANCE (Cont'd)

SB 1330 Repeals Chapter 9, Title 41, and sections 41-1001 through 41-1017, Idaho Code, and enacts a new Chapter 10, Title 41, to provide a comprehensive consolidation, recodification, revision and supplementation of the insurance laws relating to the qualifications and licensing of insurance agents, brokers and solicitors.
ED 1/1/72

SB 1352 Amends 41-2842, Idaho Code, to provide that a dividend on a participating life or disability policy for the first and second policy years may be paid subject to the payment of the premium for the next ensuing year.
ED 7/1/72

SB 1456 Adds Chapter 26A, Title 41, Idaho Code, to enact the "Mortgage Guaranty Insurance Act" to regulate the issuance of mortgage and lease guaranty insurance.
ED 7/1/72

SB 1517 Repeals 41-1829, Idaho Code, which stated that any minor over eighteen is competent to receive and to give full acquittance and discharge for payment or payments not exceeding $3,000 in one year received from a life insurer.
ED 7/1/72

INTEREST

HB 463 Amends 58-411, Idaho Code, to raise the annual interest rates on instalment sales of timber and timber lands from 4% to 6%.
ED 7/1/72

J.

JUDGES

HB 464 Amends R1-1801, Idaho Code, to provide that when a judge is disqualified the case need not be transferred to another district; rather, another judge from the same district or another district shall be called in to preside.
ED 7/1/72

L.

LANDS

HB 466 A new act known as the "Subdivided Land Disposition Act" provides rules, regulations, etc., regarding subdivisions under the administration of the Idaho Real Estate Commission.
ED 7/1/72

LANDS (Cont'd)

HB 478 Repeals Chapter 10, Title 58, Idaho Code, to abolish the State Commission on Federal Land Laws.
ED 7/1/72

SB 1302 Amends 58-307, Idaho Code, to allow state lands other than educational endowment lands to be leased to other government entities or agencies for a period of up to 25 years if used for public purposes. (Presently the maximum lease is for a 10 year period.)
ED 7/1/72

SB 1452 A new act to authorize directors of irrigation districts to institute and conduct proceedings for exclusion of non-agricultural lands from irrigation districts.
ED 7/1/72

SB 1453 Amends 43-1101, Idaho Code, and adds new sections to Title 43, Idaho Code, to provide landowners the right to petition for exclusion from irrigation districts.
ED 7/1/72

SB 1564 Adds new Chapter 16 to Title 47, Idaho Code, to authorize the Board of Land Commissioners to adopt such rules and regulations as are necessary to issue geothermal resource leases on state and school lands and to provide for the minimum royalties and rentals.
ED 3/17/72

LAW ENFORCEMENT

SB 1454 Adds 19-4812 and 18-4813, Idaho Code, to establish a criminal identification, records and statistic division in the Idaho State Police.
ED 1/1/74

SB 1579 An act to authorize units of state, city and local government that require fingerprinting of applicants or licenses to submit the prints to the State Criminal Identification Division and/or the Federal Bureau of Investigation.
ED 7/1/72

LEGISLATURE

HB 662 Amends 67-904, 67-905 and 67-906, Idaho Code, to authorize the Joint Printing Committee, rather than the Secretary of State, to enter into contracts for printing the Session Laws providing for approval for claims for payment; and to provide

LEGISLATURE (Cont'd)

that the laws will be available to the Secretary of State within 60 days following the Governor's final action on the bills.
ED 3/23/72

SB 1480 Amends 67-510, Idaho Code, to provide that no legislative act of a regular session shall take effect before July 1 of that year, or before 60 days from the end of the session, whichever occurs last, and to require that emergency clauses shall be based on facts.
ED 3/17/72

LEGISLATIVE DISTRICTS

HB 568 Amends 67-202, Idaho Code, to revise the boundaries of and add certain precincts of Legislative Districts 6, 7, 8, 33 and 35.
ED 3/13/72

LIBRARIES

SB 1334 A new act requiring all state agencies, bureaus, commissions, etc., to file with the State Librarian 20 copies of all documents they publish, and directing the State Librarian to distribute copies of other libraries, such as the Library of Congress, regional libraries, etc.
ED 7/1/72

LICENSES

HB 514 Amends Title 49, Idaho Code, by addition of a new chapter 27 to provide for registration and regulation of off-highway motorbikes.
ED 7/1/72

HB 522 A new act to provide for the registration, licensing and regulation of landscape architects and establishes a State Board of Landscape Architects with provisions for members and terms of office.
ED 7/1/72

SB 1373 Amends 36-5413, Idaho Code, to provide that failure of outfitters or guides to serve the public by limiting scope of services without good cause shall be an additional ground for revocation of a license.
ED 7/1/72

LICENSES (Cont'd)

SB 1415 Amends 21-114, Idaho Code, to provide that any aircraft holding a currently valid airworthiness certificate and inspection must register annually with the Department of Aeronautics.
ED 7/1/72

SB 1567 Amends 49-156, Idaho Code, to provide that the County Assessor may implement a system for reservations of specific number license plates for any person and that the fee therefor shall be raised from 50 cents to $1.00
ED 7/1/72

LIQUOR

SB 1556 See AGE, supra.

M.

MAIL

SB 1355 A new act to establish the date of a postmark as the legal filing date of any report, claim, tax return or other document to be filed with the State of Idaho.
ED 7/1/72

MARRIAGE

HB 500 See AGE, supra.

SB 1301 See AGE, supra.

MEDICAL & MEDICINE

HB 545 Amends 54-1806, Idaho Code, to establish a new classification of "physician's assistant" to provide rules, regulations, licensing provisions, etc.
ED 7/1/72

MEDICAL

HB 581 Adds new sections 39-131 through 39-136, Idaho Code, to bring the control and regulation of ambulance paramedics under the Board of Medicine and to provide for the training and examination of ambulance paramedics by licensed physicians.
ED 7/1/72

MILITARY & MILITIA

SB 1424 Repeals sections 701 and 710 of Title 46, Idaho Code, and repeals Chapter 9 of Title 46, Idaho Code; amends 46-805, Idaho Code, to abolish the nonoperative Idaho Armory Board of Trustees and the nonoperative Idaho National Guard Trust Fund and designates the Attorney General as the legal advisor to the Governor and the Adjutant General.
ED 7/1/72

MINES & MINING

HB 571 Amends 47-1201 through 47-1204, Idaho Code, to make royalties received from mining operations subject to the special tax on mining and to reduce such tax from 3% to 2% of the value of ores mined or royalties received.
ED 1/1/72

MINORS

HB 647 See AGE, supra.

SB 1426 Amends 32-101 and 32-103, Idaho Code, to reduce the age of minor males from under 21 years of age to under 18 years of age and provide that any male or female who has been married shall be competent to enter into contractual agreements, but an unmarried minor may disaffirm a contract.
ED 7/1/72

MOBILE HOMES

SB 1386 Amends 39-4003, Idaho Code, to require the Commissioner of Law Enforcement to adopt minimum standards for body and frame design and construction requirements of mobile homes.
ED 7/1/72

SB 1423 Amends Chapter 40, Title 39, Idaho Code, to provide that any mobile home or recreational vehicle manufactured or sold in Idaho shall have a warranty issued to the buyer, and states what the warranty must contain.
ED 7/1/72

MORTICIANS

HB 419 Amends 54-1104, Idaho Code, to clarify who is exempt from the act of regulating morticians, funeral directors and embalmers.
ED 7/1/72

MOTOR VEHICLES

HB 384 Amends 19-4705, Idaho Code, to provide that when an arrest for violation of motor vehicle laws is made by a city law enforcement official the resulting fine for forfeiture shall be distributed 90% to the city and 10% to the State General Fund. (Presently such fines are apportioned 10% to the State General Fund, 45% to the State Highway Fund, 22½% to the County Current Expense Fund and 22½% to the County School Fund.)
ED 1/1/72

HB 572 Amends 49-915, Idaho Code, to allow "stinger steered trailer combinations" to be used for purposes other than transportation of motor vehicles.
ED 2/29/72

HB 580 Amends 49-1102, Idaho Code, to provide that chemical analysis of blood, urine or breath to determine blood alcohol shall be done by the State Department of Health or in a laboratory approved by the Department of Heatlh.
ED 7/1/72

HB 598 Amends 49-312, 49-322 and 49-346, Idaho Code, to provide a $1.00 increase in all fees related to drivers', chauffers', and operator's licenses and instruction permits, except a driver training course permit which is increased $3.00; and to establish a Driver Training Fund.
ED 3/23/72

HB 615 Amends 49-228, Idaho Code, to provide for the issuance of special National Guard license plates on an annual basis and requires that the plates be turned in as a condition of discharge.
ED 1/1/73

HB 641 Amends 19-622, 49-502, 49-526 and 49-830, Idaho Code, and adds new sections 49-526A and 49-731A, Idaho Code, to redefine "police vehicle" and to provide that the flashing lights on police vehicles and road blocks will be blue and to establish regulations for the operation of a police vehicle when on an emergency call.
ED 7/1/72

HB 687 Adds new section 49-231, Idaho Code, to provide for personalized motor vehicle license plates, consisting of any combination of numbers or letters not exceeding six position, for an additional fee of $25 annually, plus the regular registration fee.
ED 7/1/72

MOTOR VEHICLES (Cont'd)

SB 1393 Amends 49-107 and 49-127, Idaho Code, to raise the maximum weight limits allowable for certain motor vehicles before they must be registered with the Commissioner of Law Enforcement, rather than the county assessor, from 30,000 pounds to 48,000 pounds, and to revise the registration fees for motor vehicles operating under the maximum gross weight schedule.
ED 7/1/72

SB 1478 Amends 49-2501A, Idaho Code, to require that any person selling a new or used motor vehicle must have it safety inspected prior to the sale. (Presently only licensed motor vehicle dealers are required to inspect all vehicles prior to sale.)
ED 7/1/72

SB 1510 Amends 49-418, Idaho Code, to require the Department of Law Enforcement to cancel the certificate of title to a motor vehicle that has been partially dismantled, junked, abandoned or is non-operating if it is declared a public nuisance by a court of competent jurisdiction.
ED 7/1/72

SB 1544 Amends 49-901, Idaho Code, to provide that the present weight limitiations on vehicles or combinations of vehicles shall apply only to the United States Federal Interstate and Defense Highways System; and adds 49-901A, Idaho Code, to adopt weight limitations for other highways in the state.
ED 3/27/72

MUNICIPALITIES

HB 460 Amends 50-902, Idaho Code, to eliminate the requirement that an ordinance be read in full on three different days and to require instead that two readings may be by title only, with the requirement that such readings still be on different days.
ED 7/1/72

N.

NATURAL RESOURCES ADVISORY BOARD

SB 1309 Repeals 38-101, and 38-102, Idaho Code, which would abolish Natural Resources Advisory Board. (This is a companion bill to SB 1310 of this session and SJR 101 of the 1st session of the 41st Legislature to make the Land Board appointive.)
ED 7/1/72

O.

OPTOMETRISTS

HB 540 Amends 67-2907, Idaho Code, to provide that the Examining Board for Optometrists shall be appointed by the State Board of Optometry.
ED 6/30/72

HB 541 Repeals and reenacts Chapter 15, Title 54, Idaho Code, to provide a new and complete recodification of the laws regulating the licensing and practice of optometry.
ED 6/30/72

P.

PARKS

HB 491 Amends Chapter 42, Title 67, Idaho Code, to change the name of the State Department of Parks to the State Department of Parks and Recreation.
ED 7/1/72

HB 518 Amends section 2, Chapter 125, Laws of 1971, to provide that the State Parks Board may grant an easement on the northwest boundary to the Idaho Veterans Memorial Park for use as a public highway.
ED 3/15/72

PERSONNEL SYSTEM

HB 443 Amends 67-5303, Idaho Code, to provide that the professional staffs of the Department of Vocational Education and Vocational Rehabilitation will be exempt from application of the personnel system of state employees.
ED 4/3/72

SB 1532 Amends section 67-5752A, Idaho Code, by striking the provision that the section applies only to classified employees and requiring appointing authorities to assign position control numbers and to notify the legislature and the governor of changes made.
ED 7/1/72

POTATOES

HB 690 Adds new section 22-911, Idaho Code, to provide that all potatoes offered or sold by a retail dealer to a consumer must be marked and graded in compliance with the law and that

POTATOES (Cont'd)

bulk potatoes must be identified by state of origin; provides for inspection of potatoes in retail stores, markets, wholesale distributors or potato dealers.
ED 7/1/72

HB 790 Amends section 22-1207, Idaho Code, by increasing tax from $.02 to $.03; amends section 22-1211, Idaho Code, by imposing an additional tax of $.01 per hundred weight on potatoes to be paid one-half each by the first handler and by the grower; adds a new section 22-1211A, Idaho Code, providing for a referendum on continuance of the additional tax.
ED 7/1/72

PRISONERS

HB 402 Amends 20-101A, Idaho Code, to revise the regulations granting prisoners reduction in their sentence for "goodtime" provisions.
ED 2/28/72

SB 1349 Amends 20-242A, Idaho Code, to provide that prisoner incentive pay authorized by the State Board of Correction shall be paid from the State Penal Betterment Fund instead of the current agency appropriation.
ED 7/1/72

SB 1414 Amends 20-409, Idaho Code, to provide that compensation may be paid to any inmate employed in any correctional institution under control of the State Board of Correction.
ED 7/1/72

PROBATE

SB 1444 Amends 15-1-201, Idaho Code, to define "determination of heirship"; adds new section to define "quasi-community property" and to establish rules and regulations as to its disposal upon the death of an interested party; and revises other sections regarding wills and probate matters.
ED 7/1/72

PROPERTY

HB 381 Amends 63-303, Idaho Code, to change the reference to section 40-2512, Idaho Code, to section 50-1314, Idaho Code, as it relates to platting requirements for intricate description.
ED 7/1/72

PROPERTY (Cont'd)

HB 654 Amends 55-1604, through 55-1610, Idaho Code, to authorize counties to record corner records by photographic process; to provide that records shall be preserved as other recorded records and that the information shall be recorded within 90 days after survey is completed.
ED 7/1/72

SB 1438 A new act that an occupant of real estate who obtained title in good faith and added improvements will be protected as to the value of the improvements if another party is found to be the true owner.
ED 7/1/72

SB 1471 Amends, 7-721, Idaho Code, to provide that culinary water systems and sewerage systems will be under the provisions of this act as well as streets and roads already included, and that the plaintiff (state) may take possession pending trial.
ED 7/1/72

PUBLIC ASSISTANCE

HB 404 Amends 56-224a and 56-224b, Idaho Code, to provide that the dwelling house or trailer house owned by recipients of old age assistance shall be subject to recovery under the provisions of the so-called "old age assistance lien".
ED 7/1/72

HB 667 Amends various sections of the Idaho Code to change the name of the Department of Public Assistance to the Department of Social and Rehabilitation Services and the Commissioner of the Department of Public Assistance to the Commissioner of the Department of Social and Rehabilitation Services.
ED 7/1/72

SB 1429 Amends various sections of Title 39, Idaho Code, and adds new section 39-3302A to remove shelter homes from the control of the Department of Health and place their regulation under the Department of Public Assistance.
ED 7/1/72

PUBLIC WORKS

HB 578 Amends 67-2304, Idaho Code, to increase from $500 to $1,000 the sum over which bids must be let for construction, alteration, equipping and repair of public buildings.
ED 7/1/72

PURCHASING AGENT

SB 1492 Adds new sections 67-1628 and 67-1629, Idaho Code, to provide for the establishment of a state car pool section under the supervision of the State Purchasing Agent and to provide that claims for costs of operation be approved as prescribed by law.
ED 7/1/72

R.

REAL ESTATE

HB 570 Amends various sections of Title 54, Idaho Code, to alter regulations regarding the "power of attorney" in real estate transactions and to revise regulations as to the licensing of real estate brokers.
ED 7/1/72

RECREATION

HB 410 Amends 31-4316, Idaho Code, to expand the authority for facilities constructed by Recreation Districts to include picnic areas, camping facilities, ball parks, handball and tennis courts, and marine and snowmobile facilities.
ED 2/10/72

RESOURCES

HB 732 An act to regulate geothermal resource exploration and development in the state under the administration of the Department of Water Administration.
ED 3/27/72

S.

SCHOOLS

HB 398 Amends 33-512, Idaho Code, to provide that entrance to the public schools or grounds shall be prohibited to any person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils.
ED 7/1/72

HB 411 Amends 33-401, Idaho Code, to change the date trustees for school districts must file for nomination from 10 days to 18 days before the election.
ED 3/6/72

SCHOOLS (Cont'd)

HB 421 Amends 33-701, Idaho Code, to require school trustees to periodically review the school district budget to reflect the availability of funds and requirements of the district and to submit any amended budgets to the State Board of Education.
ED 7/1/72

HB 547 Amends 33-317, Idaho Code, to eliminate the authority for a Cooperative Service Agency, made up of several school districts, to levy taxes or issue bonds and to provide that such levy must be approved by the member school districts and cannot exceed five mills for a period of ten years.
ED 7/1/72

HB 563 Amends various sections in Title 33, Idaho Code, to change the name of Eastern Idaho Vocational School to Eastern Idaho Vocational-Technical School.
ED 7/1/72

SB 1308 Amends 33-601, Idaho Code, to give the Board of Trustees of each school district the right to eminent domain.
ED 7/1/72

SB 1615 Adds new section 33-1009A, Idaho Code, to provide that any school district which has a decrease of 25 or more in average daily student attendance may use its 1971-1972 average daily attendance if greater than the current year to determine the allowance of funds from the Foundation Educational Program.
ED 7/1/72

SECURITIES

SB 1402 Amends 30-1434, Idaho Code, to provide that any securities issued by a community-sponsored or community-owned industrial corporation or foundation organized for the purpose of promoting growth or economic development of the community shall be exempt from registration under the State Securities Act.
ED 7/1/72

SKI RESORTS

HB 482 Amends 23-903, Idaho Code, to authorize ski resorts to be licensed to sell liquor by the drink; sets forth qualifications, regulations, etc.
ED 7/1/72

STATE PLANNING & COMMUNITY AFFAIRS

SB 1607 Amends Chapter 19, Title 67, Idaho Code, by adding new sections 67-1914 through 67-1917, to provide that the State Planning and Community Affairs Agency shall acquire information and keep state agencies advised as to possible federal assistance programs and assist any agency in obtaining federal assistance.
ED 7/1/72

BUREAU OF SUPPLIES

HB 674 Amends 67-1623, Idaho Code, to increase the appropriation from the General Fund from $20,000 to $40,000 for the Revolving Fund of the Bureau of Supplies.
ED 3/23/72

T.

TAX & TAXATION

HB 382 Amends 63-915, Idaho Code, relating to records of proceedings of the State Tax Commission, to change the reference to the State Board of Equalization so it reads State Tax Commission.
ED 7/1/72

HB 386 Amends 63-3631, Idaho Code, to eliminate the provision that an order or decision of the Tax Commission upon a petition for redetermination shall become final after 60 days; and amends 63-3633, Idaho Code, to provide that the statute of limitations regarding sales tax collection by a proceeding in court.
ED 1/1/72

HB 391 Amends 63-2503, Idaho Code, to increase the tax on cigarettes two cents per package making the total tax nine cents per package. (Eight cents to the General Fund and one cent to the Building Fund.)
ED 7/1/72

HB 458 Repeals 50-1009, Idaho Code, which is an outdated, obsolete section relating to the tax collector remitting funds to the City Treasurer.
ED 7/1/72

HB 459 Amends 50-1007, Idaho Code, to require that the certification of city taxes be in terms of total dollars to be raised, rather than mills on the dollars of assessed property.
ED 7/1/72

TAX & TAXATION (Cont'd)

HB 504 Amends various sections in Title 61, Idaho Code, and adds new section 61-811B, Idaho Code, to provide an increase in regulatory fees for motor common, contracts and private carriers, and provides that each county assessor retain five percent of the monies collected.
ED 3/17/72

HB 524 A new act and also amending 63-2503, Idaho Code, creating a fund in the state treasury to be known as the Central Tumor Registry Fund, and imposing a tax of 1/200 of $.01 on each cigarette for the development of the fund.
ED 7/1/72

HB 532 Amends 63-3022A, Idaho Code, to provide certain exemptions for benefits paid from the Firemen's Retirement Fund from Idaho Income Taxes.
ED 3/3/72

HB 565 Amends sections 49-1210A, 49-1231A and 49-1241, Idaho Code, to provide that the Park Fund shall receive 1% of the motor fuels tax and related penalties and interest received by the State Treasurer.
ED 7/1/72.

HB 678 Amends 63-105S, Idaho Code, to provide that if property normally constituting business inventory is leased or rented it will be subject to taxation but will be exempt upon return to inventory; provides procedure of reporting to county assessor and payment of tax.
ED 3/31/72

HB 681 Amends 63-3037, Idaho Code, requiring information returns on payment to subcontractors.
ED 1/1/72

HB 692 An act to provide that all tobacco products, except cigarettes, will be taxed at the rate of 35% of the wholesale price and that the funds collected shall go into the Water Pollution Control Fund; establishes procedures, rules and regulations for enforcement and collection of the tax.
ED 7/1/72

HB 694 Amends 49-127A, Idaho Code, to increase the use fees for vehicles exceeding 80,000 pounds from .40 to .50 mills per mile for each 2,000 pounds of permitted excess weight.
ED 4/1/72

TAX & TAXATION (Cont'd)

HB 695 Amends 49-127, Idaho Code, to revise the operating fee schedule "B" and "C" (mills per mile) for vehicles operating under the maximum gross weight schedule.
ED 4/1/72

HB 696 Amends 49-1210, Idaho Code, to increase the excise tax on motor fuels from 7 cents to 8½ cents per gallon.
ED 4/1/72

HB 697 Amends 49-1231, Idaho Code, to increase the excise tax on special motor vehicle fuel from 7 cents to 8½ cents per gallon.
ED 4/1/72

HB 698 Amends 49-1231A, Idaho Code, to increase the allocation of special motor vehicle fuels excise tax to cities that build and maintain streets from 1/7 to 1/6 of the special motor vehicle fuels excise tax moneys received by the State Treasurer.
ED 4/1/72

HB 729 Amends 33-1014, Idaho Code, to provide that "market value" rather than "cash value" shall be used to determine the assessed valuation of real property; to require that the State Tax Commission furnish certain data to counties for use in determining tax ratios; and to provide for appeal from the information.
ED 1/1/73

HB 752 Amends 23-217, Idaho Code, to provide for an additional 7½% increase in the surcharge at liquor dispensaries and to provide that 66.65% of the moneys received be used for completing construction of the new State Penitentiary and 33.35% go to the Water Pollution Control Fund.
ED 7/1/72

HB 770 Amends 63-3022A, Idaho Code, to provide that benefits paid to a retired policeman from a retirement fund shall be tax exempt, but the amount would be reduced from benefits received from the Federal Railroad Retirement Act or the Federal Social Security Act, and updates the amount of exemptions to conform with those provided for Social Security retirees.
ED 1/1/72

TAX & TAXATION (Cont'd)

HB 784 Repeals section 2, Chapter 171, Laws of 1972, and amends 49-127, Idaho Code, as amended by House Bill 695, This bill has the same content as Senate Bill 1393 which was passed in this session of the Legislature and signed by the Governor, but this bill increases the maximum weight limit for farm trucks from 30,000 pounds to 48,000 pounds.
ED 7/1/72

HB 789 Amends Chapter 30, Title 63, Idaho Code, to update the Idaho Income Tax Act to conform with the Federal Internal Revenue Code in effect on January 1, 1972; to clarify the definition of armed forces personnel on active duty; to disallow the Federal income tax deduction from the State income tax and to alter the rate of tax on individual returns as follows; first $1,000 of taxable income from 2.5% to 2%; second $1,000 from 5% to 4%; third $1,000 from 6% to 4.5%; fourth $1,000 from 7% to 5.5%; fifth $1,000 from 8% to 6.5%; on any taxable income in excess of $5,000 at the rate of 7.5%; to provide new regulations regarding low income allowances and certain non-business deductions; and to allow the multistate Tax Commission to inspect the tax returns. Repeals section 63-3011, Idaho Code.
ED 1/1/72

SB 1550 Amends Chapter 4, Title 14, Idaho Code, to provide certain "housekeeping revisions" in the Transfer and Inheritance Tax Act to change reference to the Probate Court and Commissioner of Finance to the State Tax Commission; to transfer collection to the State Tax Commission rather than the county treasurer; and to update the law to conform to present administration and collection of other state taxes and to the Federal Code.
ED 7/1/72

SB 1512 Amends 63-105B, Idaho Code, to extend exemption from ad valorem taxes to property owned by any religious corporation or society which property is used for any combination of religious worship, educational or recreational purposes.
ED 1/1/71

TEACHERS

HB 413 Repeals 33-1223, Idaho Code, which exempted teachers from jury duty.
ED 7/1/72.

V.

VETERANS

HB 559 Amends sections 65-502 through 65-506, Idaho Code, by eliminating the word "disabled" as related to employment in order that all veterans will be given preference by state, county and municipal governments, but preserving the word "disabled" in points added in competitive examination ratings.
ED 7/1/72

HB 560 Amends 67-5309, Idaho Code, to require that the Personnel Commission add five points to the earned rating of any war veteran on any competitive examination and ten points for any disabled veteran and that their names shall have preference on the eligibility register.
ED 7/1/72

W.

WATER

HB 437 Amends 42-1414, Idaho Code, to provide that no filing fee shall be required in water claims where the adjudication proceedings were started before such fees were required.
ED 2/19/72

HB 661 Amends 42-3704, Idaho Code, to provide that Watershed Improvement Districts may include lands within the limits of any incorporated city or village.
ED 7/1/72

SB 1511 Amends 42-3803 and 42-3809, Idaho Code, to provide authority for the Department of Water Administration to adopt and revise rules and regulations regarding the alteration of stream channels.
ED 7/1/72

SB 1531 Amends 42-3905, Idaho Code, to reduce the filing fee for an injection well from $100 to $25 and to provide that no filing fee shall be charged for applications submitted on wells in operation on or before January 1, 1972.
ED 7/1/72

WINE

SB 1557 See AGE, supra

WORKMEN'S COMPENSATION

HB 434 Amends 72-212, Idaho Code, to exempt pilots of agricultural spraying or dusting planes from the Workmen's Compensation Law if employer provides adequate insurance.
ED 2/19/72

HB 448 Amends 72-311, Idaho Code, to provide that a 10-day notice must be given before a workman's compsenation policy, guaranty contract or bond can be cancelled.
ED 3/21/72

HB 548 Amends 72-212, Idaho Code, to exempt from Workmen's Compensation coverage of an officer of a corporation who at all times during the period involved owns not less than 10% of the issued and outstanding voting stock of the corporation.
ED 7/1/72

HB 731 Repeals 72-215, Idaho Code, to withdraw Workmen's Compensation coverage to any person who is an inmate of an institution because of mental insufficiency, feeble mindedness, insanity, etc.
ED 7/1/72

HB 759 Amends 41-1317, Idaho Code, to allow group insurance coverage by Workmen's Compensation Insurance for companies or associations in the same way that life or health and accident insurance is obtained by groups.
ED 7/1/72

SB 1499 Amends 72-205, Idaho Code, to more clearly define public employees and employers by eliminating reference to quasi-political subdivis ions, institutions or instrumentalities.
ED 7/1/72

A SKETCH OF THE FEDERAL ANTITRUST LAWS AS RELATED TO IDAHO PRACTICE

I. Introductory--The Principal Federal Antitrust Laws Are:

The Sherman Act, enacted 1890 (15 U.S.C. §§1-7);

The Clayton Act, enacted 1914 (15 U.S.C. §§12-27);

The Robinson-Patman Act, enacted 1936 (15 U.S.C. §§13-13b, 21a);

The Federal Trade Commission Act, enacted 1914 (15 U.S.C. §45).

II. The Central Provisions Of These Laws Are:

(a) Sherman Act §1 (15 U.S.C. §1):

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal . . ."

(b) Sherman Act §2 (15 U.S.C. §2):

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations . . ."

is prohibited.

(c) Sherman Act §4 (15 U.S.C. §4) confers jurisdiction for equity suits by the United States to enjoin violations of the Sherman Act.

(d) Clayton Act §2 (a) to (f) (15 U.S.C. §13, 13a), as amended, is the Robinson-Patman Act, dealing with discrimination in prices, services and facilities.

(e) Clayton Act §3 (15 U.S.C. §14) prohibits a lease or sale of goods or commodities on a basis that the other party will not use or deal in any competitive products where such terms "may be to substantially lessen competition or tend to create a monopoly in any line of commerce".

(f) Clayton Act §4 (15 U.S.C. §15) is the charter under which private treble damage suits are brought. It provides:

> "That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent . . ."

and may recover treble damages, cost of suit and a reasonable attorney's fee.

(g) Clayton Act §4A (15 U.S.C. §15a) authorizes suit by the United States for its injuries in a proprietary capacity, as where it buys goods at allegedly illegal prices.

(h) Clayton Act §4B (15 U.S.C. §15b) sets up a four-year statute of limitations for private suits and those brought by the United States in its proprietary capacity.

(i) Clayton Act §5 (15 U.S.C. §16) provides that any adjudication of antitrust liability in a civil or criminal suit brought by the United States is prima facie evidence against the defendant in a suit brought by any other party "as to all matters respecting which said judgment or decree would be an estoppel

between the parties thereto", but the section does not apply to consent decrees entered before testimony is taken or to judgments obtained by the government for its injury under §4A.

(j) Clayton Act §16 (15 U.S.C. §26) confers jurisdiction for an equity suit by a private party to restrain "threatened loss or damage" by a violation of the antitrust laws.

(k) Federal Trade Commission Act, §5 (15 U.S.C. §45):

> "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

The Supreme Court has recently confirmed that this Act confers adjudicative and enforcement powers on the FTC "to protect consumers as well as competitors and authorizes it to determine whether challenged practices, though posing no threat to competition within the letter or spirit of the antitrust laws . . ." (F.T.C. v. The Sperry and Hutchinson Company, 1972 CCH Trade Cas. ¶73,861).

III. The Federal Antitrust Laws Are A Broad Charter Guaranteeing Freedom Of Competition.

(a) United States v. Topco Associates, Inc. 1972 CCH Trade Cas. ¶73,904 (at p. 91,752):

> "Antitrust laws in general, and the Sherman Act in particular, are the Magna Charta of free enterprise. They are as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete-to assert with vigor, imagination, devotion and ingenuity, whatever economic muscle it can muster."

(b) Northern P. R. Co. v. United States 356 U.S. 1, 4 (1958):

> "The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as a rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even were that premise open to question, the policy unequivocally laid down by the Act is competition. . . ."

(c) Thus, private suits are encouraged to foster these policies even where a plaintiff may himself be tainted by his conduct.

Perma Life Mufflers, Inc. v. International Parts Corp. 392 U.S. 134, 139 (1968):

> ". . . the purposes of the antitrust laws are best served by insuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the antitrust laws. The plaintiff who reaps the reward of treble damages may be no less morally reprehensible than the defendant, but the law encourages his suit to further the overriding public policy in favor of competition. A more fastidious regard for the relative moral worth of the parties would only result in seriously undermining the usefulness of the private action as a bulwark of antitrust enforcement."

IV. The Sherman Act Prohibitions Against Restraints Of Trade--Sherman Act §1.

(a) Every agreement affecting interstate trade involves elements of "restraint". A literal reading of §1 would seem to prohibit every imaginable restraint of interstate trade,

regardless of its type, extent, form, purpose or gravity. However, the Supreme Court in 1911, applying common law precedent adopted the "rule of reason", holding that §1 only reaches the same evils that were prohibited under the common law rules against unreasonable restraints of trade.

United States v. Standard Oil Co.
221 U.S. 1 (1911).

(c) The "rule of reason" was authoritatively applied and articulated in Board Of Trade v. United States, 246 U.S. 231 (1918) where the Court held a Board rule to be valid which provided that grain trades made after a trading session's close would be transacted at the closing price. The court concluded the rule had no appreciable effect on prices or volume of grain traded, was not adopted for price-fixing objectives but served legitimate regulatory purposes of the exchange, stating (at p. 238):

> "Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint, and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts."

(d) Certain restraints, however, are so inherently "pernicious" and anticompetitive, and so devoid of any purpose except the stifling of competition, that they have been declared

to be per se "unreasonable" and violative of §1. In these cases, the violation is established regardless of justification or motive.

Northern P. R. Co. v. United States
356 U.S. 1, 5 (1958):

". . . [T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use."

(e) Restraints deemed unreasonable per se usually fall into one of the following categories:

(1) Price-fixing, both horizontal and vertical.

United States v. Socony-Vacuum Oil Co.
310 U.S. 150 (1940);

Lessig v. Tidewater Oil Co.
237 F. 2d 459 (9th Cir. 1964), cert. denied
337 U.S. 993 (1964);

Plymouth Dealers' Ass'n. v. United States
279 F. 2d 128 (9th Cir. 1960).

(2) Group boycotts, or concerted refusals to deal.

Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656 (1961);

Klor's, Inc. v. Broadway-Hale, Inc.
359 U.S. 207 (1959).

(3) Horizontal division of markets

United States v. Topco Associates, Inc.
1972 CCH Trade Cas. ¶73,904.

(4) Bid-rigging, complimentary or facetious bids.

Las Vegas Merchant Plumbers Ass'n. v. United States, 210 F. 2d 732 (9th Cir. 1954), cert. denied 348 U.S. 817 (1954).

(5) Vertical division of markets, e.g., where a supplier assigns exclusive territories to its distributors or retailers.

United States v. Arnold Schwinn & Co. 388 U.S. 365 (1967).

(6) Tying arrangements, e.g., where one will only sell something on condition the other buy an unwanted (tied) product or service.

Northern P. R. Co. v. United States 356 U.S. 1 (1958);

Fortner Enterprises v. U. S. Steel Corp. 395 U.S. 495 (1969).

(f) Restraints not within the per se rule are those necessitating analysis of market structure and impact or involving novel theories. Examples:

(1) Trading rules of an exchange:

Board of Trade v. United States 246 U.S. 231 (1918).

(2) Merger cases, which frequently arise under Sherman Act §1 as well as the anti-merger statute, Clayton Act §7 (15 U.S.C. §18):

United States v. Columbia Steel Co. 334 U.S. 495 (1948);

United States v. First Nat. Bank 376 U.S. 665 (1964).

(3) Requirements contracts, e.g., where a supplier provides all of the requirements of a user:

Tampa Electric Co. v. Nashville Coal Co. 365 U.S. 320 (1961).

(4) Termination of distributors or dealers (where other per se elements are not present):

Joseph Seagram & Sons v. Hawaiian Oke & Liquors, Ltd., 416 F. 2d 71 (9th Cir. 1969), cert. denied 396 U.S. 1062 (1969);

Ricchetti v. Meister Brau, Inc. 431 F. 2d 1211 (9th Cir. 1970), cert. denied 401 U.S. 939 (1971).

(5) Charges that defendants collaborated in research and development activities:

United States v. Automobile Manufacturers Ass'n., Inc., 307 F. Supp 617 (C.D. Cal. 1969).

V. Practical Aspects Of Price-Fixing As An Antitrust Violation.

(a) Any agreement consciously made, having the purpose and effect of tampering with price structure and regardless of its "justification", constitutes a per se violation:

United States v. Socony-Vacuum Oil Co. 310 U.S. 150, 219-222 (1940).

". . . Proof that there was a conspiracy, that its purpose was to raise prices, and that it caused or contributed to a price rise is proof of the actual consummation or execution of a conspiracy under §1 of the Sherman Act.

* * * * *

". . . Any combination which tampers with price structures is engaged in an unlawful activity. Even though the members of the price-fixing group were in no position to control the market, to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces. The Act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference. Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not

permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies.

* * * * *

"Nor is it important that the prices paid by the combination were not fixed in the sense that they were uniform and inflexible."

Plymouth Dealers' Ass'n. Of No. Cal. v. United States, 279 F. 2d 128, 130 (9th Cir. 1960)

where a price schedule circulated by the dealers' association was "a substantial part of the price structure used" in the sale of the automobiles:

"When the term 'fix prices' is used, that term is used in its larger sense. A combination or conspiracy formed for the purpose and with the effect of raising, depressing, fixing, pegging or stabilizing the price of a commodity in interstate commerce is unreasonable per se under the Sherman Act."

(b) No price-fixing violation (or other infraction of §1) exists without proof of a conscious commitment by two or more persons to the illegal scheme.

Wisconsin Liquor Co. v. Park & Telford Distillers Corp., 267 F. 2d 928 (7th Cir. 1949);

United States v. Standard Oil Co. 316 F. 2d 884 (7th Cir. 1963):

"The substantive law of trade conspiracies requires some consciousness of commitment to a common scheme. Theatre Enterprises, Inc. v. Paramount Film Distributing Corp., et al. [1954 Trade Cases, para. 67,640], 346 U.S. 537, 540-541. It has been stated there is no such thing as an 'unwitting conspirator.' United States v. National Malleable & Steel Castings Co., N.D. Ohio 1957 CCH Trade Cases, Par. 68890, at page 73601.

"Unless the individual involved understood from something that was said or done that they were, in fact, committed to raise prices, there was no violation of the Sherman Act."

(c) Though an agreement is the gist of the offense, an express agreement, written or oral, is not essential:

Esco Corporation v. United States
340 F. 2d 1000, 1007-1008 (9th Cir. 1965):

"A knowing wink can mean more than words.

* * * * *

"It is not necessary to find an express agreement, either oral or written, in order to find a conspiracy, but it is sufficient that a concert of action be contemplated and that defendants conform to the arrangement."

(d) Mere similarity of conduct does not ipso facto equal illegal agreement under the Sherman Act:

Theater Enterprises v. Paramount Distrib. Corp.
346 U.S. 537, 540-541 (1954):

"The crucial question is whether respondents' conduct toward petitioner stemmed from independent decision or from an agreement, tacit or express. To be sure, business behavior is admissible circumstantial evidence from which the fact finder may infer agreement. [Citations omitted] But this Court has never held that proof of parallel business behavior conclusively establishes agreement or, phrased differently, that such behavior itself constitutes a Sherman Act offense. Circumstantial evidence of consciously parallel behavior may have made heavy inroads into the traditional judicial attitude toward conspiracy; but 'conscious parallelism' has not yet read conspiracy out of the Sherman Act entirely."

Independent Iron Works, Inc. v. United States Steel Corp., 322 F. 2d 656, 665 (9th Cir. 1963), cert. denied 375 U.S. 923 (1963):

"Similarity of prices in the sale of standardized products such as the types of steel involved in this suit will not alone make out a prima facie case of collusive price fixing in violation of the Sherman Act, the reason being that competition will ordinarily cause one producer to charge about the same price that is charged by any other."

(e) An agreement by competitors to exchange price information in a market characterized by price rigidity, where the purpose and effect of the exchange is to stabilize prices, constitutes a violation of §1:

United States v. Container Corp. Of America 393 U.S. 333, 338 (1969):

"Price is too critical, too sensitive a control to allow it to be used even in an informal manner to restrain competition."

(f) But, no violation of §1 results from an exchange of market information:

(1) Where there is exchange and dissemination of general production and marketing data and statistics, without identification of parties to specific transactions:

Maple Flooring Mfrs. Assn. v. United States 268 U.S. 563 (1925).

(2) Where prices quoted to specific customers are exchanged to guard against customer fraud and misrepresentation.

Cement Mfrs. Protective Assn. v. United States, 268 U.S. 588 (1925);

Wall Products Co. v. National Gypsum Co. 326 F. Supp. 295, 315 (N.D. Cal. 1971):

"No court is required by the Sherman Act to foster 'competition' procured by fraud and misrepresentation, and the Sherman Act does not prohibit a defendant from protecting itself therefrom."

(3) Where price information on a specific quotation is obtained as part of a good faith effort to meet competition.

Clayton Act, §2(b), 15 U.S.C. §13(b);

Standard Oil Co. v. Fed. Trade Comm.
340 U.S. 231, 243 (1951);

Wall Products Co. v. National Gypsum Co.
326 F. Supp. 295, 312, 314 (N.D. Cal. 1971)

where even though the defendants' "verification communications" had "a stabilizing effect" on price, the court stated it did "not interpret Container as precluding a proven good faith Robinson-Patman defense."

* * * * *

"The record is replete with evidence that the purpose of the verification communication of the Wallboard producers was to permit compliance with the Robinson-Patman Act."

VI. The Practical Aspects Of Tying Arrangements As Antitrust Violations.

(a) Normally tying contracts "serve hardly any purpose beyond the suppression of competition."

Standard Oil Co. v. United States
337 U.S. 293, 305-306 (1949).

This fact had led the courts to deal harshly with tying contracts.

(b) The Supreme Court has evolved the following formula for finding tying arrangements to be per se violations of the antitrust laws:

(1) Sufficient economic power in the tying product to appreciably restrain trade in the tied product, plus

(2) Restraint of a "not insubstantial" amount of commerce in the tied products, equals

(3) A per se violation of the antitrust laws.

Northern Pacific Railway Co. v. United States, 356 U.S. 1 (1958);

International Salt Co. v. United States
332 U.S. 392 (1947);

See also:

United States v. Loew's, Inc.
371 U.S. 38 (1962).

(c) Financing and tying. Fortner Enterprises v. U.S. Steel Corp., 395 U.S. 495 (1969), where the Court in a 5-4 decision held that when a subsidiary of U. S. Steel loaned $2 million to a real estate developer under a requirement that a major portion of the loan was to be used for the purchase and erection of prefabricated houses sold by U. S. Steel, that an illegal tying arrangement resulted, the credit being the tying product, the houses the tied product.

(d) Franchising and tying. Where the franchise "license" is used as leverage to require a franchisee also to buy from or through the franchisor items (packaging, utensils, equipment, supplies, mixes) which can be practically manufactured and provided others through reasonably expressed specifications, an illegal tying arrangement may result; if the items are not readily specifiable, there is no violation.

Standard Oil Co. Of Cal. v. United States
337 U.S. 298, 305-306 (1949);

Susser v. Carvel Corporation
332 F. 2d 505 (2d Cir. 1964);

Siegel v. Chicken Delight, Inc.
448 F. 2d 43 (9th Cir. 1971), cert. denied
1972 Trade Cas. ¶_____, affirming 311 F.
Supp. 847, 851 (N.D. Cal. 1970).

(e) However, an illegal tying arrangement does not result where the alleged "tied" product is merely offered in the

course of bargaining, and leverage is not used by the defendant.

American Manufacturers' Mutual Insur. Company v. American Broadcasting-Paramount Theaters, Inc. 446 F. 2d 1131, 1137 (2d Cir. 1971):

> "Tying arrangements are abhorred by the courts primarily because they foreclose a substantial quantity of business to competitors and extend pre-existing economic power to new markets for no good justification. [Citation omitted] Foreclosure implies actual exertion of economic muscle, not a mere statement of bargaining terms which, if they should be enforced by market power, would then incorporate an illegal tie. To adopt Kemper's position would subject businesses to threats of antitrust sanctions whenever they tried by bravado to buttress a sagging market position by initially offering small quantities of desired goods at high prices, in hopes of eliciting a large order without further negotion. Such bartering ploys are not generally the concern of antitrust laws."

(f) Nor is there an illegal tying arrangement where there is a reasonable basis for aggregating the tying and tied products.

Dehydrating Process Co. v. A. O. Smith Corp. 292 F. 2d 653 (1st Cir. 1961), where it was held that tying of a manufacturer's silos to unloaders was reasonable in light of evidence that customers using other silos were unhappy with the manufacturer's unloaders.

(g) Finally, there is no illegal tying arrangement if the two items are in fact so closely related as not to be separate products or where they are normally sold or used as a unit (tires with automobiles; left shoe with a right shoe).

Times-Picayune Pub. Co. v. United States 345 U.S. 594, 614 (1953), where a requirement of a newspaper publisher that purchasers of advertising in its morning paper also buy the same space in the evening paper, was held not to be an illegal tying arrangement, inter alia, because "the products are identical and the market the same."

Siegel v. Chicken Delight, Inc. 448 F. 2d 43, 48 (9th Cir. 1971), cert. denied, 1972 Trade Cas. ¶_____.

VII. Distributorship/Dealership Terminations And Sherman Act §1.

(a) A manufacturer or supplier may deal with whom he pleases. Distributorship/dealership arrangements may be terminated with impunity for business reasons sufficient to the manufacturer, so long as the action is not based on anti-competitive motives. This is so despite any consequent adverse effect on the business of the terminated party.

> Ricchetti v. Meister Brau, Inc. 431 F. 2d 211, 214 (9th Cir. 1970), cert. denied 401 U.S. 939 (1971):
>
> "It is well established that a manufacturer or producer has the right to deal with whom he pleases and to select his customers at will, so long as there is no resultant effect which is violative of the antitrust laws. Thus, a manufacturer may discontinue a relationship, or refuse to open a new relationship for business reasons which are sufficient to the manufacturer, and adverse effect on the business of the distributor is immaterial in the absence of any arrangement restraining trade or competition. [Citations omitted]."
>
> Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd., 416 F. 2d 71, 80 (9th Cir. 1969), cert. denied 396 U.S. 1062 (1969),

reversing a damages judgment for the plaintiff where there was no evidence that the termination sprung from anti-competitive motive:

> "A supplier who becomes dissatisfied with an existing distributor also has a legitimate interest in seeing that any new distributor to which it might turn would be viable. Manufacturers' or suppliers' decisions about the distribution of their products 'are not made in a vacuum.' . . . 'The antitrust laws do not require a business to cut its own throat.'"
>
> Bushie v. Stenocord Corp. 1972 Trade Cas. ¶73,896 (9th Cir. 1972)

affirming summary judgment for the defendant supplier which had terminated plaintiff's distributorship in order to sell and service its office dictating machines through its own outlet exclusively, there being no evidence that the supplier's actions "restrained trade or were motivated by an anti-competitive intent". The fact there was evidence the plaintiff had been a good dealer did not raise an inference of an intent to restrain trade.

(b) On the other hand, if the termination is part of a combination unreasonably to restrain competition, it violates Sherman Act §1. Examples:

(1) Where the termination is part of a plan involving others to force a distributor to discontinue marketing a rival product:

Walker Distributing Co. v. Lucky Lager Brewing Co. 323 F. 2d 1 (9th Cir. 1963).

(2) Where there is a combination for the purpose of putting a "discounter" or "price-cutter" out of business:

United States v. General Motors Corp. 384 U.S. 127 (1966).

(3) Where manufacturers by combination sought to suppress competition by "style-pirates":

Fashion Originators' Guild Of America v. FTC 312 U.S. 457 (1941).

(4) Where the purpose of the defendant and others was to put the plaintiff out of business:

Klor's, Inc. v. Broadway-Hale Stores, Inc. 359 U.S. 207 (1959).

VIII. PRICE DISCRIMINATION

INTRODUCTION

Section 2(a) of the Clayton Act, 15 U.S.C. § 13(a).

A. ELEMENTS

It is unlawful for any seller in interstate commerce

(1) to discriminate in price between two or more different purchasers

(2) who purchase commodities of like grade and quality

(3) if such discrimination may have the effect of substantially lessening competition or tending to create a monopoly or injures or preventing competition with any person who

(a) grants the discrimination, or

(b) receives the benefit of the discrimination,

(c) or with customers of either of them.

(4) Either the sale to the disfavored customer at the higher price or the sale at the lower price to the favored customer must be in interstate commerce.

The statute was designed to prevent large scale buyers such as chain stores from using their larger purchases to secure more favorable prices than were made available to small retailers. (See FTC v. Borden, Infra.)

B. CONFLICT WITH OTHER ANTITRUST LAWS

The Sherman Act compels competition. The Clayton Act in essence says "compete but not too hard". Effect may be to keep prices higher.

C. "COMMODITIES"

The Clayton Act applies only to the sale of "commodities" -- not services. A contract for the construction of buildings under the terms of which the construction company supplied brick was not a sale of brick within the meaning of the price discrimination statutes, since labor and other services were included in the contract for the erection of the building and could not be separated from the bricks used in construction. General Shale Products Corp. v. Struck Construction Co., 132 F.2d 425 (C.A.6, 1942). Leasing of property or the loaning of money are not commodities. Gaylord Shops, Inc. v. Pittsburgh Miracle Mile Shopping Center, 219 F. Supp. 400 (D.C. Pa., 1963), Birkel Optical Laboratories, Inc. v. Marquette National Bank, 1972 Trade Cases ¶ 73,956 (D.C. Minn.). Lawyers, doctors, etc. are free to discriminate since they sell services.

D. "LIKE GRADE AND QUALITY"

Discriminatory prices on commodities of unlike grade and quality are immune from attack. Consumer differentiation between private label and advertised brands of intrinsically identical products are not exempt. FTC v. Borden Company, 383 U.S. 637 (1966). Borden had charged a lower price for private label evaporated milk sold to A & P and other chain stores than it charged for its Pet milk. The Fifth Circuit held that the statute was not violated, since Pet milk had achieved a significant consumer preference and normally sold at a higher price than the private label milk, so that the two products were of a different "grade". The Supreme Court held that both grade and quality should be determined on the basis of physical and chemical characteristics.

The effect on competition was found in the fact that a retailer who could only buy the more expensive Pet brand would have no chance to sell those who might seek to buy the cheaper product under the private label.

On the other hand, minor physical differences, for example, an ice cream product made to a special formula containing a lower percentage of butterfat content was not

of like grade and quality and could be sold at a lower price. Central Ice Cream Co. v. Golden Rod Ice Cream Co., 184 F. Supp. 312, 314 (N.D. Ill. 1960), aff'd 287 F.2d 265 (C.A.7, 1961), cert. denied, 368 U.S. 829 (1961).

E. FUNCTIONAL DISCOUNTS

1. DISTRIBUTOR AND O.E.M. DISCOUNTS

It is normal for a manufacturer to grant discounts to distributors who resell to jobbers or retailers or original equipment manufacturers (the manufactured product, such as spark plugs, as a component in the manufactured equipment, such as automobiles). This is generally permitted since the distributors and the O.E.M. buyers do not compete with retailers or on the same level. If purchasers are on different levels of the distribution process, it is permissible, for example, that the distributor receive a discount to cover his cost of warehousing, sales and distribution although customers selling at retail are charged more. Minneapolis Honeywell Regulator Co. v. FTC, 191 F.2d 786 (C.A.7, 1951), cert. dismissed, 344 U.S. 206 (1952); Klein v. Lionel Corp., 237 F.2d 13 (C.A.3, 1957). The sale of a product to all customers at an identical price, regardless

of their function, is not unlawful. Standard Oil Co. v. FTC, 173 F.2d 210 (C.A.7, 1949). However, if a manufacturer elects to sell directly to retailers in addition to wholesalers, the customers of the wholesaler compete with the retailers to whom the manufacturer sells directly. Under those circumstances, the prices charged to retailers cannot be less than those charged to the wholesaler. Krug v. International Telephone & Telegraph Corp., 142 F. Supp. 230 (D.C. N.J., 1956).

2. THE COMBINED DISTRIBUTOR-RETAILER

In some cases the distributor to whom the manufacturer sells may also have a retail operation and thus compete with retailers to whom the manufacturer sells. Under those circumstances, the manufacturer should charge the distributor two prices -- the normal wholesale price for the quantity of merchandise that it sells performing its wholesale function -- and the normal price to retailers for that portion of the goods which the wholesaler markets in competition with retail customers of the manufacturer.

F. GEOGRAPHIC PRICING

Utah Pie Co. v. Continental Baking Co., 386 U.S. 685 (1967). Utah Pie, the plaintiff, in 1958 had a quasi-monopoly

of frozen pies in the Salt Lake City market, having 66.5% of the business. Pet Milk Company, Carnation and Continental Baking, large national companies, entered the market, and in 1958 the prices per dozen for apple pies generally was as follows:

Pet	$4.92
Carnation	$4.82
Continental	$5.00
Utah	$4.15

By 1961, as a result of price competition, these prices had been reduced to the following:

Pet	$3.46 to $3.56
Carnation	$3.46
Continental	$2.85
Utah	$2.73 to $2.75

The Supreme Court held that insofar as Pet was concerned, it had engaged in predatory tactics, since the prices that it charged for its pies in Salt Lake were lower than the prices it charged in California and the other Western markets.

Carnation sold at prices below cost and also below the prices which it sold in other markets.

Continental was guilty of price discrimination since it too attempted to increase its share of the Salt Lake City market by offering price concessions at the same time it was selling pies at substantially higher prices in other markets. Furthermore, it was selling pies in the Salt Lake area at less than cost. Utah, in order to keep business away from Continental, cut its price to $2.75 per dozen.

It should be noted that both Pet and Carnation, although held by the Supreme Court to be guilty of price discrimination, were substantially the victims of both Continental and Utah's more severe price cuts. At times Utah Pie itself was the leader in moving the general level of prices down. But Utah Pie cut its prices across the board. The Court said:

> "We believe that the Act reaches price discrimination that erodes competition as much as it does price discrimination that is intended to have immediate destructive impact. In this case, the evidence shows a drastically declining price structure which the jury could rationally attribute to continued or sporadic price discrimination."

The dissent stated:

> "[T]he Court has fallen into the error of reading the Robinson-Patman Act as

> protecting competitors, instead of competition. * * * [L]ower prices are the hallmark of intensified competition.
>
> * * *
>
> "I cannot hold that Utah Pie's monopolistic position was protected by the federal antitrust laws from effective price competition, and I therefore respectfully dissent."

See also FTC v. Annheuser Busch, Inc., 363 U.S. 536 (1960); Moore v. Mead's Fine Bread Co., 348 U.S. 115 (1954).

G. DEFENSES

1. MARKETABILITY AND MARKET CHANGES

Section 2(a) of the Clayton Act expresses exempts from price discrimination lower prices charged from time to time "in response to changing conditions affecting the market for or the marketability of the goods concerned . . .". This includes such things as spoilage of perishable goods, obsolescense and other reasons for distressed sale.

2. COST JUSTIFICATION

A differential in price between two purchasers is not unlawful under Section 2(a) of the Clayton Act if it merely reflects "due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities

are to such purchasers sold or delivered." The cost justified savings result from reduced costs of manufacture because of planned production runs, lower selling or advertising, warehousing or storage expenses shipping and delivery charges, and sometimes credit and collection expense. Normally, the difficult problem is justifying a quantity discount. The general guidelines of cost justification are found in United States v. Borden Company, 370 U.S. 460 (1962). The Court recognized the impracticality of authenticating cost justification on a customer by customer basis. Group averaging of costs was suggested to estimate costs of dealing with any specific member of the group. However, Borden was not successful in its cost justification in that case, since statistical analysis presented was faulty and was made after the fact.

The cost justification defense is upheld occasionally. See Morton v. National Dairy Products Corp., 414 F.2d 403 (C.A.3, 1969), cert. denied, 396 U.S. 1006 (1970). Morton alleged that the Sealtest Division of National Dairy had charged lower prices to a Philadelphia supermarket chain than those charged to other customers. Sealtest had to deliver milk to the stores of the other customers, but the

supermarket took delivery of milk at the Sealtest plant. The Court upheld the cost justification study presented and stated that it did meet the requirements of the Borden case.

3. GOOD FAITH MEETING OF COMPETITION

Under Section 2(b) of the Clayton Act (15 U.S.C. § 13(b)), if a difference in price is shown, the burden of proof shifts to the defendant. The charge may be rebutted by showing that the lower price or furnishing or services or facilities by defendant "was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor." (Emphasis added)

There must be a viable competitor offering the price which is met. Even if a competitor publishes a price list and he does not have the ability to compete the defense is not sufficient (example). Generally you may reduce your price to "meet but not beat" that offered by your competitor. Forster Manufacturing, Inc. v. FTC, 361 F.2d 340 (C.A.1, 1961). But see Balian Ice Cream Co. Inc. v. Arden Farms Co., 231 F.2d 356 (C.A.9, 1955); and Moss Inc. v. FTC, 148 F.2d 378 (C.A.2, 1945) and 155 F.2d 1016

(C.A.2, 1946). The defense does not allow a discriminatory price cut to enable the buyer to meet price competition from persons who are not competitors of the seller. FTC v. Sun Oil Co., 371 U.S. 505 (1963).

In order to establish "good faith", the seller meeting the competitive price should know the facts which would lead a responsible and prudent person to believe that the granting of a lower price would in fact be above or meeting the equally low price of a competitor. Forster Manufacturing, Inc. v. FTC, supra. If the competitor has unlawful price system, in itself discriminatory, an adoption of the competitor's price system may violate the law. FTC. v. A.E. Staley Manufacturing Co., 324 U.S. 746 (1945).

The best evidence of competitive pricing is the actual quotation or invoice. However, if these are not available, oral statements made by the customers may be sufficient. To preserve good faith it would be desirable to obtain affidavits from the customer or the salesman making the call establishing the detailed facts of the competitive offer.

There are some dangers in seeking to secure from your competitor price information with respect to specific sales to customers. Manufacturers of corrugated containers were held to have engaged in a conspiracy under Section 1 of the Sherman Act as a result of exchanging price information for the purpose of checking to determine whether the offers reported by customers were actually made for meeting the competitive price. The Court held that by agreeing to do this, even though ostensibly to adhere to the requirements of the Price Discrimination Act, the price reporting had the effect of stabilizing prices and interfering with free market forces. United States v. Container Corp. of America, 393 U.S. 333 (1969). But see also United States v. FMC Corp., 306 F.Supp. 1106 (E.C. Pa., 1969) and Di-Wall, Inc. v. Fibre Board Corp., 1970 Trade Cases, ¶ 73,155 (N.D. Cal., 1970) which permitted such exchanges to establish good faith meeting of competition defenses if there was no agreement.

IX. BROKERAGE, SECTION 2(c)

Section 2(c) of the Robinson-Patman Act prohibits parties to a sales contract from granting or receiving a "commission, brokerage * * * or any allowance or discount in lieu thereof except for services rendered in connection with the sale or purchase of goods." The purpose of the

statute is to eliminate any middleman's commissions except where actual services are performed. See FTC v. Henry Broch & Co., 363 U.S. 166 (1960). Any payment of commission without services performed are suspect because frequently such commissions find their way to the buyer in the form of a secret rebate.

X. ALLOWANCES AND SERVICES, SECTIONS 2(d) and 2(e)

Sections 2(d) and 2(e) of the Robinson-Patman Act prohibit a seller from granting promotional allowances or services to customers unless they are avilable to all competing customers on proportionally equal terms. In FTC v. Simplicity Pattern Co., 360 U.S. 55 (1959), the Supreme Court confirmed that Sections 2(d) and (e) are absolute prohibitions which required no showing of competitive injury and no cost justification defense is available. If some "benefit" is conferred on the customer, any allowance or service proscribed by 2(d) or (e) is per se unlawful. However, it is permissible to meet competitive offers of services or facilities under the "good faith meeting of competition" proviso of Section 2(b) (15 U.S.C.A., § 13(b)). See Exquisite Form Brassiere Co. v. FTC, 301 F.2d 499 (D.C.

Cir., 1961). Normally, the services and facilities involved are advertising allowances or special merchandise aids such as free display facilities, in store demonstrator refrigerators for the storage of milk and ice cream, etc.

The language in the statute which requires that such services and allowances be "available on proportionally equal terms" does not mean that an allowance must be made for the same kind of advertising since small retailers may not have enough sales to make payments for newspaper display advertising meaningful. Therefore, such allowances would not be "available". This can be cured by providing payments to assist the smaller retailer of "in store" or window displays or even handbills to be used in the neighborhood.

In Centrex-Winston Corp. v. Edward Hines Lumber Co., 1971 Trade Cases, ¶ 73,671 (C.A. 7), the Seventh Circuit sustained a complaint filed by a subdivision builder, Centrex, which charged that the lumber company delayed shipments of lumber to the plaintiff while giving better service to other competitive builders. The court held that delivery services, as well as promotional services, were included under the Act and a supplier could not grant special favors to one purchaser over competitors.

IX. THE RESPONSIBILITY OF THE BUYER FOR INDUCING DISCRIMINATION

Inducement of the seller by the buyer to secure a price discrimination is prohibited by Section 2(f) of the Clayton Act. This last section of the Robinson-Patman amendments to Section 2 of the Clayton Act is aimed at the buyer. The statute provides "that it shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this Section." Kroger was found in violation of Section 2(f) by inducing discriminatory prices from Beatrice Foods who supplied Kroger its private label milk. The Commission issued a cease and desist order against Kroger although it dismissed the complaint against Beatrice on the ground that although Beatrice had lowered its price below that of competitors, it did so based on the representations of Kroger. Therefore Beatrice had met the "good faith meeting of competition," exception of Section 2(b). However, Kroger was held to have violated Section 2(f) because it had not supplied accurate information to Beatrice and (FTC Docket 8663).

Texas Gulf Sulphur Co. v. J.R. Simplot, Inc., 418 F.2d 793 (C.A. 9, 1969). Texas Gulf, a supplier of sulphur to Simplot, an Idaho fertilizer manufacturer, attempted to avoid a long term sulphur contract that it had entered into with Simplot on the theory that it was an unlawful agreement. Texas Gulf alleged that Simplot had induced Texas Gulf to enter into a

discriminating contract which was more favorable to Simplot than contracts available to other sulphur purchasers. The contract provided for price protection over the term of the contract. The Court pointed out that at the time the contract was entered into Simplot was the only purchaser. There was no other competitor purchasing the type of sulphur sold to Simplot, and the only later purchaser, El Paso, was not even in business at the time the contract was entered into. Thus, there was no competitive injury at the time of the sale. The Court also found that Simplot had not exerted any pressure for special prices. Simplot was "a David compared to the Goliath of Texas Gulf," and after Texas Gulf had found that it had made a bad deal, it attempted to assume "the role of the poor widow wronged by the town banker."

XII. CRIMINAL PENALTIES FOR DISCRIMINATION

Section 3 of the Robinson-Patman Act, 15 U.S.C.A. § 13a, provides for a fine up of $5,000 or imprisonment up to one year, or both, for any person engaged in commerce who is a party to or assists in any sales contract which discriminates against competitors of the purchaser or sells goods in any part of the United States "at prices lower than exacted by said person elsewhere in the United States for the purpose of destroying competition or eliminating a competitor" or "selling goods at unreasonably low prices for the purpose of destroying competition

or eliminating a competitor." This is purely a criminal statute and civil private claims cannot arise under this section of the law. Sales to Government and other non-profit institutions are exempt from price discrimination provisions. 15 U.S.C.A. §13C.

XIII. LITIGATION FOR ENFORCEMENT OF ANTITRUST LAWS

A. Department of Justice --

1. The Antitrust Division has the authority to conduct grand juries and indict under the criminal provisions of the various antitrust statutes. Some violators have gone to prison (Union Fork & Hoe). Fines may go as high as $50,000.

2. Civil suits seeking injunctions prohibiting unlawful conduct are also brought by the Department of Justice. 15 U.S.C.A. §§4 and 25. Frequently consent judgments are entered.

3. When the United States is the victim of price fixing or otherwise injured by reason of a violation of the antitrust laws it may recover its actual single damages plus costs (15 U.S.C.A. 15a). This contrasts with treble damages and attorneys fees awarded to private parties under 15 U.S.C.A. 15.

B. PRIVATE TREBLE DAMAGE CASES -- A BONANZA?

1. To give you some idea of the magnitude of some of the recoveries in antitrust litigation, the settlements in the antibiotic antitrust class actions have already exceeded $100 million and not all cases have yet been settled. State of West Virginia v. Chas. Pfizer & Co.,

314 F.Supp. 710 (S.D.N.Y. 1970). In Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp., 1972 Trade Cases, ¶ 73,953, which involved the class actions filed on behalf of purchasers of plumbing fixtures, part of the actions were settled for $21.5 million and an additional amount of approximately $2 million was awarded for attorneys fees for this settlement.

2. USE OF GOVERNMENT JUDGMENTS AS PRIMA FACIE EVIDENCE

In any Government case where evidence has been taken and a final judgment has been entered or conviction secured establishing a violation of the antitrust laws by the defendant, such a judgment is prima facie evidence against such defendant in any action or proceeding alleging similar matters brought by a private treble damage plaintiff. Furthermore, the filing of the Government suit tolls the applicable statute of limitations, 15 U.S.C.A., § 16. The normal statute of limitations is for a four year period, 15 U.S.C.A., 15b. However, active fraudulent concealment of the conspiracy by defendants may nullify the four year statute of limitations.

3. CONSOLIDATION AND TRANSFER UNDER 28 U.S.C.A. Sec. 1404 and 1407

Frequently, litigation by the Government results in a rash of private treble damage suits. These may be consolidated for pretrial or trial in districts far from the place in which any suit was originally filed. This is generally done at the direction of the Judicial Panel on Multidistrict Litigation. See 28 U.S.C.A. § 1407. In the antibiotic drug cases, Judge Lord, to whom the cases

were assigned for pretrial under § 1407, subsequently transferred all cases to himself for trial under 15 U.S.C.A. § 1404. Such a transfer is permitted under a new Rule 15 of the judicial panel on multidistrict litigation. Pfizer, Inc. v. The Hon. Miles W. Lord 449 F.2d 122 (C.A. 2, 1971)

C. FEDERAL TRADE COMMISSION CEASE AND DESIST ORDERS.

The Federal Trade Commission under 15 U.S.C.A. § 45, et seq. has authority to conduct hearings before hearings examiners and issue orders to cease and desist from conduct which violates the antitrust law. Cease and desist orders are applicable to the Circuit Courts. If such a cease and desist order is appealed and subsequently is sustained, then it becomes a judgment of the Circuit Court of Appeals. Then it may be used by a private treble damage plaintiff as prima facie evidence. Purex Corp. Ltd. v. Proctor & Gamble Co., 1971 Trade Cases ¶ 73,782 (C.A. 9, 1972) (Cert. denied, 1972).

XIV. COMPETITIVE INJURY

In order to prevail, the Government, in some cases, must show an actual injury or effect on interstate commerce. For example, under Section 1 of the Sherman Act, a restraint on interstate commerce must be shown. However, under some of the price discrimination statutes and Section 7 of the anti-merger statute, the Government may prevail on a mere showing of the likelihood potential injury to competition. For example,

under 15 U.S.C.A., § 13(a), a discrimination is unlawful if its effect "may be substantially to lessen competition, etc."

With respect to a private treble damage claimant, in order to recover treble damages, he must show that he is directly injured by the violation of the antitrust laws and quantitatively prove the amount of his injury. In a price fixing case, the amount of the injury to the plaintiff is the increased price which he paid as a direct result of the conspiracy. His damage is the difference between the price paid and what the price would have been absent the conspiracy. In a price discrimination case, normally the plaintiff will be injured to the extent of the difference between the price which he paid and the lower price offered to competitors. However, if the market situation is such that he was able to pass on all of the cost increases to his customers, one would suppose that he suffered no injury. However, the Supreme Court has indicated to the contrary. See Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968).

If the plaintiff is not in the "target area" of the illegal practices or not within the sector of the economy in which the violation occurs, he has no standing to sue under 15 U.S.C.A., § 4. See Karseal Corp. v. Richfield Oil Corp., 221 F.2d 358 (C.A. 9, 1955); Billy Baxter, Inc. v. Coca Cola Company, 431 F.2d 183 (C.A. 2, 1970). Bill Baxter sued Coca Cola alleging that Coca Cola marketing programs resulted in Baxter's franchised customers not purchasing extracts used in the franchised soft

drinks from Baxter. Although Baxter's customers competed with Coca Cola Baxter did not market bottled beverages and the Court held that the relationship was too indirect and too insignificant to give Billy Baxter any standing to sue. However, the case indicates Baxter's customers would have the standing if Coca Cola had violated the antitrust laws. Similarly, in Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co. and State of Illinois, 315 F.2d 564 (C.A. 7, 1963), the Court held that the State of Illinois had no standing to intervene since the State "or even the customers themselves did not have any direct personal or pecuniary interests in these antitrust matters." The original plaintiff, Commonwealth Edison, had sued to collect damages for a price fixing conspiracy among the electrical equipment manufacturers who supplied generating equipment to silicitors. The Court acknowledging the fact that this might mean higher electric bills to consumers described such injury as being "too remote." There was "no proximate impact" on consumers.

> "The consumers' rights, if any, to reparation for their consequential hurt arise from higher rates and charges for services provided by [Commonwealth Edison]. That is the proximate cost of their injury, not the antitrust violation . . . The consumers' rights do not penetrate through to the antitrust conspiracies."

Damages may not be speculative. Frequently, damages are established by experts who give opinions based on accounting data. Occasionally, loss of anticipated profits may be awarded.

In price discrimination cases, competitors of the seller may be hurt to the extent that they did not make the sales they would have made but for the lower prices of the price discriminator. This was the case in Utah Pie. Under those circumstances, damages would replace the profits that would have been made had such sales not been lost.

On the other hand, if a retailer is charged higher prices than his competitors, it is difficult to determine whether he would have in fact made any additional sales. His recovery is limited simply to the difference in price without any allocation for profits.

XV. CLASS ACTIONS AND PARENS PATRIAE ACTIONS -- THE UNKNOWN PLAINTIFF

A. CLASS ACTIONS

Under Rule 23 of the Federal Rules of Civil Procedure class actions are permitted. The formal requirements of the rule were ably discussed by Bob Cartwright this morning.

Class actions are widely used in the antitrust area and cases are filed in which multitudes of plaintiffs are involved who never are in court. For example, in the Automobile Pollution

cases a single California nut farmer, almonds to be exact, purports to represent approximately 2-1/2 million crop farmers throughout the entire United States whose crops were supposedly injured by automobile exhaust emissions over a period of approximately 10 years. The complaint did not attempt to segregate those who farm in the clean air of Idaho from those who farm in California where pollution may be a problem in localized areas. How much less spinach, lettuce, tobacco did each farmer grow because of air pollution generally? How much of the alleged loss of crops can be attributed to that portion of air pollution caused by the automobile rather than to many other sources? If the quantity grown was less did prices increase because of reduced production? If each farmer takes only 10 minutes to prove his claim and allowing the defense 10 minutes to rebut each of such claims, the jury would have to sit for 40 years. Obviously, such class actions are unmanageable and ridiculous. I believe that the Ninth Circuit where the case has been briefed and argued will agree with me.

The class action originally was designed to take care of the typical airline crash case. Obviously, there is not much point in requiring 40 victims to prove in 40 separate trials that the identical engine of the identical airplane was defective. However, at the time the rule was adopted little thought was given

to the damage problem of proof. In Chicken Delight, Inc. v. Harris, 412 F.2d 830 (C.A. 9, 1971), the court on mandamus refused to permit a class action even for an antitrust price fixing charge (vertical agreement between Chicken Delight, the franchisor, and 650 franchisee class members) because determination of that issue for the class

> "would involve significantly different evidence and separate factual determinations as to each separate franchisee and that to impose such a burden in this case would be inconsistent with the basis salutary purpose of Rule 23, Fed. R. Civ. P." 412 F.2d at 831.

The charge involved was that the franchisees would have made more money if they had not been compelled to follow the price schedule of Chicken Delight. However, each of the franchisees might have adopted a higher or lower price schedule and claimed a loss of profits based on higher prices or increased volume of the lower prices. Any damages would be highly speculative under the circumstances and require individual proof.

In some price-fixing cases, such as the Antibiotics Antitrust Actions, 1971 Trade Cases ¶ 73,481, if each and every purchaser was injured in the identical direct percentage of his total dollar purchases a class action may be possible. See also Illinois v. Harper & Row Publishers, Inc., 301 F.Supp. 484 (N.D. Ill. 1969). Proof of a multitude of purchases even under these conditions may also take a great deal of time and make an action unmanageable.

B. PARENS PATRIAE

In State of Hawaii v. Standard Oil Company of California, 1972 Trade Cases ¶ 72,862 (C.A. 9), the State in its capacity as parens patriae attempted to sue on behalf of its citizens to recover damages to its economy based on overcharges allegedly paid by citizens of the State. The Supreme Court held that the injury asserted by Hawaii in its parens patriae count did not allege any injury to its own "business or property". The Court concluded that since no direct commercial interest or enterprise of the State of Hawaii was involved in the particular count it could not sue for damages for violation of the antitrust laws under 15 U.S.C.A. § 4. The individual citizens themselves might have a cause of action but had not attempted to exert it.

XVI. IDAHO ANTITRUST LAWS

Article 11, Section 18 of the Idaho Constitution prohibits combinations in restraint of trade that fix price or regulate production.

The Idaho Code (Title 48, Chap. 1, Section 48-101 et seq., 48-401 et seq., Title 18, Chap. 52, Section 18-5201), has a broad spectrum of antitrust provisions which generally track the federal antitrust laws but include more severe requirements on selling below cost and of course eliminate the interstate commerce requirements of its Federal counterpart. However, as far as I can tell, there has been little or no effort to use these statutes. Perhaps because everyone had forgotten they exist. So here is a reminder.

XVII. CONCLUSION

Legislature of the State of Idaho] [Second Regular Session Forty-first Legislature

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

PROVIDING FOR MANDATORY MEDICAL AND DISABILITY COVERAGES IN AUTOMOBILE LIABILITY POLICIES, AND PERMISSIBLE EXCLUSIONS; PROVIDING FOR SUBROGATION AND CORRELATION OF BENEFITS IN SOME CASES; DEFINING TERMS AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. Every policy delivered or issued for delivery in this state, including renewals of such policies previously delivered or issued, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person caused by accident and arising out of the ownership, maintenance or use of a motor vehicle registered or principally garaged in this state shall provide coverage therein or supplemental thereto, affording at least the minimum benefits for injury or economic loss resulting from the operation, maintenance or use of the insured vehicle specified in sections 2 and 3 hereof. The coverage shall extend to the named insured, members of his family residing in his household when injured in any motor vehicle accident, passengers in the insured vehicle, persons using the insured vehicle with the permission, express or implied, of the named insured, and to pedestrians injured by the insured vehicle.

SECTION 2. Each such policy shall provide for the payment of all reasonable and necessary expenses for medical, dental, hospital, surgical, ambulance, x-ray, laboratory, professional nursing and prosthetic devices, up to an aggregate limit of at least two thousand dollars ($2,000) per person incurred in two (2) years from the date of the accident for each accident, and an additional limit of one thousand dollars ($1,000) funeral services per person incurred within one (1) year from the date of the accident for each accident.

SECTION 3. Each such policy shall provide for payment of benefits for loss of income as a result of total disability as follows:

A. In the case of an income producer, benefits equivalent to eighty-five per cent (85%) of loss of income, payable without regard to eligibility for

any other form of wage continuation benefits.

B. If the injured person was not an income producer at the time of the accident, but did perform essential services, payment of benefits not exceeding fifteen dollars ($15) per day shall be made in reimbursement of expenses reasonably incurred for substitute help to perform such services.

Under either A or B hereof, benefits shall be payable during the period commencing fourteen (14) days after the date of the accident, or fourteen (14) days after the onset of disability, whichever is later, and ending on the date the injured person is able to return to his usual occupation or is reasonably able to perform the essential services. The policy limit under this section for each disabled person for each accident shall be at least three thousand dollars ($3,000).

SECTION 4. With respect to the insured and members of his family residing in the same household, an insurer may offer deductible forms of up to two hundred fifty dollars ($250) for each person for each accident for the benefits required by section 2 of this act.

SECTION 5. A. The benefits prescribed in sections 2 and 3 hereof shall be payable as follows:

1. As to any person injured in an accident while occupying an automobile insured for such benefits, or injured as a pedestrian by the automobile, the benefits shall be payable by the insurer of the automobile.

2. As to any person insured under a policy providing such benefits who is injured in an automobile accident by occupying, or being injured as a pedestrian by an automobile not insured for such benefits under another policy, the benefits shall be payable by the insurer affording the benefits. Such benefits shall be reduced by an applicable medical or disability coverage applicable to the injured person under such other policy..

B. An injured person may recover available benefits under more than one (1) policy where available, but no person shall recover benefits for the same items of damage under the minimum coverages required by sections 2 and 3 from more than one (1) policy.

SECTION 6. Benefits recoverable under the social security and workmen's compensation laws of any state or of the United States shall be deducted from the benefits afforded pursuant to sections 2 and 3 hereof.

SECTION 7. All benefits required to be paid under the provisions of this act shall be paid promptly after proof of loss is submitted to the insurer. The provisions of section 41-1839, Idaho Code, shall apply benefits payable under a policy containing the coverages required in this act. The existence of

a potential cause of action in tort arising out of an accident does not relieve an insurer of its obligation to pay benefits to the injured person as required by this act.

SECTION 8. The insurer may exclude from coverage of benefits required under this act any person otherwise entitled to benefits under the policy:

(1) who intentionally causes the accident resulting in the injury; or,

(2) who is participating in any prearranged or organized racing contest or in practice or preparation for such contest; or,

(3) who is injured while operating or voluntarily riding in a vehicle known by him to be stolen; or,

(4) who is injured in the commission or attempted commission of a felony or while seeking to elude lawful apprehension or arrest by a police officer.

SECTION 9. This act shall not be construed to prevent or prohibit an insurer from providing broader benefits or higher limits than required by sections 2 and 3 of this act.

SECTION 10. Every insurer authorized to write automobile liability insurance in this state shall be deemed to have agreed as a condition to maintaining such license after the effective date of this act that:

(1) where its insured is or would be held legally liable for damages for injuries sustained by any person to whom benefits required by sections 2 and 3 of this act have been paid by another insurer, it will reimburse such other insurer to the extent of such benefits, but not in excess of the amount of damages so recoverable for the types of loss covered by such benefits or in excess of the limits of its liability under its policy; and

(2) the issue of liability for such reimbursement and the amount thereof shall be decided by mandatory, binding inter-company arbitration procedures approved by the commissioner of insurance of the state of Idaho. Any evidence submitted or decision rendered in the arbitration proceeding shall be privileged and shall not be admissible in any action at law or equity.

SECTION 11. As used in this act:

(a) The term "motor vehicle" means a self-propelled vehicle used to transport or convey passengers or goods on public roads and highways, including automobiles and trucks, and required to be registered under the laws of the state of Idaho, except motorcycles as defined in section 49-201(3), Idaho Code.

(b) The term "income" includes, but is not limited to, salary, wages, tips, commissions, professional fees, and other earnings from work or tangible things of economic value produced in individually-owned business

or farms or other work or the reasonable value of the services necessary to produce them.

(c) An "income producer" is a person who at the time of the accident causing injury or death was earning or producing income.

SECTION 12. This act shall be in full force and effect on and after January 1, 1973.

[Second Regular Session
Legislature of the State of Idaho] [Forty-first Legislature

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

REQUIRING ARBITRATION OF CERTAIN SUBROGATION CLAIMS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO PROMULGATE REGULATIONS; AND PROVIDING FOR APPEAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. Disputes between and among insurance companies concerning the liability of one insurer to reimburse a second insurer for subrogated claims not exceeding three thousand dollars ($3,000) arising from a policy of automobile liability insurance shall be submitted to binding inter-company arbitration. The arbitration shall be conducted pursuant to a private agreement between the insurers or pursuant to an insurance industry agreement, if any there be. If there exists no such private or industry agreement, then the arbitration shall proceed according to arbitration procedures established by the commissioner of insurance. The commissioner of insurance shall establish fair and expeditious arbitration procedures by regulations promulgated in accordance with the Idaho administrative procedures act, chapter 52, title 67, Idaho Code.

[Second Regular Session
Legislature of the State of Idaho] [Forty-first Legislature

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

RELATING TO AUTOMOBILE LIABILITY INSURANCE POLICIES; DEFINING TERMS; PROVIDING FOR BASIC ECONOMIC LOSS COVERAGE INCLUDING MEDICAL AND HOSPITAL BENEFITS, DISABILITY BENEFITS, AND FOR SUBROGATION AND INTER-COMPANY ARBITRATION; PROVIDING FOR CATASTROPHE ECONOMIC LOSS COVERAGE INCLUDING MEDICAL AND HOSPITAL BENEFITS, DISABILITY BENEFITS, SURVIVOR'S BENEFITS, DEATH BENEFITS, A MAXIMUM AGGREGATE AMOUNT AND COLLATERAL SOURCES; PROVIDING FOR PAYMENT OF BENEFITS, AVOIDANCE OF DUPLICATION, AND EXCESS COVERAGE; DEDUCTING RECOVERY UNDER UNINSURED MOTORIST COVERAGE OR WORKMEN'S COMPENSATION; PROVIDING FOR PERIODIC PAYMENT OF BENEFITS; LISTING THOSE EXCLUDED FROM COVERAGE; PROVIDING FOR BROADENED BENEFITS; PROVIDING ADDITIONAL LIMITATIONS ON ORIGINAL PROOF OF LOSS, RECURRENCES, ADDITIONAL INSIDE LIMITS, AND FEDERAL EMPLOYMENT BENEFITS; PROVIDING FOR DISCLOSURE AND OFFSET OF BENEFITS; PROVIDING FOR COOPERATION OF BENEFICIARIES; PROVIDING FOR RULES AND REGULATIONS INCLUDING SCHEDULES OF BENEFITS; PROVIDING FOR A LIMITATION ON THE RIGHT TO RECOVER IN TORT, BUT NOT AFFECTING INTER-COMPANY ARBITRATION; PROVIDING FOR A SET-OFF FOR INCOME TAX FROM LOSS OF EARNINGS; PROHIBITING FALSE AND FRAUDULENT CLAIMS; PROVIDING THAT EVIDENCE OF PAST HISTORY MAY BE INTRODUCED IN FALSE OR FRAUDULENT CLAIMS PROSECUTIONS; PROVIDING FOR DISCLOSURE OF MEDICAL EVIDENCE; PROVIDING FOR FIRST PARTY COVERAGE FOR OUT OF STATE DRIVERS INSURED BY COMPANIES LICENSED TO DO BUSINESS IN THE STATE OF

IDAHO; PROVIDING FOR SEVERABILITY EXCEPT IF TORT LIMITATION SECTION IS DECLARED UNCONSTITUTIONAL; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR TRANSITION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. As used in this article:

(a) "Automobile" means a motor vehicle not used as a public or livery conveyance for passengers, (1) of the sedan, coupe, station wagon or jeep-type or (2) a camper, travel trailer, boat trailer, utility trailer, pickup truck, sedan delivery truck or panel truck not primarily used in the occupation, profession or business, other than farming or ranching, of the insured; provided, however, that a motorcycle, a motorcycle with a side car attached, a snowmobile, an all-terrain-vehicle or a vehicle designed primarily for use off the road shall not be deemed to be an "automobile" as defined herein.

(b) "Motor vehicle" means any vehicle designed to be propelled by an engine or motor except one designed primarily for use off the road or on rails, and includes a trailer or semi-trailer while connected to or being towed by a motor vehicle.

(c) The term "income" includes, but is not limited to salary, wages, tips, commissions, professional fees, and other earnings from work or tangible things of economic value produced in individually owned businesses or farms or other work or the reasonable value of the services necessary to produce them.

(d) "Income loss" means loss of income from work the injured person would have performed had he not been injured, reduced by any income from work actually performed after the injury.

(e) "Occupying" means being in or upon a vehicle as a passenger or operator, or engaged in the immediate acts of entering, boarding, or alighting from a vehicle.

(f) "Pedestrians" includes any person not occupying a motor vehicle or machine operated by a motor or engine.

SECTION 2. All policies insuring against loss resulting from liability imposed by law for bodily injury or death arising out of the ownership, maintenance or use of an automobile registered in this state shall, on or after the effective date of this act, afford the benefits specified in this section. Every such policy shall afford such benefits to the named insured and members of his family residing in his household, because of injuries incurred in and arising out of a motor vehicle accident while occupying an automobile or when struck by a motor vehicle while a pedestrian. Every such policy shall

afford such benefits to guest passengers and persons using the insured automobile with permission, express or implied, of the named insured, because of injuries incurred in and arising out of a motor vehicle accident while occupying the insured automobile, and to pedestrians when struck within the state by the insured automobile.

Specified benefits shall include:

(a) Payment of all reasonable expenses incurred for treatment received within two (2) years from the date of the accident for necessary medical, surgical, x-ray, dental and medical and vocational rehabilitation services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services limited to one thousand dollars ($1,000), up to an aggregate limit of two thousand dollars ($2,000) per person.

Hospital room and board benefits may be limited to the regular daily semi-private room rates customarily charged by the institution in which the recipient of benefits is confined.

(b) (1) Payment of benefits equivalent to eighty-five per cent (85%) of income loss, subject to a maximum of seven hundred fifty dollars ($750) per month per person. Such benefits shall be payable without regard to eligibility for any other form of wage continuation benefits. Insurers may provide for an excluded period of not exceeding two (2) weeks.

(2) Payment of all reasonable expenses incurred, not exceeding twelve dollars ($12) per day, in obtaining essential services in lieu of those that, had he not been injured, the injured person would have performed, not for income but for the benefit of himself or his family, provided that such services are not such as could reasonably be expected to be performed by another person residing in the same household.

Disability benefits hereunder shall accrue during the life of the injured person and shall be subject to an aggregate limit per accident of six thousand dollars ($6,000) payable to any one person for income loss and four thousand five hundred dollars ($4,500) payable to any one person for expenses for essential substitute services.

(c) The existence of a potential claim for relief in tort by any person entitled to the benefits specified in this section shall not affect the insurer's obligation to pay such benefits promptly; provided, that if prior to payment by the insurer of such benefits, payment of loss in whole or in part is received from or on behalf of a person who is or may be liable in tort for such loss, either as an advance payment or as a settlement, the recipient shall disclose such fact, and shall not collect benefits hereunder to the extent that such benefits would produce a duplication of payment or reimbursement of

the same loss.

(d) Every insurer licensed to write automobile liability insurance in this state shall be deemed to have agreed as a condition to maintaining such license after the effective date of this act that (1) where its insured is or would be held legally liable for damages for injuries sustained by any person to whom the minimum benefits provided in this section have been paid by another insurer, it will reimburse such other insurer to the extent of such benefits, but not in excess of the amount of damages so recoverable for the types of loss covered by such benefits or in excess of the limits of its liability under its policy, and (2) that the issue of liability for such reimbursement and the amount thereof shall be decided by mandatory, binding inter-company arbitration procedures approved by the commissioner of insurance. If the insurer providing such benefits also has provided coverage to the same policyholder for collision or upset arising out of the same occurrence, such insurer shall also submit the issue of recovery of any payments thereunder to the same mandatory and binding arbitration proceedings as herein provided. Any decision in the arbitration proceedings shall be privileged and shall not be admissible in any action at law or in equity by any party or parties.

(e) In any case in which an insurer has paid such benefits specified in this section to an injured party for whose injuries legal liability exists or may exist on the part of a third person who is not an insured under a policy of automobile liability insurance issued by an insurer licensed to write automobile liability insurance in this state, the insurer paying such benefits shall, to the extent of such payments, be subrogated to any right of action for damages by the injured party against such third person.

SECTION 3. Every insurer providing basic economic loss coverage, as provided in section 2, shall also make available upon request of the named insured and offer upon solicitation or issuance of a new or renewal policy, optional catastrophe economic loss coverage providing for payment, under the conditions of coverage prescribed in the first paragraph of section 2, of benefits to the named insured and members of his family residing in his household, in excess of the benefits specified in section 2, which coverage shall pay medical, hospital, disability, death and survivor's loss benefits, as follows, commencing upon the exhaustion of such medical and hospital benefits or disability benefits and, as regards survivor's benefits, upon death.

Such benefits shall include:

(a) Payment of all reasonable expenses for necessary medical, surgical, x-ray, dental and medical and vocational rehabilitation services, including prosthetic devices, and necessary ambulance, hospital, professional nursing

and funeral services; provided, however, that the benefits payable for funeral services shall not exceed one thousand dollars ($1,000). Hospital room and board benefits may be limited to the regular daily semi-private room rates customarily charged by the institution in which the recipient of benefits is confined.

(b) (1) Payment of benefits equivalent to eighty-five per cent (85%) of income loss subject to a maximum limit of seven hundred fifty dollars ($750) per month; provided that for the purposes of this subsection disability shall mean disability which continuously prevents the injured person from engaging in any substantial, gainful occupation or employment for wage or profit for which he is or may by training become reasonably qualified.

(2) Payment of all reasonable expenses incurred, not exceeding twelve dollars ($12) per day, in obtaining essential services in lieu of those that, had he not been injured, the injured person would have performed, not for income but for the benefit of himself or his family, provided that such services are not such as could reasonably be expected to be performed by another person residing in the same household.

(c) In the event of death occurring within one (1) year of the date of the accident, caused by and arising out of injuries received in the accident, a survivor's benefit shall be paid to a surviving spouse or children of the deceased, as follows:

(1) Where the survivors were dependent for income upon the deceased, then (a) if there is one surviving dependent, the benefit shall be fifty per cent (50%) of the average monthly income the deceased would have earned had he survived; (b) if there are two or more dependents, the benefit shall be seventy-five per cent (75%) of such average monthly income.

(2) If the deceased was a parent of a minor or incompetent child or children upon whom such child or children were not dependent for financial support, survivor's benefits shall be payable to compensate for essential services obtained in lieu of those the decedent would have performed for their benefit had he survived, provided that such services are not such as could reasonably be expected to be performed for the child or children by a surviving parent or another person residing in the child's or children's household.

The benefits provided in subparagraphs (1) and (2) payable in total to all beneficiaries shall be subject to a maximum limit of seven hundred fifty dollars ($750) per month, and to an aggregate maximum limit of twenty-five

thousand dollars ($25,000) for any one accident. Payments to the surviving spouse may be terminated in the event such surviving spouse remarries or dies. Payments to a dependent child may be terminated in the event he attains majority unless the child is incompetent, marries or becomes otherwise emancipated, or dies.

(d) A minimum of five thousand dollars ($5,000) payable to a named beneficiary due to the death of the insured named in the policy as a result of the accident.

(e) All benefits set forth in this section 3 may be made subject to an aggregate limit of not less than one hundred thousand dollars ($100,000) payable on account of injury to or death of any one person as a result of any one accident.

(f) The benefits payable under this section may be made excess over any other collateral source benefits paid or payable to the persons covered, except that this provision shall not in any way limit such person's right to recovery in tort. An insurer may provide that it be subrogated to the insured's rights as regards benefits specified in this section.

SECTION 4. (a) As between applicable policies, the benefits specified in section 2 shall be payable as follows:

(1) As to any person injured in an accident while occupying an automobile insured for such benefits, or injured as a pedestrian by the automobile, the benefits shall be payable by the insurer of the automobile.

(2) As to any person insured under a policy providing such benefits who is injured in a motor vehicle accident while occupying an automobile not insured for such benefits, or while being struck as a pedestrian by a motor vehicle not insured for such benefits, the benefits shall be payable by the insurer affording the benefits to the injured person or members of his family residing in his household; provided, however, that such benefits shall be reduced to the extent of any automobile medical or disability benefits coverage available under a motor vehicle insurance policy applicable to the motor vehicle involved in the accident.

(b) No person shall recover benefits under the coverage specified in sections 2 or 3 from more than one automobile policy on a duplicative basis nor on a supplemental basis except as provided in section 4(a)(2), provided further that the supplemental benefits specified in section 3 may be recovered from an applicable policy in case the policy first applicable provides only the benefits specified in section 2.

SECTION 5. (a) Benefits received under sections 2 and 3 shall be

deducted from any recovery under uninsured motorist coverage as defined by section 41-2502, Idaho Code.

(b) Benefits recoverable under the workmen's compensation laws or medicare or medicaid of any state or the federal government shall be deducted from the benefits afforded under sections 2 and 3.

SECTION 6. All payments of benefits specified under sections 2 and 3 shall be made periodically at thirty (30) day intervals when practicable, or otherwise as the claims therefor arise and as promptly as satisfactory proof thereof is received by the insurance company subject to the time limitation on original notice of loss and recurrences contained in section 9 of this act.

SECTION 7. The coverages specified under sections 2 and 3 hereof may exclude from benefits thereunder any person otherwise insured under the policy who (1) intentionally causes the accident resulting in the injury, or (2) is injured while wilfully operating or riding in a vehicle known by him to be stolen, or (3) is injured in the commission of a felony other than a felony based solely upon the criminal operation of the vehicle, or while seeking to elude lawful apprehension or arrest by a police officer, or (4) is occupying a vehicle, not insured for the benefits specified under section 2, owned by the insured or a member of his family residing in the same household.

SECTION 8. (a) Nothing in this act shall be construed as preventing insurers from offering on an optional basis coverages herein specified in connection with policies on motor vehicles other than automobiles as defined in section 1.

(b) Nothing in this act shall be construed as preventing the insurer from offering other benefits or limits in addition to those required to be offered under section 3.

SECTION 9. (a) The coverages described in sections 2 and 3 may prescribe a period of not less than six (6) months after the date of accident within which the original notice of loss with respect to a claim for benefits under section 2 must be presented to the insurer or its agent or other authorized representative as a condition to eligibility for basic economic loss benefits or catastrophe economic loss benefits.

(b) The coverages described in section 2 and 3 may provide that in any instance where a lapse occurs in the period of disability or in the medical treatment of an injured person who has received benefits under such coverage or coverages and such person subsequently claims additional benefits based upon an alleged recurrence of the injury for which the original claim for benefits was made, the insurer may require reasonable medical proof of such alleged recurrence; provided, that in no event shall the

aggregate benefits payable to any person exceed the maximum limits specified herein, and provided further that such coverages may contain a provision terminating eligibility for benefits after a prescribed period of lapse of disability and medical treatment, which period shall not be less than one (1) year.

(c) Additional reasonable inside limits applicable to specific benefits provided under sections 2 and 3 may be included in basic economic loss coverage and catastrophe economic loss coverage subject to the approval of the commissioner of insurance.

(d) The obligation to pay benefits under sections 2 and 3 shall not apply to any direct or indirect loss or interest of, or for services or benefits provided or furnished by, the United States of America or any of its agencies coincident to a contract of employment or because of military enlistment, duty or service.

SECTION 10. If any person entitled to benefits under the minimum coverage prescribed in section 2 of this act with respect to injuries received in an automobile accident files any action in this state for damages for bodily injury or death arising out of the same accident, such benefits must be disclosed to the court and the amount of the benefits recovered or recoverable under coverage specified in section 2 and subject to binding inter-company arbitration shall be deducted from any amount awarded to such person in such proceedings. In the event collision loss of the plaintiff is subject to binding inter-company arbitration, the collision loss paid or payable to plaintiff by his insurer shall not be awarded to plaintiff in any action for damages.

Nothing in this section shall be construed to be in derogation of the right of an insurer to recover by way of subrogation amounts paid to an insured under a policy providing coverage specified under section 2 or section 3, except as such amounts may be or have been subject to binding arbitration of the liability of the insurer of the person subrogated against.

SECTION 11. Any person receiving benefits under sections 2 or 3 shall participate and cooperate, as required under the coverage, in any and all arbitration proceedings and legal actions instituted by or on behalf of the insurer paying the benefits, and the insurer may require in the furnishing of proof of loss that such person shall so participate and cooperate as consideration for the payment of such benefits.

SECTION 12. The commissioner of insurance shall have the authority to issue and promulgate all necessary rules, regulations, definitions and minimum provisions for forms not inconsistent with the provisions of this act. He shall also have the authority, after notice and hearing thereon, to

approve schedules of reasonable maximum benefit payments for specified medical services which insurers may incorporate into their policies of basic or supplemental coverages herein prescribed.

SECTION 13. (a) No action may be brought in tort as a result of bodily injury, sickness or disease, arising out of the operation, ownership, maintenance or use of an automobile within this state, against a person who is an insured under a motor vehicle liability policy which contains the basic economic loss coverage prescribed by section 2 of this act, except as set forth in subsection (b); provided, however, that a person not required to obtain insurance including the benefits prescribed in section 2 of this act, and to whom benefits of section 2 coverage does not extend, may sue in tort to recover special damages not exceeding the benefits prescribed in section 2 of this act.

(b) The limitation prescribed in subsection (a) shall not apply in cases of:

(1) death,

(2) permanent disfigurement or severe disfigurement exceeding six (6) months in duration,

(3) dismemberment,

(4) impairment of a bodily function for a total past and/or foreseeable period of time exceeding six (6) months in duration,

(5) injury proximately resulting in reasonably incurred and/or foreseeable medical expenses and incurred or future loss of income or other economic loss which separately or jointly exceed five hundred dollars ($500).

Medical treatment expenses for this purpose are defined as the reasonable value of services rendered or to be rendered for necessary medical, surgical, and dental treatment of the claimant for such injury, sickness or disease, including prosthetic devices and ambulance, hospital and professional nursing services, but excluding diagnostic x-ray service.

(c) The limitation on the right to sue in tort prescribed in this section shall in no way affect an insurer's right to recover in inter-company arbitration.

(d) The limitation on the right to sue in tort described in this section shall not be applied retroactively, but shall be in full force and effect from and after the effective date of this statute.

(e) Nothing contained in this section shall be construed to extend the statute of limitations in any action to recover damages for injury to person or for death caused by the wrongful acts of another or neglect of another, as found in section 5-219, Idaho Code.

SECTION 14. In any action in tort brought as a result of bodily injury, sickness, or disease, caused by accident occurring on or after the effective date of this act arising out of the operation, ownership, maintenance or use of a motor vehicle within this state, damages awarded for loss of past earnings and reasonably anticipated future earnings due to disability sustained by the plaintiff as a result of the injuries giving rise to the action shall be computed net of any income taxes which would have been payable on such past earnings and net of a reasonable set-off for income taxes prospectively payable on such future earnings. In the absence of proof supporting a smaller set-off for such income taxes, the set-off shall be equivalent to fifteen per cent (15%) of the total amount of such lost earnings.

SECTION 15. Any person who, in connection with any claim arising out of an automobile accident, (1) obtains or attempts to obtain, from any other person or any insurance company in this state, any money or other thing of value by falsely or fraudulently representing that said person is injured or has sustained an injury or damage to property for which money may be paid by way of compensation for medical expenses incurred, or wage loss sustained, or (2) makes any statement, produces any document or writing or in any other way presents evidence falsely and fraudulently representing any injury, or any damage to property, or exaggerating the nature and extent of said injury or damage, or (3) cooperates, conspires or otherwise acts in concert with any person seeking to falsely and fraudulently represent an injury or damage to property, or to exaggerate the nature and extent of said injury or damage shall, if such sum is less than one hundred dollars ($100), be guilty of a misdemeanor, and shall, if the sum so obtained or attempted to be obtained is one hundred dollars ($100) or more, or in the event of a second or successive conviction hereunder regardless of the sum obtained or attempted to be obtained, be guilty of a felony of the third degree.

SECTION 16. In order to establish that there exists an intent to falsely and fraudulently represent an injury or damage to property, or the extent thereof, it shall be admissible evidence to present a history of similar false or fraudulent representations by the accused person or persons; but no such evidence shall be essential to sustain a successful prosecution.

SECTION 17. Any person injured in an automobile accident who claims damages therefor from another party or benefits therefor under an insurance policy shall, upon request of the party or insurer from whom recovery is sought, submit to a physical examination by a physician or physicians selected by such party or insurer as may reasonably be required,

and shall do all things reasonably necessary to enable such party or insurer to obtain medical reports and other needed information to assist in determining the nature and extent of the claimant's injuries and the medical treatment received by him. If the claimant refuses to cooperate in responding to requests for examination and information as authorized by this section, evidence of such non-cooperation shall be admissible in any suit filed by the claimant for damages for such personal injuries or for benefits under any insurance policy.

SECTION 18. As a condition of doing business in Idaho, every insurer licensed to write automobile liability insurance in this state is hereby deemed to have endorsed on any contract of auto liability insurance written for a nonresident of this state who is operating an automobile in this state an insurance contract providing the benefits set forth in section 2 of this act. Such endorsement shall continue to be in effect while such insured is in the state of Idaho.

SECTION 19. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. Provided, however, that if section 13 of this act is held to be unconstitutional, the entire act shall be deemed to have been repealed.

SECTION 20. This act shall be in full force and effect on and after July 1, 1973. In consideration of retention of its license to write automobile liability insurance, each insurer shall be deemed to have agreed to provide the benefits specified in section 2 on policies outstanding on the effective date of this act which are required to contain such coverage. In consideration of the additional insurance afforded, any automobile medical payments coverage or automobile disability income coverage already in effect upon the effective date of the law shall become excess for the remainder of the policy term over the coverage afforded pursuant to this act.

REPORT OF THE EXECUTIVE DIRECTOR

COMMITTEE REPORTS

FINANCIAL REPORTS

RESOLUTIONS

IDAHO STATE BAR

1972 ANNUAL MEETING
SUN VALLEY, IDAHO

REPORT OF THE EXECUTIVE DIRECTOR

The 1971-72 fiscal year has been a busy year for the Idaho State Bar -- and a year of accomplishment. Although much of the information given below will be expanded in the committee reports which follow, it is hoped that a brief summary of activities will be interesting to the membership.

BAR OFFICE REMODELED

The offices of the Idaho State Bar, at 425 First Security Bank Building, Ninth and Idaho in Boise, were remodeled during the past year, and a conference room added to the former space.

The results of this remodeling already are apparent. The staff has more work space, and the appearance of the office, while still not plush, presents a pleasant reception to office visitors. The conference room, which will be used for meetings of the Board of Commissioners and Bar committees, also is available to out-of-town lawyers for deposition taking, meetings, etc.

Fortunately, much of the cost of remodeling was borne by the lessor.

LEGISLATION

As most lawyers know by now, the product of the last Legislature has been met with mixed reaction. However, it is interesting to note that the legislators as a whole seemingly are beginning to take a closer look at so-called "uniform" or "model" acts which are proposed.

In the field of automobile casualty insurance, the Bar took a positive position, instead of the purely negative attitude taken by some other Bar groups in other states. Although nothing was passed in this area, work will continue prior to and during the 42nd Session of the Legislature.

The last-minute repeal of the Criminal Code created difficulties in many areas. The Bar, at the specific invitation of legislative leaders, formed a task force at the last minute to create legislation which would at least be workable until something more suitable could be enacted. For this work, the Bar received commendation unanimously passed by both houses of the Legislature.

THE MID-WINTER MEETINGS

Pursuant to a resolution passed by the 1971 Annual Meetings, the Bar during the past year held two mid-winter meetings of Bar presidents -- the first prior to the legislative session in Lewiston, and the second during the session in Boise.

These were held in order to enable local Bar presidents to report legislative activities to their memberships, and to seek to obtain grassroots feeling on pending legislation.

COMMISSIONER VISITATIONS

Also, during the Winter months, the Board of Commissioners visited with six of the seven District Bar Associations, at their invitation. The purpose of these meetings also was to report on legislative activities as well as the work of the Bar in general.

DISCIPLINE

The current Board of Commissioners has worked during the past year to speed up disposition of ethics complaints received by this office.

During the past year, one lawyer was suspended and fined, and three other recommendations for suspension have been filed with the Idaho Supreme Court.

During the past year, 51 discipline complaints were filed with the Bar office, 45 were dismissed, and 19 discipline matters are pending.

BAR ADMISSIONS

Interest in being admitted to the Idaho State Bar continues to grow. The Bar office almost daily receives inquiries from lawyers and law graduates from all parts of the United States seeking information on moving to Idaho.

During the 1971-72 fiscal year, 73 applied to take the Bar; 50 were admitted.

Although at this writing it is too early to give a definite figure, it appears that at least 60 will be taking the Fall Bar examination.

CONTINUING LEGAL EDUCATION

This past fiscal year was an active one in Continuing Legal Education. Courses in five areas of practice were given in nine different parts of the state. A total of 1,587 lawyers, judges and secretaries attended these courses. This figure does not include approximately 50 law students who were admitted to our courses without charge.

RULES COMMITTEE

Only recently, the Board of Commissioners and the Idaho Supreme Court entered into an agreement where by committees jointly approved by both bodies will, on a continuing basis, study our court rules and make recommendations for updating and improving them.

LAWYER REFERRAL

A new committee, headed by William Stellmon of Lewiston, was appointed this year to study and make recommendations for a statewide lawyer referral system in Idaho. This is part of a continuing effort on the part of the Bar to assure that all persons having need of legal services have access to them.

IN CONCLUSION

Space does not permit the listing of the many lawyers who helped the Bar -- and helped me -- during the past year. Suffice it to say, the response to requests for work for the Bar have been most gratifying. In many instances, the amount of gratis work done for this Bar by its practitioners has been truly amazing. I would, however, especially like to thank the Board of Commissioners who give roughly one week a month to the work of the Bar; also, I would like to thank the office staff: Gloria Lees, Sally Swanholm and Linda Caulk, who have been most conscientious and devoted to their jobs. --Ronald L. Kull.

REPORT OF THE BAR-PRESS COMMITTEE OF THE IDAHO STATE BAR

1971 - 1972

As announced in the Volume 14, No. 8 edition of "The Advocate", the following members of the Idaho State Bar were appointed to the Bar-Press Committee, in July, 1971: Gary M. Haman, Coeur d'Alene, Chairman; George Hargraves, Pocatello, and Jay Webb, Boise.

The committee spent the first several months of its existence in attempting to learn what it was to do. On February 17, 1972, the Secretary of the Idaho State Bar requested that the committee schedule and hold a meeting of the signators of the Fair Trial-Free Press Compact.

Following numerous correspondences among and between committee members and Mr. Ronald L. Kull, Secretary, a meeting of the signators to the compact and the committee was held at Boise on May 12, 1972. Committee members present were Gary M. Haman and Jay Webb; committee member George Hargraves was unable to attend but had previously submitted a letter enumerating suggestions and topics of discussion. Mr. Eugene C. Thomas, President of the Idaho State Bar also attended. Signators in attendance were: Mr. James M. Davidson, Idaho State Broadcasters; Mr. William Moon, Idaho Press Association; Chief Stan Sower, President, Idaho Police Chief's Association; Mr. John Corlett, SDX Coordinator; Justice Joseph J. McFadden, Idaho Supreme Court; Sheriff Dale G. Haile, Idaho Sheriff's Association; Mr. Dean Edwards, Chief Deputy Sheriff, Canyon County; Ellen Hautzel, Secretary, Canyon County Sheriff; Mr. Richard L. Cade, Director, Department of Law Enforcement, Division of Liquor Law Enforcement; Mr. Robert Nuttelman, President, Idaho Peace Officers Association; Hon. J. Ray Durtschi, District Judge.

The committee had previously suggested that the Fair Trial-Free Press Compact be printed and distributed to interested parties such as the various news media agencies, police agencies, and journalism schools for use in training and dissemination of its provisions. With respect to financing this effort, President Thomas suggested that the Bar pay one-half of the printing costs, with the various signators to pay the remaining one-half of such costs, at a rate not to exceed $25.00 per signator. Those persons present at the meeting unanimously approved this proposal.

Also unanimously approved was a suggestion that there be an annual meeting of the committee and compact signators to be held in conjuction with the annual meeting of the Idaho State Bar, such meeting to commence in 1973.

It was moved and seconded that it be the concensus of opinion of the persons present at the meeting that paragraph 3, page 5 of the Fair Trial-Free Press Compact should be changed to read as follows: "Prior criminal charges and convictions are, in some areas, matters of public record and in some instances may be available to the News Media through police agencies or from court records. The publication of such information should be carefully reviewed because it may be inadmissable as evidence, and publication might result in prejudice to a fair trial." The motion was unanimously carried.

Because of time consideration in actually making such change, it was decided that such provision should appear as a footnote in any publication of the compact.

Other items discussed but not acted upon were: (1) Press releases by private attorneys, (2) sensationalism in reporting, (3) reporting of criminal charges and arrests not followed by any reporting of disposition of such cases, i.e. dismissals, convictions, etc., (4) reporting of civil litigation, and (5) the reporting of general non-specific criticisms of the judiciary and law enforcement.

There being no further business to come before the meeting, the same was adjourned.

Gary M. Haman, Chairman

ANNUAL REPORT

COMMITTEE ON CONTINUING LEGAL EDUCATION

As Chairman of the Committee of Continuing Legal Education, it is my distinct pleasure to summarize the activities of our Committee for the past year.

In September, the Comparative Negligence Institute was presented in Boise and was very well attended with 315 registrants for the program. That program was followed in December by a review of the new Criminal Code held in Coeur d'Alene, and the following week in Twin Falls. We had a total of 224 registered.

In November, a Legal Secretaries program was conducted in Boise with a total registration of 184.

The Creditor's Rights Institute which was held the last of January and the first of February in Moscow and Burley, a total of 172 members registered for that program.

Your Committee wound up the year with the program on the Uniform Probate Code. This program was held in Idaho Falls, Boise and Coeur d'Alene, on successive weekends and had an excellent attendance of 692.

The programs presented by your Committee this year, had a total attendance of 1,583, which would indicate that every member of the Idaho State Bar attended at least two programs during the year.

In March, your Committee Chairman met with the Commissioners to review the program and to discuss plans for the future. It was agreed that the Committee should submit to the Commissioners annually, a budget establishing as close as possible, its expectant expenses and revenues for the coming year. It was also agreed that the Committee should try to plan at least three years in advance in a general fashion so that program planning would be relative to the interests and needs of the Bar, and would not be repetitious. This year's Committee did submit such a budget and an outline for programs for the coming three years. Committee continuity was also discussed with the Commissioners and it was recommended that each year the Committee be composed of four practicing attorneys and the Executive Director. The four practicing members should come, one from each Commissioner's district, and two from the district in which the current President resides. Each appointment would be for a three year term and the Senior member from the President's district would act as Chairman of

the Committee, and the most Junior member would also come from the same district. Under this program, you would have only one new member each year, and should provide a great deal more continuity and experience on the Committee.

Your Committee has been most pleased with the results of the Continuing Legal Education effort this past year and wish to extend our thanks to Mr. Ronald Kull, the Executive Director of the Bar, who was primarily responsible for the success of this Committee. Mr. Kull's expertise in this field has added immeasurably to the Continuing Legal Education program, and we wish to recognize his outstanding contribution.

Respectfully submitted,

/s/ J. Robert Alexander
J. Robert Alexander
Chairman of the Committee

BAR GROUP INSURANCE LIAISON COMMITTEE REPORT

The Bar-sponsored group insurance in Mutual of Omaha Insurance Company is in effect, as heretofore.

It appears to the committee to be satisfactory to the members of the Bar.

Yours respectfully,

/s/ Eugene H. Anderson
Eugene H. Anderson
Chairman

REPORT OF THE IDAHO STATE BAR ECONOMICS OF LAW PRACTICE COMMITTEE

DATE: May 31, 1972

COMMITTEE MEMBERS: Bert Larson, Chairman, Twin Falls
Eli Rapaich, Lewiston
Tim Daley, Boise
Wallace M. Transtrum, Soda Springs
Isaac McDougall, Pocatello

The Committee held three meetings as follows:

DATE	PLACE	PERSONS PRESENT
1/22/72	Boise	Larson, Rapaich, Daley, McDougall
3/11/72	Twin Falls	Larson, Daley, McDougall
4/21/72	Moscow	Larson, Transtrum, McDougall, Ron Kull

OTHER ACTIVITIES: Committee members also participated in these other activities:

1. Bert Larson attended a meeting during the last week of September in Twin Falls and conferred with Chief Justice Henry F. McQuade and Ron Kull about a possible office practice course to be offered law students at the University of Idaho College of Law, a CLE program on law office management, and an economic survey of Idaho lawyers.

2. Eli Rapaich attended a meeting on October 9, in Moscow and conferred with Chief Justice McQuade, Dean Albert Menard and Prof. Brabham about the possibility of implementing a law school course on Law Office Business Practice.

3. The committee arranged for the production of a Videotape covering in-office operation of three types of automatic typewriters in three diiferent locations.

4. Bert Larson, Isaac McDougall, Wallace Transtrum and Ron Kull participated in a panel on law office operations presented to the law students at the University of Idaho College of Law on April 21.

5. Eli Rapaich spoke to the Lewiston-Clarkston Chapter of the National Association of Legal Secretaries on May 6 about para-legal training.

6. Conferences were held and communications were exchanged between members of the committee and Stan Gardner, president, 6th district bar association, Pat Boring, president, Pocatello Legal Secretaries Association, Robert Crabtree, Director of Adult Extension Service, Idaho State University, Paul Kaus, Director of Special Programs, University of Idaho, Prof. Kline Strong, University of Utah College of Law.

TOPICS CONSIDERED BY THE COMMITTEE:

1. Examination of the unit value approach to the Advisory Fee Schedule.
2. Curriculum for a paraprofessional training program.
3. Law Office Business Practices courses and workshops for law students and for new lawyers and for practicing lawyers.
4. An economic survey of Idaho lawyers
5. Legal fees and Phase II of the Economic Stabilization Program.
6. Restructuring of the Economics of Law Practice Committee to provide continuity of membership and operation.
7. Providing a budget allocation to the Economics of Law Practice Committee.
8. Prepaid legal services and group practice
9. Use of letter size paper
10. Manuals for Idaho lawyers on law office operating methods and procedures to promote uniformity of operation.
11. The ABA Statement of Principles Regarding Probate Practices and Expenses
12. The use of automatic typewriters in law offices
13. The use of videotape in law practice

COMMITTEE RECOMMENDATIONS:

1. The Economics of Law Practice Committee should have six members, each appointed for a three year term, but appointments should be staggared so that two committee members are appointed each year. One of the six would be designated chairman and would have no vote.

2. The Annual meeting of the Idaho State Bar hold three workshops covering each of these areas: (1) Automatic typewriter use, and use of videotape in areas of the law; (2) Office management including timekeeping, telephone procedures and equipment, office facilities and equipment, secretarial assistants, filing systems, methods and procedures involving the legal process; (3) Techniques of attorney relationships and operations with the general legal process, clients, other attorneys and the legal profession including the recognition of acceptable uniform approaches to common problem areas. SEE ATTACHED RESOLUTION.

3. Letter size be made uniform size in all areas of the law. SEE ATTACHED RESOLUTION.

4. The Idaho State Bar sponsor and fund an economic survey of Idaho lawyers. SEE ATTACHED RESOLUTION.

5. The Idaho State Bar sponsor a project to develop and publish desk books covering the internal operations of the law office. SEE ATTACHED RESOLUTION.

6. The Idaho State Bar endorse and approve the Draft Statement of Principles Regarding Probate Practices and Expense proposed by the Real Property, Probate and Trust Law Section of the American Bar Association. SEE ATTACHED RESOLUTION.

The Committee wishes to express its sincere appreciation for the special assistance given by these individuals:

Ted Eberle, Mrs. Wilma Armstrong, Mrs. Nancy Hochstrasser, Mrs. Boots Burden and Mrs. Shirley Hudson for assistance in producing the videotape on automatic typewriter operation.

Chief Justice Henry F. McQuade, Dean Albert Menard and Ron Kull for assistance in the planning for a law school course on Law Office Business Practice.

IDAHO STATE BAR ASSOCIATION
REPORT OF LEGAL AID COMMITTEE
For the year 1971-72

The principal activity of the Legal Aid Committee during the past year, as has been the case in previous years, has been primarily aimed at giving aid and assistance to local Bar Associations in organizing whatever type of legal aid to indigents program was desired by the majority of the members of those associations.

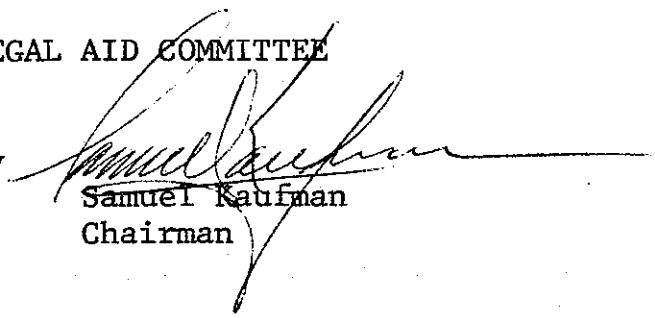
As a matter of procedure, this committee determined some years ago that legal aid problems should best be handled on a local district basis rather than attempt to organize a state-wide system. Each of the district associations is now being served either by a local Bar Association Legal Aid Committee or by a combination of such committee and the Legal Services Programs funded through the Office of Economic Opportunity.

The work of this committee during 1971-72 has been primarily in the area of observing and counseling the local associations and advising them, when requested to do so, on particular problems and how such problems have been effectively handled in other associations. The committee has not taken an active role in other areas because those areas have been examined and projects concluded in prior years.

It is anticipated that the future work of this committee will be devoted chiefly to observation of the local district efforts coupled with advice to local committees whenever the same might be sought.

Respectfully submitted,

LEGAL AID COMMITTEE

By 
Samuel Kaufman
Chairman

REPORT OF THE COMMITTEE ON LEGISLATIVE INFORMATION

The Committee consisted of the following members:

James E. Schiller, Nampa (Chairman)
Edward L. Benoit, Twin Falls
Myron Gabbert, Jr., Boise
Joseph Imhoff, Jr., Boise
T. J. Jones, III, Boise
Robert Koontz, Boise
Roy E. Mosman, Lewiston
Dennis M. Olsen, Idaho Falls
Randall Wallis, Boise

The Committee was assigned with two responsibilities. The first responsibility was following and studying legislative matters as the same arise, and making legislative reports to the membership of the Bar. This was carried out during the 1972 Session of the Idaho Legislature by mailing to each member of the Bar a legislative bulletin. All proposals and bills before the Legislature were studied by the Committee, and those deemed by the committee to be of general interest to the Bar were reported in the said bulletin. The response from the Bar has been altogether favorable, and the Committee recommends that this procedure be carried forth in the future.

In connection with the bulletin, the Committee wishes to recognize the devoted and very able efforts of Mr. Ron Kull, the Executive Director of the Idaho State Bar, and his staff.

The second responsibility given to the Committee is that it is to represent the Bar in general legislative matters upon which the Bar has taken an official position in convention, or on an interim basis by action of the Board of Commissioners. The Committee had no duties assigned to it in connection with this responsibility. The Committee feels that the State Bar must, for its own protection, work out a better procedure in connection with the "lobbying," of bills in which the Bar of the State of Idaho has an interest.

We can start with the premises that in the future the Idaho State Bar must be fully prepared on a year-around basis to protect it's interests and the interests of it's clients against action by the Legislature and by the Legislative Counsel when the Legislature is not in session. The Committee feels that as yet the Idaho State Bar does not have a workable method devised to carry forth these purposes. The Idaho State Bar as an organization appears to be ineffective in such lobbying. In

order for any lobbying to be successful it must be from the grass roots. Individual attorneys, having the respect and confidence of the legislators from their own district, can get an audience and be listened to. Recently the lobbying efforts of the Idaho State Bar itself were met with derision and the State Bar has been used as a "whipping boy." The Committee on Bar Policy and Position in Public Matters has been formed with an able chairman and committee. Yet, by the time a matter could be referred to this committee, then to the Bar Commissioners and then to the Committee on Legislative Information, it would probably be way too late. The Committee believes that the elected officers of the Bar, the Bar Commissioners, must take on the sole responsibility of policy decisions concerning legislative matters. If they desire advice and consent, then they may go to the District Bar Associations. The presidents of those District Bar Associations can call an emergency membership meeting, decide the issue and notify the Bar Commissioners. Then, once a decision is made to act, it is the recommendation of the Committee that the Committee on Legislative Information be a central planning agency only and that the lobbying duties be delegated back to the District Bar Associations so that they may have various individuals contact legislators in their own legislative district.

Under such a plan the continuation of the weekly legislative bulletins is mandatory, and after one year of operation, undoubtedly can be improved upon.

Respectfully submitted,

James E. Schiller, Chairman

COMMITTEE ON RESTITUTION AND CASUALTY INSURANCE

This Committee was created as you know, from a Resolution of the Idaho State Bar at the last annual meeting. Many and numerous meetings have been held concerning the problems, out of which this Committee produced a position paper on "no fault" which was first published, I believe, in September of 1971. Later in October, a revised version of the position paper was published and presented to the Legislative Interim Committee, studying the matter of no fault insurance and the various proposals circulating around the United States. To sum up and attempt to put the matter in focus, this Committee, as well as the Legislative Interim Committee, took a look at the various alternatives, which in summary would be about as follows:

1. U.S. Senator Hart Bill pending in Congress, which would be Federal legislation requiring no fault first party coverage and eliminating all tort arising out of automobile accidents. A version of this proposal by the A.I.A. Association has been proposed to the several states and is what is generally considered a pure no fault proposal. This proposal has been consistently and vocally advocated by John Blaine, the Idaho Insurance Commissioners.

2. A second alternative would be a modified no fault, wherein tort would survive under certain criteria under a formula approach. (This is the proposal proposed by the N.A.I.I. group and which was basically adopted in the State of Illinois.)

3. A third proposal was a modified no fault with a lid or threshold limitation on tort liability, which is the basic form adopted by the State of Massachusetts and which was the recommended form of the Interim Committee to the Idaho Legislature and was printed as Senate Bill 1298.

4. A fourth approach was a modified no fault or first party coverage which provided for no restrictions as to tort liability. This was the basic position of the Idaho Bar proposal. (This is basically what the State of Oregon has enacted and which went into effect January 1, 1972.)

5. A fifth approach, of course, is to do nothing or leave the matter alone.

As stated above, the Legislative Interim Committee offered to the Legislature a modified no fault with a threshold approach, which was Senate Bill 1298. This Interim Committee further asked the Idaho State Bar to offer their proposals in addition, which Bills were prepared and drafted under the supervision of this Committee by Mr. Rob Paine of Twin Falls. The basic Bar Bill was introduced as Senate Bill No. 1413, but by inadvertence and mistake, the Bill that was printed was not our final draft and recommendation. This Committee further had introduced in the Senate a mandatory arbitration bill. Further Senate Bill 1298 provided for mandatory arbitration on subrogation claims. The Idaho State Bar further prepared a Bill and submitted it through Representative Clyde Keithley, at his request, which Bill basically requires mandatory third party coverage tied to the license plate and registration of the automobile. As far as I know, Mr. Keithley has not as yet introduced the mandatory third party coverage bill; or if he did, it has not survived the House Printing Committee.

In addition to the foregoing, Commissioner John Blaine had his pure no fault bill introduced, which is Senate Bill 1385. All of the four principal bills were introduced and pending in the Commerce and Labor Committee of the Idaho State Senate.

At our request, Senator V. K. Brassey, Chairman of the Commerce and Labor Commiteee held a hearing on all of these bills in the Capitol Building on the evening of February 16, at which time a great deal of testimony was presented to the Committee by practically all interested parties.

At the end of the hearing on February 16, it was announced by the Chairman that the Committee would again consider these bills at nine o'clock noon Thursday morning, February 24.

I have been advised this day that apparently on February 23 at a meeting of the Commerce and Labor Committee of the State Senate, all four bills on the so-called no fault insurance were tabled by the Committee. I am further advised that the Committee is drafting a Resolution for a continued further study of no fault proposals to the next Legislature.

I have had the reading from talking to various Legislators for several weeks, that it was very likely that the Legislature was not inclined to do anything on no fault at this session, and apparently the Committee action would confirm this.

Frankly, due to the fact that the Illinois Court has declared a portion of their plan unconstitutional in a Circuit Court opinion which is now pending before the Illinois Supreme Court, and by reason of the further fact that experience from the states who have adopted various modified no fault approaches is very meager and inconclusive at this time, it would appear to me that the Legislature perhaps adopted the proper course of action.

This, of course, is a very complicated subject and is one that I would venture to say that most of the public does not fully understand, and certainly a great many of the Legislators have failed to comprehend the full significance of the various proposals.

As Chairman of the Committee on Restitution and Casualty Insurance, and due to the developments in the Legislature, I did not feel that it was necessary to again call the Committee together to make this report on behalf of the entire Committee; and I am hopeful that this report to the Commissioners would be accepted by the entire Committee. I would further ask that Mr. Ronald L. Kull, Executive Director, mail a copy of this report to each member of the Committee.

Further, as Chairman of the Committee, I would recommend to the Commissioners that it be proposed at the next Annual Meeting of the Idaho State Bar that a Committee on Restitution and Casualty Insurance be recreated or continued, and that this Committee continue to work closely, through its Chairman, with the next Legislative Interim Committee on this subject. In closing, I would wish to thank my entire Committee for the many hours of work they have put into this matter. I would further wish to acknowledge that your President, Eugene C. Thomas, has worked extremely close with this Committee and has been most helpful and responsible for a great deal of the policy and accomplishment of the Committee.

Respectfully submitted,

/s/ Harold L. Ryan
Harold L. Ryan
Chairman
State Bar Committee on
Restitution and Casualty Insurance

COMMITTEE ON PROFESSIONAL ETHICS

We submit herewith a brief report concerning the activities of the Committee on Professional Ethics during the past year. The Committee received during the year an unusally large number of requests for informal opinions. Many of these involved conflict of interest problems related to the system of public defenders. The Committee commends the almost uniform practice of the members of our Bar in soliciting the views of the Committee on ethical problems prior to committing to a course of action.

Respectfully submitted,

William D. McFarland

Jack G. Voshell

By/s/ Jess B. Hawley
Jess B. Hawley, Chairman

REPORT OF THE FEDERAL COURT LIAISON COMMITTEE

I submit herewith the report of the Federal Court Liaison Committee. Initially, no problems were tendered to the Committee requiring the direct intercession of the Committee in the absence of which the Committee did nothing to disturb the superb rapport existing between the Idaho State Bar and the Federal Bench.

During the past year, the Committee has had under consideration Senate Bill 1876, which seeks to extensively modify the diversity jurisdiction of United States Courts. As of the present writing, the Committee has been unable to reach any determination justifying a proposal of action to the Commissioners of the Bar.

Very truly yours,

/s/ Raymond D. Givens

IDAHO CODE COMMISSION REPORT

After receipt of Ronald L. Kull's letter of October 5, the Code Commission met and is pleased to know of the interest of the Idaho State Bar in the future of the Idaho Code.

You will recall that at the time of the reorganization of our Court system which became effective early this year, a different system of fees was provided by Legislative amendment to provide money for the Idaho Code. We have now had an experience of some ten months operating under this new fee system and it appears that the money that is forthcoming is substantially the same as heretofore provided, with some small increases. You are also aware that in the meantime publication costs have increased tremendously. With your awareness of the fiscal matters facing the Commission, we think you will better understand our present and future planning which is generally as follows:

1. You should know that we have already contracted for the publication of a completely new Index in a two-volume set at a cost of $48,000.00 or $48.00 a set. This was to have been delivered in September of this year. However, because of the enactment of massive statutes at the last Session of the Legislature, i.e., the Probate Code, Criminal Code, Uniform Consumer Credit Code, and Workmen's Compensation Laws, the Commission decided it was imperative to have these acts indexed in the new volumes. To accomplish this we granted an extension of time in delivery date to March of 1972. By so doing, we should have a very up-to-date Index.

2. Bobbs-Merrill is in the process of completing for delivery by November 15 a 1971 Cumulative Pocket Supplement for the present Code. It will be cumulative for all volumes except Volume 11. It was not possible, because of the amount of legislation affecting Volume 11, to put this in a cumulative form, therefore the 1969 Cumulative Supplement will have to be retained and there will be a standup separate volume which will cumulate the 1970 and 1971 legislation and contain an Appendix which will contain the new Workmen's Compensation Act which will take effect January 1, 1972. The Supplement to Volume 3 will have an Appendix containing the new Probate Code which becomes effective July 1, 1972, and the Volume 4 Supplement will have an Appendix containing the revised Criminal Statutes which will be effective January 1, 1972. The Commission realizes that this Supplement has been delayed longer than is normal, but at the same time recognizes that the editorial work required because of the massive legislation excuses the late delivery. The

cost of this Supplement will be $42,500.00, or $42.50 a set.

3. The Commission made an effort to republish Volume 11 because of the size of the Supplement, but the printing schedule of the publisher prohibited the delivery thereof by the time it would have been useful. The Commission feels that this will be its first priority for the republication of existing volumes if funds are adequate. The quoted price at that time was $21.50 a volume for two volumes, or a total cost of $43,000.00 or $43.00 for the republished volume.

4. It will be advisable to republish Volume 4, but because there will be substantial editorial work required to separate the substantive from the procedural matters contained in this volume, if and when the Criminal Rules of Procedure are adopted by the Supreme Court, we have made no immediate plans for the republication of this volume.

5. The next volume that will probably need action is Volume 3 because of the complete revision of the Probate Code. Adequacy of funds will again dictate the time of such republication.

6. Subsequent republications of volumes are largely dependant upon the nature of subsequent legislative acts, as well as availability of funds to the Commission.

7. Because of the increased costs for Cumulative Supplements and the delay in delivery, the Commission may give some thought to again attempting to have a single volume supplement for one legislative year and a cumulative supplement for the second legislative year. Cost and delivery dates, of course, are the large deciding factors, i.e., the 1969 Cumulative Supplement cost $27,500.00 or $27.50 per set, and this would normally cover a biennial period. With the advent of annual sessions, this required a supplement every year. The cost now is $42,500.00 or $42.50 per set, or a total of $85,000.00 or $85.00 a set a biennium. The 1970 one-volume Supplement cost $17,500.00 or $17.50 a set. Whichever device is used, the Commission desires to have the publication available in a timely manner at a reasonable cost.

8. If the present fees payable to the Code Commission are retained, the Commission will be seriously curtailed in providing a current, up-to-date Code. The Commission is seriously considering asking the Legislature at this coming Session to increase these fees to provide adequate funds to do all things necessary to have the very best working tools in the hands of the Judges and lawyers. We have made no estimate at this time as to the extent of the increase, but our past experience indi-

cates that some raise is necessary. As you know, these fees do not come from the General Fund but are paid as a part of the Filing Fees by the litigants in our Courts.

Thank you for your interest. Copies of this letter will go to each member of the Idaho Bar Commission, and we want them to know that The Idaho Code Commission would be pleased to meet with them at any reasonable time.

Very truly yours,

/s/ Carey H. Nixon
Carey H. Nixon
Chairman
Idaho Code Commission

REPORT OF THE PEER REVIEW COMMITTEE

The Peer Review Committee, consisting of Robert H. Copple, Boise, Chairman, John Peacock, Kellogg, and LaMont Jones, Pocatello, was organized in August of 1971 pursuant to a resolution adopted by the Idaho State Bar Association at its 1971 annual meeting. The Committee organized by dividing the State into three general geographical areas with committee member Peacock to process complaints in the northern part of the State, committee member Copple the central part of the State, and committee member Jones the southern part of the State. Each committee member was to appoint two or more attorneys from its geographical area to constitute a peer review committee for the investigation and review of complaints in each respective area.

The Committee has received six complaints, one of which was from the northern area, but since committee member Peacock deemed himself disqualified in connection with the complaint filed in his area the complaint was heard and disposed of by the committee from the central district of Idaho. There were two complaints filed in the central district and the committee for this area, consisting of committee member Copple assisted by Jack Hawley and Craig Marcus, both of Boise, heard and disposed of the two complaints in the central district, as well as the one complaint in the northern district, for a total of three complaints. At the present time there are two complaints under consideration in the southern geographical area under the jurisdiction of committee member LaMont Jones. The remaining complaint, which was filed in the southern district, was returned to the commissioners without action by the Committee due to the fact that litigation involving the fee dispute was pending in the district court at the time the complaint was submitted to the Peer Review Committee.

In considering and disposing of complaints the Committee has attempted to be fair to the lawyer involved as well as the complaining client. The general procedure followed by the Committee is that when a complaint is filed a copy is sent to the lawyer involved with an invitation to the attorney to reply to the complaint and give his version of the facts involved. When the lawyer's reply is received, a copy is mailed to the complaining client who is invited to answer the reply and furnish any other information or evidence in support of the complaint. Following the exchange of correspondence by the complainant and the attorney, both are afforded the opportunity, if they so desire, to meet with the Committee in a frank and open discussion of the problem and the presentation of any evidence or arguments that either may

wish to make, following which the Committee reduces its findings and recommendation to writing, and after approval by the local committee and the State Committee, a report is filed with the Board of Commissioners of the Idaho State Bar.

It is believed that the Committee has served a useful purpose in its first year of existence and will continue to be an effective tool in the improvement of the relationship between the lawyers and their clients. As a result of the experience in handling these cases, the Committee emphasizes the importance of complete communication and agreement between the lawyer and the client as the most effective means of preventing fee disputes. We believe that the continued existence of the Committee may well provide the Bar with a greater understanding of the public's reaction to fees charged by attorneys and assist in minimizing the number of complaints in this area.

Respectfully submitted,

PEER REVIEW COMMITTEE

By /s/ R. H. Copple
R. H. Copple, Chairman

COMMITTEE ON REAPPORTIONMENT OF BAR DIVISIONS

The Committee on Reapportionment of the Divisions of the Idaho State Bar met at the Rodeway Inn on Friday, April 28, 1972. All of the Committee members were present, to wit: W.E. Sullivan, Chairman; Jerry V. Smith; Blaine F. Evans; Wesley F. Merrill; and William S. Holden.

Thomas Nelson was present and presented the views of the Fifth District Bar Association. Also, a letter was received from Neil Walter, President of the First District Bar Association setting forth its views. Several other lawyers were also present in person and entered into the discussion.

After giving consideration to the correspondence received, the presentations of the attorneys present and consideration of the problems involved, upon motion duly made, seconded and unanimously carried, it was resolved that the number of commissioners of the Idaho State Bar should remain at three.

It was moved by Mr. Merrill and seconded by Mr. Smith that the divisions of the Idaho State Bar be not reapportioned for the reason that it was felt that the present geographic areas in the divisions were essential for the proper functioning of the Commission and that an attempt to approach a one-man one-vote basis was relatively unimportant. This motion was unanimously carried.

It was moved by Mr. Evans and seconded by Mr. Merrill that the Committee recommend to the Idaho State Bar Commission that a resolution be prepared and submitted for vote by the Bar Association which will provide a speedy and effective method of action by the local Bar associations on resolutions that may be proposed, and that will provide a vote thereon by each member of the Bar. Further, in connection therewith, that Rule 185 of the Rules of the Idaho State Bar be revised and vitalized. This resolution was unanimously adopted.

The Committee further wishes to advise the Commissioners that it would be happy to assist them in developing this last resolution.

Respectfully submitted,

IDAHO STATE BAR COMMITTEE
ON REAPPORTIONMENT

By /s/ W.E. Sullivan
Chairman

REPORT OF SPECIAL ADVISORY COMMITTEE TO THE SUPREME COURT

ON THE REVIEW OF RULES FOR CRIMINAL PROCEDURE

A Supreme Court Order, signed by Chief Justice Henry McQuade on the 31st day of March, 1972, created a Special Advisory Committee to the Supreme Court to review rules of criminal procedure and recommend changes to put the present Idaho Criminal Rules in conformity with the criminal code adopted by the Legislature of the State of Idaho during the Second Regular Session of the Forty-first Legislature effective April 1, 1972.

The following members of the judiciary and bar of the state of Idaho were appointed members of the special committee:

The Honorable Robert M. Rowett, Magistrate
Chairman - Mountain Home, Idaho

The Honorable J. Ray Durtschi, District Judge
Boise, Idaho

Francis H. Hicks, Esq.
Mountain Home, Idaho

Samuel Kaufman, Jr., Esq.
Boise, Idaho

James W. Derr, Esq.
Boise, Idaho

James E. Risch
Prosecuting Attorney
Boise, Idaho

Mack A. Redford, Esq.
Reporter, Boise, Idaho

Prior to any action by the special committee the reporter Mack A. Redford, reviewed the criminal code adopted by the recent legislature in an effort to find any conflict with the present Idaho Criminal Rules. Pursuant to this review and study by the reporter, a report was made to each and every member of the committee and thereafter on the 19th day of April, 1972, all committee members met at the Boise Hotel and discussed the report, decided the direction the committee should take, and agreed on recommendations to be made to the Supreme Court.

The report was in two sections. The first section dealt with those rules which needed revision for consistency between the new criminal law and the criminal rules. The second section concerned changes which appeared necessary, after three and one half months experience with the rules, to make them more workable.

The committee, at the meeting on April 19, 1972, concluded that the assignment from the Supreme Court was only to review the Rules and insure that they are consistent with the present criminal law; and therefore, that they should formally concern themselves only with the first section of the report. The committee, however, decided to review the second section of the report prepared by Mack A. Redford, with the thought in mind that individual committee members could point out to the Court any glaring defects in the rules and make recommendations in unofficial letters.

Furthermore, the committee agreed unanimously to recommend that the Supreme Court appoint an advisory committee with statewide representation to make a thorough study and recommendation for additional changes as problems have developed or hereafter develop in the Rules.

The following proposed rule changes are submitted by the Special Committee to the Supreme Court for their consideration as necessary to put the Idaho Criminal Rules in line with the present criminal law.

1. Rule No. 3 should be amended to read as follows:

> Rule No. 3 - THE COMPLAINT - The Complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate except as provided in Rule 3.1.
>
> ~~In all cases where an extended term of imprisonment is sought under the provisions of I.C. Section 18-2208, the Complaint shall set forth the facts on which the extended term of imprisonment is sought. The facts so alleged shall not be read to the jury. If the defendant is~~

~~found-guilty-of-the-primary-charge,-the court-thereafter-shall-proceed-to-hear the-issue-or-issues-involving-an-extended term-of-imprisonment.~~

The penal and correctional code which was in existence from January 1, 1972, to April 1, 1972, provided for extended sentences in cases where special facts presented themselves. The Second Regular Session of the Forty-first Legislature repealed the penal and correctional code and in its place adopted a new criminal code. The criminal code that is now in existence does not contemplate extended terms of imprisonment and therefore that portion of Rule 3 which dealt with such extended terms of imprisonment is now surplusage and without need.

Rule 7 of the Idaho Criminal Rules should be amended to read as follows:

> Rule No. 7 -- THE INDICTMENT AND THE INFORMATION.
>
> (a) USE OF INDICTMENT OR INFORMATION. All felony offenses shall be prosecuted by indictment or information.
>
> (b) NATURE AND CONTENTS. The indictment or the information shall be in a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that means by which the defendant committed the offense are unknown or that he committed it by one or more specific means. The indictment or information shall state for each count the official or customary citation of the statute, rule or regulation or other provision of law which the defendant is alleged to have violated. Error in the citation or its omission shall not be grounds for dismissal of the indictment or information or for reversal of the con-

viction if the error or omission did not mislead the defendant to his prejudice.

~~In all cases wherein an extended term of imprisonment is sought under the provisions of Idaho Code, Section 18-2206, the indictment or information shall set forth the facts on which the extended term of imprisonment is sought. The facts so alleged shall not be read to the jury. If the defendant is found guilty of the primary charge, the Court thereafter shall proceed to hear the issue or issues involving the extended term of imprisonment.~~

(c) SURPLUSAGE. The Court on motion by either party may strike surplusage from the indictment or information.

(d) AMENDMENT INFORMATION OR INDICTMENT. The Court may permit an information or indictment to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(e) FILING OF INFORMATION. The prosecuting attorney must file an information within ten (10) days after an order is entered by the magistrate holding the defendant to answer in the district court, unless more time is granted by the court for good cause shown.

This rule should be changed for the same reasons as are found in Rule 3 in that the Idaho Legislature did away with extended terms of imprisonment for felonies.

Rule No. 8, Joinder of Offenses and of Defendants, should be amended to read as follows:

> Rule No. 8 -- JOINDER OF OFFENSES AND OF DEFENDANTS.
>
> (a) JOINDER OF OFFENSES. Two or more offenses may be charged on the same complaint, indictment or information and a separate count for each offense if the offenses charged, whether felonies or misdemeanors, or both, are of the same or similar character or based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. ~~A misdemeanor may be charged in an information or indictment only when a felony is also charged.~~
>
> (b) JOINDER OF DEFENDANTS. Two or more defendants may be charged on the same complaint, indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offesnes. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Subsection (a) of Rule No. 8 now provides for joinder of offenses. The last sentence of this subsection appears to be in conflict with Section 19-1432 of the present criminal code. The sentence of the rule which is struck above speaks in terms of misdemeanors. Section 19-1432 provides:

> Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Thus the committee feels that the conflict between the rules and the statute can best be resolved by striking the portion of the rule as indicated above.

Rule No. 29, Transfer from the County for Plea and Sentence, (1) Complaint-Misdemeanor-Petit Misdemeanor, should be amended to delete in the caption the word "petit misdemeanor" because that designation of crime was not used in the present code.

Rule No. 39.1, Stay of Execution and Relief Pending Review, was also discussed by the committee. Subsection (2) of that rule provides:

> (2) Imprisonment. The judgment of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. In the event a defendant is not admitted to bail following conviction and during pendency of the appeal, any sentence of imprisonment shall commence on the date of entry of judgment.

Although this subsection of Rule 39.1 speaks in terms of sentences, the committee considered the question of whether it might be in conflict with Section 18-309 of the present Idaho Code which speaks in terms of computation of imprisonment.

18-309, after providing that credit shall be given to a person for any period of incarceration prior to the entry of judgment, provides:

> The remainder of the term commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if thereafter, and during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

It appeared to the committee that such first paragraph of Rule 39.1(2) and such portion of Section 18-309, Idaho Code, speak toward the same subject. It was pointed out that the original committee, in proposing Rule 39.1, was concerned with those common situations where a defendant who appeals a judgment and sentence is left in the county jail during the pendence of the appeal. If the defendant was then unsuccessful in his appeal, the time spent in jail pending the appeal was what was considered

"dead time". The special committee agreed with the original committee that there is no justification for taking this time away from the defendant, and that Subsection (2) of Rule 39.1 should be left intact. The committee surmised that although there may be a conflict between the Rule and the statute, the rule would prevail under the view that the rule making power of the Court would cause a statutory conflict to be abrogated.

Furthermore, the committee was not certain that the statute and rule do actually conflict, because of that portion of the statute which states:

"***the time during which he was at large***". If the words at large were construed to mean those situations where the defendant is not incarcerated in a jail, but is at large on appeal - released from complete custody - then there very well may be no conflict at all between the rule and the statute.

CONCLUSION

The committee feels that the above proposed changes in the Idaho Criminal Rules will substantially place the Rules in conformity with the present criminal code.

The committee recognized that other statutes in Title 19, as well as elsewhere in the Idaho Code, may also in some form conflict with the Idaho Criminal Rules; but felt that such conflicts would also probably be resolved by the view that the Court's rule making power would prevail, and the Court's Rules would abrogate statutes in conflict.

Respectfully submitted,

/s/ Robert M. Rowett
ROBERT M. ROWETT, Chairman
Special Supreme Court Advisory
Committee to Review Rules for
Criminal Procedure.

REPORT OF THE COMMITTEE ON LAWYER REFERRAL SERVICES OF THE IDAHO STATE BAR ASSOCIATION

July, 1972

This committee was formed after considerable study and discussion among the Commissioners concerning a need for such a service in Idaho. The committee was established to study the various approaches to referral services and then make recommendations to the Bar Association.

"The California law firm that started offering a plan for group legal service nine months ago now is under retainer to thirty labor unions, credit unions and other organizations with about 42,500 members. Danny R. Jones, a partner in the law firm based in the Los Angeles suburb of Norwalk estimates the plan will be serving over 50,000 people by June. In Pittsburgh, District 15 of the Steel Workers Union started providing its 65,000 members free legal advice through a local law firm last October. About 300 members were using the plan each month and officials from several other districts are interested in it. The plan, 'Will be forerunners of lega-cost insurance programs that will be available to people on a wide-scale basis in the not too distant future', predicts F. William McCalpin, chairman of the American Bar Association's special committee on prepaid legal insurance. There has also been growing concern among many lawyers about the service their profession is providing. Frets one Washington lawyer. 'If General Motors produced cars the way we try to deliver legal services, a Chevy would cost $30,000 and one out of two would be a lemon'. California attorney Jones notes that the poor are eligible for government subsidized legal aid and the wealthy can easily afford lawyers, but he says, 'The people making between $5,000 and $15,000 a year aren't adequately served.'" (Wall Street Journal, Monday, May 17, 1971.)

Revolutionary changes in making lawyers' services available to people of moderate means face our profession. An unfilled need of poor people for legal services has been faced by the Office of Economic Opportunity's financing of legal services for poor citizens of the country. The case load of these offices over the country runs into the millions each year. The middle income groups' need for good legal service is not now being met. The concept of group legal services which arises from United Mine Workers of America vs. Illinois State Bar Association, 38 U.S. 940 (1964) has been fostered by unions meeting the demand of middle class membership for access to competent lawyers at reasonable fees. Many of our state bar associations have defaulted in this responsibility and the need is partially being filled by others. The wild fire growth of union group legal programs is mushrooming in almost every state of the union. It will undoubtedly not be long before we have it in Idaho. The affluent individuals and corporations continue to be able to afford an attorney and the lower income class is being reasonably well served by the legal aid offices, by the OEO and by Judicare and in some areas by public interest law offices. However, the real bind occurs to those people making between $5,000 and $15,000 a year, which represents the largest segment of our society with at least as many legal problems per capita as any other income segment of our society.

The private practioner in Idaho must make his counselling services more readily accessible to the medium income family to increase attorney income and fill a public need. The demand is there. Distribution of competent legal advice is not. It has been estimated that if lawyer referral services were properly funded and administered two million new cases per year would be referred to lawyers and that is just scratching the surface.

(Christensen, Lawyers for People of Moderate Means, American Bar Foundation, 1970, Page 25, Note.)

From what the committee has been able to determine a well-run lawyer referral program is good business. The Illinois Bar Association's lawyer referral program in a recent survey has learned that 19% of the cases referred to lawyers have resulted in an additional fee over the initial consultation fee. An additional 32% of the cases have resulted in an additional fee ranging betwen $100 and $500. 8% of the cases referred have resulted in fees in excess of $500. 96% of the clients responding to the survey were enthusiastic about the program and the services performed for them by their lawyer. Although the statistics are not old enough to be very reliable, the Oregon State Bar Association feels that their program will generate at least twenty times its cost in lawyer fees.

Overcoming the average person's reluctance to contact a lawyers' services readily available makes economic sense to the private practioner. If the gap is not filled by the profession, it will be filled by group legal services and government programs to the possible detriment of the profession. It is the opinion of the committee that the Idaho State Bar Association should establish a state-wide lawyer referral or counselling service in which all private practioners (defined as those whose names appear in the yellow pages of the phone books) participate through the Idaho State Bar office.

Based upon the cost incurred by the Illinois Bar Association and the cost incurred by the Oregon State Bar Association, it is estimated that the initial cost of setting up and administering the program by the Idaho State Bar Association will be approximately $8,000. Some portion of this expense may be avai lable through federal funding, although this possibility has not been explored to any great length.

We are attaching hereto as appendix a very brief overview and rundown of lawyer referral services in various states of the union .

It is the recommendation of this committee that a state-wide lawyer referral service be established in Idaho along the lines of the service that has been established in Oregon. All members of the Idaho State Bar Assocation engaged in private practice would be participants in the state-wide lawyer referral service and would be members of a general panel in the geographic area in which they practice. All referrals would be made to the office of the Idaho State Bar Association. A toll-free watts line to the office would be set up and calls would be taken from 9:00 a.m. to 5:00 p.m. on week days. Notification to both client and attorney would be made by mail, except for emergency needs. The client will be instructed to contact the lawyer for an appointment. The charge for the client would be $15.00 for the first half-hour counselling appointment with any subsequent fee for additional work to be arranged by the lawyer and the client. The lawyers would pay no membership fee to be on the panels, as is done in many states, but rather the cost of the program should be funded through the Idaho State Bar.

We are attaching hereto several sample forms that have been used by the Oregon State Bar Association in establishing this service. Form 1 is used by the secretary in taking the call from a prospective client. Form 2 is a request and referral form which goes to the client following the call taken by the Idaho State Bar office. This form should be prepared in four parts - the first copy is the client's copy, second copy is the Idaho State Bar copy, third copy is the attorney's copy, and the fourth copy is a report to be returned by the lawyer to the Idaho State Bar following closing of the case. The last two copies are exactly the same as the other two except that in the lower right-hand corner there is a very short check-off report form indicating contact by the client; whether a conference was held; whether the matter was handled by the attorney; and whether or not there were additional fees generated.

We are also attaching to this report a suggested letter that could go out from the committee to every lawyer in the State of Idaho indicating establishment of a lawyer referral program, should that be done by the members of the Bar Association, and a short statement of the method of operation which would be sent out with the initial letter by way of explanation. There is also attached a form which would be returned by each attorney indicating his area of practice and panels that he would be willing to work on.

With these recommendations it is hoped that the proposition can be put to the membership of the Idaho State Bar Association as to whether or not the Association should establish a state-wide lawyer referral service in Idaho. The committee will, of course, attempt to iron out the details of establishing the program should the membership vote to do so.

Respectfully submitted,

LAWYER REFERRAL SERVICES COMMITTEE

William A. Stellmon, Chairman
Terry L. Crapo
Ronald B. Rock

STATEWIDE LAWYER REFERRAL

STATEWIDE LAWYER REFERRAL

RHODE ISLAND established the first statewide lawyer referral service in 1953. Edward P. Smith has been the director of that program since its inception. Mr. Smith is also the Executive Secretary of the State Bar Association.

The service has a unique two panel arrangement: an active panel whose members receive referrals by the conventional rotation method and an inactive panel whose members do not receive referrals unless an active panel member is not available.

In organizing the service, a provision was made to set up separate geographical panels. Consequently, panels were established not only in Providence but also in Pawtuchet, Warwich, Bristol, Westerly, East Providence, Barrington and in New Port. In that the whole state of Rhode Island is under one area code, anyone in the state can call the Providence office at local rates.

Panel membership is contingent on meeting the standards established by the committee. Those standards consist of requiring a member to have been in practice for at least one year, to personally know at least two members of the committee (a personal visit to two members is sufficient in most cases) and agree to abide by the rules of the

service. When a lawyer is accepted for panel membership, he is placed on a panel in the geographical area in which he practices.

The service works as follows: When an individual in the Providence area in in need of legal services and calls the lawyer referral office, an interview is arranged. All interviews are conducted by Mr. Smith who decides, during the interview, whether or not the individual needs legal help. If legal help is needed, an appointment is made with a panel member selected by rotation, unless he has indicated that the subject matter is in one area of the law that he would prefer not to be referred. If the client lives outside of Providence, he is interviewed by telephone and then referred to a panel member located in the geographical area closest to his home. The service has no provision for specialty panels. It is the contention of the association that this is a form of specialization and, therefore, unethical.

The client is charged $2.00 for the initial interview and an additional $10.00 for the first half-hour consultation with the attorney. If additional services are required, the fees are determined by agreement between the lawyer and the client. They may also agree that any dispute having to do with fees shall be settled by decision

of the referral service committee of the bar association.

The service and the bar association protect themselves against any liability for activity of the referral lawyers by a "disclaimer clause" in the referral forms, which is signed by the client at the time of interview. But, they do claim to have a moral responsibility to refer clients to well qualified attorneys.

The service points out that it is not a chairtable service and those who cannot pay any fee should not apply to the service. The program provides a method of overseeing the final disposition of the referral by requiring each lawyer to fill out a form within one week after termination of services on the particular referred matter.

In 1970 the service referred 654 individuals to panel members. Fifty percent were telephone referrals. The program serves a population of 900,000, the entire state of Rhode Island. There are 145 attorneys serving on panels and 10,026 attorneys that are members of the bar association. Last year the service collected $2,971 for panel membership fees and $502.00 for client registration fees. They spent between $250 and $500 on

yellow page ads. Any costs remaining are absorbed by the association as a part of their general operating overhead. As of last year, the service is no longer conducting its follow-up service, unless a complaint is issued, because of the over abundance of paper work.

HAWAII was the second state to set up a statewide lawyer referral service. The service caters basically to those individuals living on the island of Oahu, consequently, it is more like a local service than a statewide service.

Last year, in serving a population of 800,000, the office referred 1,347 applicants to panel attorneys, 70% of which were conducted by telephone. There are 67 attorneys registered under the numerous specialty panels. An annual fee of $35.00 is charged each panel member and there is no amount charged to the client for registration with the service. Ronald Y.C. Yee is the General Counsel for the service.

ILLINOIS On June 1, 1970 the Illinois State Bar Association set up the largest (geographically) lawyer referral service in the United States. This service covers a population of approximately 5,000,000 and is spread over 54,923 square miles. The major component of the service is a wide area telephone service, a WATS

line. With such a telephone service any Illinois resident who lives in an area where there is no existing lawyer referral service may call, toll free, the Illinois State Bar Association headquarters in Springfield. A specially trained clerk will interview the client and determine the nature of the problem. If a legal question exists, the clerk consults the lists of attorneys and advises the client of the name, address and telephone number of an attorney in the geographical area in which the client resides. The initial interview costs the client $10.00 for a half-hour consultation. If additional legal services are required, an arrangement can be made between the client and the attorney. Notification of the referral is made to the attorney and the client by mail.

The service does not require that the attorney panel member be a member of the Illinois Bar Association but he must be a member in good standing of the state bar of Illinois. Illinois does not have an integrated bar. The service requires all panel members to carry professional liability insurance. The service carries its own liability insurance, covering any negligence arising out of

the making of a referral. Having insurance affords the public every protection possible arising from the use of the service.

The service does not have specialty panels but they do permit attorney panel members to indicate the type of case that they do not wish to handle. They also request attorneys to disclose any foreign language they speak or write so that they can be referred to individuals who cannot speak English and must communicate in a foreign language.

The WATS service is an incoming WATS line. Initially the service purchased 10 hours of measured WATS line service for $140.00 per month. If more than 10 hours are used per month, the measured time by the hour is billed by the telephone company.

The referral clerk was selected primarily because of her maturity and desire to be in contact with the public. When answering a call, she identifies the service and asks if she can make a referral. She is trained to limit her conversations to determining the general nature of the problem and to making a referral to the attorney next in line

in the appropriate geographical area. She states the terms of the referral and thanks them for calling. If she receives a call from an individual in a county with an established lawyer referral service, she gives them the telephone number of that service.

Additional duties of the clerk consist of registering by code each referral made. She also sends out verification of each referral to the attorney and client and maintains a file on referrals made under each attorney's name. The attorney to whom a referral is made is asked to return one of the verification slips within 10 days. The purpose of this is to determine if the client kept the appointment, if the client made the fee payment, the general nature of the problem, and whether further services appear to be required. If further services are required, the State asks for an estimate of the size of the fee.

For publicity purposes the Illinois statewide service has devised an advertisement describing the service. The ad includes the toll-free telephone number and has been distributed to the public in the form of newspaper ads, press releases, public service radio spot announcements, to county clerks,

states attorneys offices, public aid offices and through employers. Yellow page advertising is being carried in each new telephone directory published. The Illinois State Bar Association budgeted $7,000 for the service for fiscal 1970-71. Lawyer referral panel members pay a fee of $15.00 annually to help defray the expense of operating the service.

In its first 9 months of operation the Illinois service referred 717 clients to panel attorneys. They reported that 169 attorneys out of 5000 that are eligible have already registered with the service. The nine month operating cost totaled $4,792 which included over $1000 expenditures for advertisement.

NEW HAMPSHIRE Bar Association officially began operation of a lawyer referral service in June 1970. The service has 140 lawyers registered and have established a $10.00 fee for the first consultation. The service has no formal plan of organization. It is presently supervised by the State Bar Association Committee on Legal Aid. No attempt has been made to screen panel members, which consist of any attorney who volunteers for the service. The Association assumes that every lawyer is competent until proven otherwise. The panel members are given the opportunity

to indicate the type of case in which they are active or interested.

The cost of running the service is absorbed by the office overhead. No kick-back or sponsorship by either the lawyer or the client is required. At the end of the first six months the service referred 35 applicants. The program works as follows: When a client calls in, the Executive Director of the State Bar, Joseph S. Hayden, refers the case to a panel lawyer on a rotating basis in the area in which the client resides. The attorney charges no more than $10.00 for the first conference.

A majority of the individuals utilizing the service have done so by telephone. When calling in, the client is asked the general nature of his legal problem, who referred him to the Association, where he lives and whether he has checked into his eligibility for OEO sponsored legal aid. When an appointment is arranged it is confirmed by phone and letter, a copy going to the lawyer along with a short questionnaire regarding the disposition of the case or consultation.

UTAH - In the latter part of July 1970, the Bar Commissioners of the State of Utah approved and adopted the state's lawyer referral committee's recommendation to set up a statewide lawyer referral service. The service is to be operated out of the State Bar office utilizing its facilities and staff. In the committee proposal it was recommended that panel members be catogorized into areas of interest. They also recommended that no fee percentage be referred back to the office for it would be too cumbersome in practice and would place too great a burden on the staff of the State Bar office. They also proposed that a full-time staff and professional screening method be set up.

The Bar Association's executive secretary, Mr. Dean W. Sheffield, will personally talk to any inquirer and classify the problem and then select three lawyers from the panel who have expressed interest in this type of a case. He has devised a punch card system which he will put in to use to control the system. The client will then receive a written statement containing the

name of the three attorneys and after a reasonable time a simple follow-up form will be sent out to the attorneys. Names are drawn on a strict rotation basis, with some discretion exercised as to geography if, in the Executive Secretary's opinion, this is a significant factor, or, of course, if geographic preference is stated by the inquirer.

Our Annual Survey indicates that the service began operation on July 28, 1970 and serves a population area of 1,000,000. Last year 444 applicants requested legal services and 434 of these were referred out, ninety-eight percent by telephone. Four-hundred ninety seven attorneys out of a total Bar Association membership of 1,246 registered with various specialty panels of the service.

A $10.00 fee is charged a client for a one-half hour consultation with a panel lawyer. Panel membership is free for attorneys. The service keeps no separate record of the cost of the operation, all expenses are absorbed by the Bar Association. In order to advertise the service, the program is to be publicized in all telephone

directories in the state in the 1971 editions, they expect to spend between $500 and $1000 on publicity.

MICHIGAN - On March 1, 1971 the State Bar of Michigan inaugurated a statewide lawyer referral service. The service is operated out of the State Bar headquarters in Lansing. It is based on the Illinois program which makes the service available to the public by means of a toll-free WATS line.

When an individual calls into the office the nature of the problem is determined and the caller's location. A referral clerk then furnishes the name, address and telephone number of a panel lawyer in the area in which the caller is calling. The client makes his own appointment with the attorney. Referrals are made to attorneys by rotation from alphabetical lists in the appropriate geographical division. Written confirmation of the referral is mailed to the caller and to the attorney. The fee for the initial half-hour conference is no more than $10.00. This service, as in Illinois, has no effect in counties where there are existing lawyer referral services. There are nine such counties in Michigan

DELAWARE - On March 31, 1971 the State Bar Association of Delaware set up a statewide lawyer referral service in its association office. All persons in Delaware seeking legal assistance can now contact the bar association office which in turn will refer them to an attorney who has previously agreed to accept such matters. A telephone answering service is being instituted to accept calls during periods of time that the Bar Association office is closed.

The client pays $2.00 to the association for its services and $5.00 to the attorney for a half-hour consultation. If further services are required, the fees can be determined by arrangement between the attorney and the client. On July 1, 1971 the bar set up an additional arrangement in which each member of the bar is on-call for approximately two referrals a year. The attorney must now return the half-hour consultation fee to the association.

To determine the "on-call" dates assigned to each member of the bar, the lawyer referral committee draws lots. Those on call have a respon-

sibility to be available on the assigned date and if they are to be out of town, etc., then they must try to arrange for another attorney in their office to take the calls or to notify the bar association office if there is no other attorney available.

The population of the area served is 548,104. In 1971 the service had 890 applicants and out of these 669 were referred to panel members. One-hundred percent of the referrals were made by telephone. The service indicated that 90 out of 554 attorneys are members of the panel at no charge to attorneys for membership.

WASHINGTON - At its June meeting the Board of Governors of the State of Washington approved the establishment of a statewide lawyer referral service. The service is housed in the State Bar office and conducted by the use of a statewide toll-free long distance telephone line similar to Illinois. The service is not effective in the large counties in which local lawyer referral services are now operating.

The service is patterned almost entirely after the Illinois service except for a few minor exceptions, one of which is as follows: The Washington program has no fee arbitration feature as does the Illinois program. The basic reason for this difference is that Washington is an integrated bar having a grievance procedure while Illinois is not an integrated bar.

No statistical material is yet available in that the service has not been in operation for very long.

OREGON

At the Annual Meeting in October, 1971 of the State Bar Association of Oregon, plans for a statewide lawyer referral service were adopted. In adopting the statewide program the bar also initiated a budget of $10,000. The program is based on the Illinois program with a toll-free phone system (WATS line).

The service operates under two very unique aspects, (1) all members of the Oregon Bar are required to become panel members and (2) the service has intention of placing ads in each telephone book published throughout the state of Oregon.

The ad would be at the top of every attorney's section in the yellow pages and would advertise that every attorney listed thereunder will arrange for a half-hour appointment for any person to discuss any legal problem, all the person has to do is call one of the listed lawyers of their choice and arrange for an appointment. The fee would be limited to $15.00 for the first half-hour. If additional legal services are required, arrangements for the fee can be made between the client and the lawyer. The ad would also indicate that an interested party could call a toll-free number and have a lawyer referred to them for a half-hour counseling for the same fixed fee of $15.00.

The bar association prepared a three-part form for use by a trained secretary working out of the bar association office for referral calls coming in. The form will contain all necessary information, one part will be sent to the attorney who the caller is referred to in his geographical area, the second will remain in the office and the third returned to the client. If the attorney the caller is referred to finds that he does not have

enough expertise to sufficiently counsel the client, he should make arrangements for the client to meet with a lawyer of greater expertise.

If the caller has a problem reaching the attorney or the attorney is uncooperative, the caller may recall the state bar for help. If after a period of time it is learned that an attorney or a law office is shirking its responsibility, the matter can be referred to the Board of Governors for review and action.

FLORIDA - On March 1, 1972 the State Bar Association of Florida began operations of a statewide lawyer referral service.

The Florida service is patterned after the Illinois one with slight changes. The service is housed in the public affairs office of the Bar Association in Tallahassee. Any member in good standing of the Florida Bar Association is eligible to become a panel member. Membership fee is $25.00 for the first year, $15.00 for the second and $10.00 for the third and successive years. One difference from the Illinois program is that panel members must return to the service 10% of each fee over $25.00 received from clients referred to them.

Panel members are requested to grant the initial half-hour consultation free or for no more than $10.00. They are also requested to carry and continue to carry professional liability insurance for $25,000-$75,000. Like the Illinois program, the Florida program has a means by which a dispute concerning fees can be submitted to binding arbitration upon petition of the client. The Florida committee in evaluating various systems determined that it might be more economical to carry on the service through the use of a "collect call" type of telephone service as opposed to the WATS line.

The committee presented a budgetary request for $9,950 for the first year with a minimum requested budgetary allotment of $5,000. One interesting aspect of the Florida program is; when a panel applicant submits his application he must list the areas of legal work which he desires to handle, but he can not designate an area of competency in which he does not devote at least 15% of his practice. Unlike the Illinois program, there is no provision in the Florida program that the service itself should have insurance.

Emergency: _____ NO: _____

Call Back: _____

DATE: _____

Client: _____

_____
Address

_____
City, Zip

_____
Phone

_____
Field Code

Remarks: _____

_____

_____

_____

_____

Lawyer: _____

_____
Office

_____
Address

_____
City, Zip

_____
Phone

FORM 1

808 S. W. 15th Avenue
Portland, Oregon 97205

OREGON STATE BAR
Lawyer Referral Service

Telephone
Portland Area: 229-5476
Toll Free: 1-800-452-7636

REQUEST AND REFERRAL

3732

Referral Field Code:	Date Referred

CLIENT

Telephone:.....

SPECIAL INSTRUCTIONS:

LAWYER

Telephone:.....

TO CLIENTS

A copy of this Referral Request has been mailed to your referral lawyer. Please call him at your earliest opportunity and arrange for your conference. You are entitled to a half-hour consultation for $15. A subsequent fee for any additional work should be arranged between you and the lawyer at this first interview.

If, for any reason, you are unable to make an appointment with your referral lawyer, please call the office of the Oregon State Bar. In the Portland metropolitan area, the number is 229-5476; outside this area, the toll-free number is 1-800-452-7636. We will gladly assist you in finding another lawyer to help you with your problem.

If you cannot keep your appointment please call your lawyer immediately so that he can reschedule his time.

FORM 2

CLIENT COPY

808 S. W. 15th Avenue
Portland, Oregon 97205

OREGON STATE BAR
Lawyer Referral Service

Telephone
Portland Area: 229-5476
Toll Free: 1-800-452-7636

REQUEST AND REFERRAL

3732

Referral Field Code:	Date Referred

CLIENT

Telephone:.....

SPECIAL INSTRUCTIONS:

LAWYER

Telephone:.....

TO CLIENTS

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OSB FILE COPY

808 S. W. 15th Avenue
Portland, Oregon 97205

OREGON STATE BAR
Lawyer Referral Service

Telephone
Portland Area: 229-5476
Toll Free: 1-800-452-7636

REQUEST AND REFERRAL

3732

Referral Field Code:	Date Referred

CLIENT

Telephone: .....

SPECIAL INSTRUCTIONS:

TO CLIENTS

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LAWYER

Telephone: .....

REPORT

1. Contacted by Client:	Yes	No
2. Conference Held:	Yes	No
3. Matter Handled:	Yes	No
4. Additional Fees Generated	Yes	No

ATTORNEY'S COPY

606 S. W. 15th Avenue
Portland, Oregon 97205

OREGON STATE BAR
Lawyer Referral Service

Telephone
Portland Area: 229-5476
Toll Free 1-800-452-7636

REQUEST AND REFERRAL

3732

Referral Field Code:

Date Referred

CLIENT

Telephone:

SPECIAL INSTRUCTIONS:

TO CLIENTS

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LAWYER

Telephone:

REPORT

1. Contacted by Client:	Yes	No
2. Conference Held:	Yes	No
3. Matter Handled:	Yes	No
4. Additional Fees Generated	Yes	No

REPORT COPY - PLEASE RETURN TO OREGON STATE BAR

IDAHO STATE BAR ASSOCIATION

Dear Fellow Lawyer:

At the 1972 annual meeting, the members of the Idaho State Bar voted for the establishment of a state-wide Lawyer Referral Service which will include all membersof the Bar engaged in private practice. Thus, Idaho moves in a decisive way to eliminate the recurring complaint that we are not making legal services available to the largest segment of our society -- the middle class. It is estimated, on the basis of national statistics, that this new service will result in several thousand Idahoans being served by lawyers who might not otherwise have been served.

The initial fee is $15 for a half-hour consultation. Experience in other states indicates that nearly one-fifth of these initial consultations result in additional fee-generating legal business. So the Lawyer Referral Service is good business for you and a real service to the public. To insure that clients are receiving counseling by attorneys knowledgeable in the area of their particular problem, we are asking each of you to check, on the enclosed list, the areas which you do not now handle in your private practice. Referrals will be made on a rotational basis. We will try not to send you problems outside your fields of expertise, but it may occasionally happen.

Please fill out the enclosed form today. Advertising on this new program is scheduled to begin in _____, and we must have our lists and forms ready to go when the advertising begins. If you are not in private practice, please check the appropriate line on the form and return it.

Very truly yours,

William A. Stellmon, Chairman
Lawyer Referral Service Committee

IDAHO STATE BAR

LAWYER REFERRAL SERVICE

INSTRUCTIONS: Please check all areas which you do not handle in your practice and return as soon as possible to the office of the Idaho State Bar, P. O. Box 835, Boise, Idaho 83701.

CODE		TITLE	CODE		TITLE
01	____	Administrative law	14	____	Juvenile matters
02	____	Admiralty	15	____	Labor relations
03	____	Adoption	16	____	Landlord and tenant
04	____	Bankruptcy	17	____	Malpractice - legal
05	____	Business law	18	____	Malpractice - other
06	____	Civil rights	19	____	Patent, trademark and copyright
07	____	Collections and foreclosures	20	____	Real property
08	____	Consumer protection	21	____	Taxation
09	____	Criminal law	22	____	Tort litigation
10	____	Draft and military law	23	____	Wage claims
11	____	Dissolution of marriage	24	____	Workmen's compensation
12	____	Estate planning, wills and trusts	25	____	Zoning and land use
13	____	Immigration and naturalization			

____ I am not engaged in private practice.

_____
Name (please print)

_____
Address

IDAHO STATE BAR

LAWYER REFERRAL SERVICE

Method of Operation

1. All members of the Idaho State Bar in private practice are, by vote of the membership at the 1972 annual meeting, participants in Idaho's new state-wide lawyer referral service and are members of the "general panel" in the geographic area in which they practice.

2. All referrals will be made through the office of the Idaho State Bar. A toll-free Watts line (number) to the office will be in operation by(date) Calls will be taken from 9 a.m. to 5 p.m. on week days. Notification both to client and attorney will be made by mail except for emergency needs. The client will be instructed to contact the lawyer for an appointment.

3. Special interest panels will be established and your preferences respected as much as possible. Geography or lack of members interested in specific areas may necessitate going to the general panel for some problems, but this will be kept to a minimum.

4. The advertised charge is $15.00 for the first half-hour counseling appointment. A subsequent fee for any additional work should be arranged between the lawyer and the client at this first interview.

5. A short report back to the State association will have to be made but this will be in a check-off form and will take little time to com plete.

STATUS OF THE COLLEGE OF LAW

Albert R. Menard, Jr.

It has been the custom of the College of Law to report to the Idaho State Bar each year, at least for the last few years. Often, the report has taken the form of a speech by the dean at a breakfast or luncheon gathering in connection with the annual meeting at Sun Valley. However, the inability of most of us to get up that early for breakfast and then endure a few words by the dean, or to avoid the temptations of the golf course at lunch, have made that arrangement of questionable desirability. Perhaps these written comments will be more satisfactory. Let us know which approach you prefer, will you? Meanwhile our thanks to president Gene Thomas and the other Commissioners for making this format available to us this year.

In the words which the stand-up comics have made so popular this year, I've got news for you. First the good news: the school is larger than ever, 233 this past year with 265 or so anticipated this coming fall, an increase of 123% from the 119 who registered in the fall of 1969. We will have ten full-time faculty teaching during the coming year, with two part-time men, the dean, and the librarian supplementing them with perhaps one or two courses a year each. Construction on the new building is moving along right on schedule with all piling, grade beams, and other foundation work complete and the skeleton structure going up rapidly.

Now the bad news: an unprecedented wave of students who desire to enter the College of Law this coming fall has forced us to reject the vast majority, particularly the non-residents. Indeed, while we extend a definite preference to residents of Idaho, there are many more Idahonians who aspire to study law than can do so under our present faculty. The result is disappointment for many, including sons and daughters of Idaho lawyers and other prominent citizens.

Closely related to problems in the field of admissions is the budget crisis in Higher Education in Idaho. With adequate funding to add faculty, additional professors could have been acquired and some additional students admitted. Under our current "bankruptcy budget" this simply hasn't been possible. Indeed, we have a great deal of trouble keeping the faculty we now have with the $100 a year salary increases which have been the rule of late. We also have vast difficulty undertaking any special tasks on request from the Bar and others, even though they may require the expenditure of only a few dollars.

I would now like to develop a few of the above matters and touch on a few others, having summarized the major good and bad news.

Admission To The College Of Law

The current first-year class has been the best qualified in the history of the College of Law. The median Law School Admission Test score in this class was 575. The median college grade point average was 2.93. Idaho residents made up approximately three-fourths of those entering the law school last September; and even so, a large number of colleges were represented. Apparently many students who take their undergraduate work out of the state return home for law school. Among the colleges who sent us students were institutions from as far afield as Harvard and M.I.T. in Boston to UCLA and the University of California on the West. Brigham Young University is represented by the usual large contingent, demonstrating rather graphically the large number of LDS citizens of the state in the southeastern region. From the other direction we wlso receive students

from Washington State University and the University of Washington. All in all, the atmosphere is certainly non-parochial in spite of the predominance of Idaho residents; and the intellectual capability and background of these students is exceptional.

For the coming fall admission will be even more competitive, since we have received 1200 applications for approximately 100 places. With the preference extended Idaho residents, perhaps half of those from Idaho who apply will be admitted. A non-resident has a chance of only one in twenty of being extended admission. There is a good deal of self-selection among the Idaho students who have fairly good information as to the grade point and test scores required; or we would probably be rejecting more from this state. As it is, they simply do not apply as a rule if they are sure they will not competitively qualify. You should advise pre-law students consulting with you that they must have a 2.75 cumulative average and that 2.85 to 2.90 improves their position considerably. In effect, this means that one bad year or so is apt to be fatal. By the same token an Idaho resident should seek an LSAT score of at least 500 and again 565 to 570 is better. Attendance at law school under current conditions requires long-range planning and continued effort from the first year of college through to the bachelor's degree, which is today also essential prior to admission.

There are a few other characteristics of the entering class which may interest you. Nearly all are married, and many have children. Indeed, the class which registered last September had one man with five children and another with four. The average age is 25, and most of the students

have both completed college and been in the military service, usually in responsible positions as officers with troop leadership assignments. Almost as often the student has been on an LDS mission to an overseas country and has a definite competence in at least one foreign language. All in all, they are an exhilarating group with which to work.

With the large number of students, most first-year classes are now being taught in sections; and the classrooms of the College of Law, as the alumni know it, cannot accomodate the teaching schedule. As a consequence, we have been using at various hours during the day at least six other buildings on the campus. If nothing else, the students became accustomed to exposure to Moscow weather while moving about the campus. We have also been using certain office and study space on the ground floor of what was formerly Forney Hall. It will be great to be back together again under one roof in the new building.

The Faculty

The faculty has been growing gradually but not rapidly enough to properly cope with the rising tide of students. As a consequence, our faculty/student ratio has deteriorated and personal contact between instructors and students has become somewhat more difficult. At the close of this year we are losing two instructors to problems of ill health. Professor Lon Davis is leaving us after one highly successful year of teaching. Professor Jim harrington has resigned after two years in Moscow.

Offsetting these losses there will be three new faculty members next fall. Professor Ron Wyse joins us from the Gonzaga faculty where he has taught for three years. He is a graduate of UCLA where he served on the

Law Review. After practice of two years with a large firm in Santa Barbara, California, he served in Viet Nam as Captain of an armored unit. He is a member of the Bar in both California and Washington.

Professor Hank DeJong comes to us from the law firm of Faegre and Benson in Minneapolis, a large firm of about fifty lawyers, where he has been engaged largely in banking and commercial law matters. He graduated from the University of Chicago where he made Phi Beta Kappa as an undergraduate and was a member of the Law Review staff in the College of Law. He is a member of the Minnesota Bar. He and his spouse make up a teaching team, since she has her Ph.D. in Scandanavian Languages also from the University of Chicago. We can now translate for any of you Swedes who write home occasionally.

The third new member of the faculty is Professor Darrel Dunham. Professor Dunham is finishing a year of graduate study at Harvard Law School with an LL.M. Degree. His earlier education was at Willamette from which he secured both an undergraduate and a J.D. Degree. At Willamette he finished second in his class and was a member of the Board of Editors of the Law Journal. He is a member of the Bar in the State of Washington but has some Idaho roots with relatives on the Camas Prairie.

The Library

The library continues to grow in spite of tremendous difficulties of space. We have been fortunate in securing, as a replacement for Mrs. Carolyn Folz, Mr. Walter McLeod. Mr. McLeod has a Bachelor of Science in Commerce from NYU, a J.D. Degree from William Mitchell in St. Paul,

Minnesota, and a Master of Library Science from the University of Washington. With this combination of business, law, and library education we expect that he will bring tremendous versatility to the challenging task of replacing Carolyn. He is a native of Montana and has had a number of years business experience in Western Montana.

As the student body expands and the library has additional space facilities, we would like to begin a campaign to actively encourage gifts of books to the library when lawyers close out their offices for one reason or another. Particularly helpful are official sets of the Idaho Reports, which can be kept available in a number of places in the building for students. If we accumulate more than we need, they can always be traded to another state for sets of its official Reports, and the library thus expanded. Meanwhile, we are now prepared to be of some assistance to the lawyers. We can send Xerox copies of material in the library to you at a cost of 10 cents per page if you will indicate your wishes. Particularly helpful is our collection of legal periodicals, which includes bound volumes of nearly all English language law reviews back to their foundation and is the best collection of periodicals in the Northwest between Seattle and Salt Lake.

The Legal Internship Program

With the passage of Rule 123 extending certain court appearance privileges to third-year law students acting under the supervision of a practicing attorney, our clinical program has taken on major new dimensions. We also operate under a very comparable rule in Eastern Washington.

Between the two programs fully half of our third-year class has made actual court appearances by the time they graduate. Even more significant are the number of added duties in which they have had active experience around law offices, since attorneys are much more willing to utilize their services during the summer between the junior and senior year, with the added versatility which Rule 123 gives them.

During the academic year the intern or clinical training programs have several aspects. The College of Law together with the Whitman County Bar Association operates a legal aid clinic in Pullman with daily service to indigents. A broad spectrum of service is rendered; and under indigency standards adopted by the Whitman County Bar a rather substantial number of individuals qualify for these services. Students also participate in the prosecution of cases with the cooperation of Mr. Phil Faris, the prosecutor for Whitman County, and serve as interns in several Pullman and Colfax law offices. A slightly differently structured program is offered in the second judicial district through the Lewis-Clark Legal Services program and the cooperation of the Clearwater Bar Association. In this program students assist staff attorneys of the OEO-sponsored legal services program. A third group of students participate in the University of Idaho Penitentiary Program sponsored by the College of Law and state correctional authorities at the Idaho State Penitentiary, the institution at St Anthony, and at the Oregon state institution at Salem which cares for Idaho state female prisoners pursuant to contract. These students, under faculty supervision and with the cooperation of the public defender's office and the Southwestern Idaho Legal Services program, counsel

with prisoners on a wide variety of matters. A final dimension to this series of programs are the students who operate with the prosecutor's office in Latah County and with various law firms in Moscow, in work comparable to that previously described. As suggested above, during the extended summer vacation program we have legal interns workin in a variety of positions ranging from the county prosecutor's office of Bonneville County at Idaho Falls to a law firm in Seattle and from a law firm in Washington, D.C. to the Attorney General's office in Boise. The average graduate of 1973 and subsequent years is going to feel far more poised and at ease during the first few months of practice than his counterpart of a few years ago. As a result of these experiences many third-year students this past year have commented on the fact that third-year courses take on substantially more meaning against this background of clinical training. However, it must be noted that this type of activity requires substantially more faculty supervision on a man-to-man basis if it is to realize its full educational value. It also requires substantially more miscellaneous expenditures in the way of travel, correspondence and clerical assistance in the typing of complaints, motions and other legal documents. Legal education is not cheap; and clinical education is even more expensive.

The Near Future

The completion of the new building in 1973 will permit a number of research and teaching activities which we have been forced to operate without. One will be a development of more seminars and small discussion

group approaches, due to the additional space available. Another is the development of TV as a teaching aid. We anticipate substantial improvement in such activities as Moot Court when we can televise the students and then permit them to critique their own performance. A third will be the expansion of our research activities with space again available in the library and in small studies for research groups to function.

Conversely, we do not expect any vast expansion of enrollment. In response to the plea of applicants we have pushed our current enrollment far past our physical capacity and will not be able to expand a great deal further. We will simply be able to consolidate and operate more efficiently our program which is now scattered through six campus buildings. Furthermore we do anticipate that the intensity of the demand for legal education will probably begin to taper off in the next twelve to eighteen months, although it is hardly likely to return to the levels which prevailed ten and fifteen years ago.

One of our greater challenges is to make our curriculum and our teaching, indeed our entire program, responsive, on the one hand, to the desire of students and also to the public need for the production of better, clinically-trained lawyers. At the same time we must better integrate knowledge from other disciplines into law study, in order that the graduate will be well equipped for the tremendous requirements of community leadership which are going to be imposed upon the profession in the decade ahead. Thus there is ample work which remains to be done. We hope and trust that the resources to enable us to do this work with credit to the profession and to the satisfaction of the citizens of the state will be forthcoming.

IDAHO STATE BAR
REVENUE

JULY 1, 1971 - JUNE 15, 1972

License Fees	$ 59,112.50
Out of State License Fees	1,735.00
House Counsel License Fees	1,100.00
Bar Exam Application	4,925.00
House Counsel Application	100.00
Investigation Fees	500.00
CLE Fees	57,067.28
Annual Meeting Registration	4,500.00
Advocate Revenue	1,020.75
Desk Book Revenue	3,395.75
Sales - Books and Pamphlets	46.35
Addressing and Mailing	661.91
Interest	1,776.06
Discipline Fines & Costs Reimbursement	1,314.76
Xerox	480.80
Miscellaneous	14.00
Honorary Retirement Dinner	1,530.00
Total Revenue	$139,280.16

Revenue	$139,280.16
Less: Expenditures	131,840.44
	$ 7,439.72

IDAHO STATE BAR
EXPENDITURES

JULY 1, 1971 - JUNE 15, 1972

GENERAL & ADMINISTRATIVE:

Salaries	$27,337.45
Payroll Taxes, Ins. & Retirement	2,984.67
Bonds & General Liability Insurance	1,186.23
Rent	3,608.60
Supplies	1,938.53
Printing and Collating	949.96
Postage, Bulk Mail, Box Rent	3,367.09
Phone	1,947.09
Equipment Rental	3,951.00
Repairs & Maintenance	275.34
Clipping Service	138.12
Subscriptions	28.00
Audit Fees	1,275.00
Sundry	151.06
Executive Director's Expense	759.09
Delivery Charges	167.72
Honorary Retirement Dinner	2,359.22
Total General and Administrative	$52,424.17

OTHER OPERATING EXPENDITURES:

Committees	$ 1,891.56
Commissioners Meetings	2,915.86
American Bar Association	2,521.17
Western States Bar Conference	1,868.74
Jackrabbit States Bar Conference	409.29
Miscellaneous Travel	747.28
Discipline Expense	2,077.39
Total Other Operating Expenditures	$12,431.29

DESK BOOK COSTS	$ 3,028.95
ADVOCATE COSTS	$ 2,063.60

BAR EXAMS & ADMISSIONS:	
Travel and Grading Costs	$ 7,350.74
Investigation	900.00
Supplies	179.50
Admissions Receptions	218.24
Monitor	90.00
Miscellaneous	5.00
Total Bar Exam Costs	$ 8,743.48
CLE ACTIVITIES:	
Travel - Speakers	$ 4,677.04
Travel - Others	1,597.11
Supplies	6,272.13
Printing & Collating	11,795.61
Housing Coffee Break & Entertainment	1,845.94
Publicity	806.85
Miscellaneous	58.81
Total CLE Activities	$27,053.49
ANNUAL MEETING:	
Travel - Speakers	$ 1,040.08
Travel - Others	2,697.85
Supplies	26.08
Printing & Collating	639.76
Entertainment	33.04
Delivery Costs	13.25
Awards & Testimonials	-0-
Ladies Functions	91.57
Miscellaneous	21.54
Total Annual Meeting Costs	$ 4,563.17
NON-OPERATING EXPENSE:	
Furniture and Equipment Purchase	$ 7,152.36
Contributions	25.00
Transfers to Client Security Fund	7,635.00
Payments to District Bar Associations	6,719.93
Total Non-Operating Costs	$21,532.29
TOTAL EXPENDITURES	$131,840.44

R E S O L U T I O N

WHEREAS, the Rules of the Supreme Court and the Board of Commissioners of the Idaho State Bar governing admission to practice law do not now provide for the payment of additional fees by applicants for admission to practice law in the State of Idaho who have previously failed to pass the Bar Examination, and

WHEREAS, the cost of preparing, administering and grading Bar exams makes it impractical to permit an applicant to be re-examined without the payment of an additional examination fee,

NOW, THEREFORE, be it resolved by the members of the Idaho State Bar in convention assembled at its annual meeting in 1972 that Rule 108 (b) of the Rules of the Supreme Court and Board of Commissioners of the Idaho State Bar governing admission to practice law be amended to read as follows:

(B) Re-Examinations -- An applicant whose certificate has expired may reapply under the same conditions and by payment of the same fee as an original applicant; provided, however, that if such applicant shall have failed one or more examinations, he shall show such fact, and if he shall have failed two examinations he shall not be examined again until he

shall have shown to the satisfaction of the Board that since his last examination he has diligently studied the law. Such showing shall be made by the applicant's affidavit setting forth the nature and extent of such study. An applicant will not be examined more than three (3) times without special permission from the Board. If the applicant shall be rejected by the Board, written notice thereof shall be given as provided in Rule 113. No applicant who shall have failed one or more examinations shall be examined again unless he shall have paid to the Executive Director a re-examination fee of Fifty and no/100 ($50.00) Dollars prior to taking any such further examination; such fee shall accompany the filing of the application for re-examination; and

BE IT FURTHER RESOLVED that this amendment shall be in full force and effect from and after the date of its approval by order of the Supreme Court of the State of Idaho.

DATED this _____ day of _____, 1972.

R E S O L U T I O N

The following resolution was adopted by the Third Judicial District Bar Association at its annual meeting in Payette County, Idaho, on April 21, 1972, and is submitted to the Idaho State Bar for consideration at its annual meeting in June, 1972:

WHEREAS, it is in the best interest of the Idaho State Bar to reapportion itself and to provide for an equitable and continuous representation from each district,

NOW, THEREFORE BE IT RESOLVED, that the Idaho State Bar request and recommend to the Idaho legislature at its next session to provide a more equitable basis for representation on the Board of Bar Commissioners of the Idaho State Bar, and to provide for Seven (7) Bar Commissioners, one from each judicial district, and to provide for the President and other elective officers of the Idaho State Bar not to be chosen on a revolving basis from the various districts, and to consider providing for the election of the President and such other officers on an annual, at-large basis.

April 21, 1972
KEN WHITE
Secretary, Third District Bar

R E S O L U T I O N

The following resolution was adopted by the Third Judicial District Bar Association at its annual meeting in Payette County, Idaho, on April 21, 1972, and is submitted to the Idaho State Bar for consideration at its annual meeting in June, 1972:

WHEREAS, it is in the best interest of the members of the Idaho State Bar to permit the easy identification of attorneys when the public seeks to find an attorney listed in telephone directories, and

WHEREAS, it is not improper or unethical to assist the public to identify an attorney,

NOW, THEREFORE BE IT RESOLVED by the Idaho State Bar that it shall no longer be considered improper or unethical conduct for any attorney or firm of attorneys to have a professional listing in bold-face type in a telephone directory.

April 21, 1972
KEN WHITE
Secretary, Third District Bar

RESOLUTION

WHEREAS, the permanently bound edition of the Idaho Code (1949), published by Bobbs-Merrill has become unwieldy and composed of many segmented and diverse annotations, additions and supplements, together with extra volumes; and

WHEREAS, revision of the code has become a major editing problem, at ever increasing expense; and

WHEREAS, the time lag and delay in integrating and annotating within the code the decisions of the Courts and Legislative changes, has been ever increasing and evermore complicated; and

WHEREAS, the same has the effect of requiring extra time, care and caution in researching any statutory matter, thus resulting in increased cost to the public and clients;

NOW, THEREFORE, BE IT RESOLVED by the Sixth District Bar Association, that the Idaho State Bar Commissioners and the Idaho Code Commission investigate the implementation and acceptance of a LOOSELEAF CODE for the State of Idaho, and seek the adoption of such a looseleaf service as the official code of this state.

May 19, 1972

Stanley E. Gardner
Stanley E. Gardner
President, Sixth District Bar Association

ATTESTED BY: William Becker
William Becker
Secretary-Treasurer

R E S O L U T I O N

BY

THE BOISE BAR ASSOCIATION

BE IT RESOLVED: That Rule 185 of the Rules of the Supreme Court and Board of Commissioners of the Idaho State Bar be amended to read as follows:

Rule 185. (a) At a time in the months of October and December each year and at a place in Idaho selected by the Commissioners of the Idaho State Bar there shall be meetings of the delegates of each local bar association. Notice by mail of the time and place of holding such meetings shall be given by the Secretary on or before the 15th day of September and the 15th day of Ocotber of each year. At all local bar delegate meetings each local bar may cast one vote on any question as instructed by the membership of the local bar, or if not instructed, then as determined by majority vote of the delegates of the local bar present at the meeting.

(b) All resolutions of local bar associations to be proposed for consideration at the local bar delegate meeting of the Idaho State Bar shall be submitted in writing on or before September 20 to the Chairman of the Resolutions Committee appointed by the Board of Commissioners of the Idaho State Bar, with a copy thereof to the Secretary of the Idaho State Bar. A copy of each such resolution shall be presented by the Secretary to the meeting of the local bar delegates in October for their review.

(c) At the October meeting of the delegates from each local bar association the delegates shall consider all resolutions submitted and forwarded by local bar associations for the purpose of studying and analyzing the resolutions and preparing reports to the members of the their local bar associations. The delegates shall also consider any resolutions submitted by the Commissioners or regularly appointed committees of the Idaho State Bar and upon majority vote of the local bar associations, each association casting one, vote, such resolutions shall be forwarded to the local bar associations for their review and action.

(d) Following the October meeting of the delegates of the local bar associations, all resolutions previously submitted by local bar associations and all resolutions otherwise submitted and approved by majority vote of the bar associations, acting through their delegates at the October meeting, shall be published in the Advocate, or otherwise disseminated to each licensed attorney as soon as practical by the Secretary.

(e) Each resolution, following its publication or dissemination shall be considered by the members of each local bar association at a meeting called for the purpose of voting on such resolutions prior to December 1st of each year. The delegates of each bar association at the December meeting of the delegates shall cast the vote of the local bar associations.

(f) Each local bar association, organized and existing as provided by Rules 186 and 187, shall be entitled to as many votes as there are bona fide residents, members of the Idaho State Bar, within the territorial limits of such association at the time of such meeting and any duly appointed delegates of any local bar association present at such December local bar delegates' meeting shall cast the entire vote of the members of such local bar association.

(g) The members of the Idaho State Bar may by resolution deterimine (1) whether a referendum of the membership shall be taken on any question, and (2) the form and substance of the question to be presented, which question shall be so framed as to be capable of answer by "yes" or "no". The Secretary shall prepare ballots within ten days following the December meeting of the local bar delegates containing such questions and mail one thereof to each member of the Idaho State Bar, such ballots to be returned personally or by mail to the Secretary within fifteen days after the Secretary has mailed them. Envelopes containing voted ballots, shall be endorsed, and envelopes and ballots opened, deposited, and canvassed as provided by Rule 182(d), except that the Board shall constitute the canvassing committee; canvassing shall be at the Board meeting following the closing of balloting; the Board shall declare the majority vote to be the opinion of the Idaho State Bar on said question, and publish the same.

(h) The delegates to the October meetings of the local bar delegates shall consist of the President and Vice President of the local bar association, who are serving at that time, and a member of the local bar association elected by the members of the local bar association as a delegate or appointed by the President of the local bar association in the absence of such election and the delegate to the December meeting shall con-

sist of the President of the local bar association or other appointee of the local bar association. The actual expenses of the delegates at each meeting shall be paid by the local bar association.

(i) The delegates at the December meeting of the local bar delegates meeting may, upon a vote of two-thirds (2/3) of the bar associations, each of which shall have one vote, adopt resolutions which have not been circulated to the members of the Idaho State Bar, and voted on at the local bar meeting, but all such resolutions relating to or affecting statutes of the State of Idaho, rules of court, the policy of the Idaho State Bar, or the government of the local bar associations, shall be determined by majority vote of the members of the Idaho State Bar, by secret ballot, submitted to each member for vote as set out in paragraph (g), but the form of of the question shall be determined by vote of the local bar association delegates.

BE IT FURTHER RESOLVED; That the Supreme Court of Idaho be petitioned by the Commissioners to adopt the revised Rule 185 prior to September 1, 1972 so that the local bar delegates may prepare further amendments to other rules in the fall of 1972 to implement this resolution and to adopt or change other rules for the government of the Bar consistent with this resolution.

PROPOSED RESOLUTION

TO: THE MEMBERS OF THE IDAHO STATE BAR

FROM: THE ECONOMICS OF LAW PRACTICE COMMITTEE

DATE: MAY 31, 1972

SUBJECT: RESOLUTION CONCERNING THE AMERICAN BAR ASSOCIATION DRAFT OF THE STATEMENT OF PRINCIPLES REGARDING PROBATE PRACTICES AND EXPENSE

==========

DECLARATIONS:

1. There is growing criticism of Fee Schedules, particularly in the area of probate fees.

2. The Idaho State Bar has implemented an Advisory Fee Schedule used by Idaho Attorneys as a guide and not as a mandate.

3. The wording of the Advisory Fee Schedule under the heading "General Considerations" is:

> "In cases of financial hardship where justice requires representation by counsel, the lawyer is at liberty to deviate from or ignore the following recommendations."

4. The wording of the Advisory Fee Schedule was enhanced at the 1971 meeting of the members of the Idaho State Bar by the addition of subparagraph (4) under "COURT MATTERS" "D. Decedents Estates" which reads:

> "In an appropriate case a fee may be prepared on the basis of the actual time devoted to such case rather than figured on the above percentage and the lesser of the two figures may be charged."

5. The Real Property, Probate and Trust Law Section of the American Bar Association has authorized a Draft Statement of Principles Regarding Probate Practices and Expenses to be circulated among state and local bar associations for comments and reactions.

6. The Draft Statement of Principles Regarding Probate Practices and Expenses closely parallels the approach already taken by the Idaho State Bar.

7. The Idaho State Bar should endorse the Draft Statement of Principles Regarding Probate Practices and Expenses.

RESOLVED, that the Idaho State Bar:

1. Endorses the Draft Statement of Prnciples Regarding Probate Practices and Expenses proposed by the Real Property, Probate and Trust Law Section of the American Bar Association.

2. Directs the Executive Director of the Idaho State Bar to send a copy of this resolution to George J. Hauptfuhrer, Jr., a member of the ABA Real Property, Probate and Trust Law Section.

PROPOSED RESOLUTION

TO: THE MEMBERS OF THE IDAHO STATE BAR

FROM: THE ECONOMICS OF LAW PRACTICE COMMITTEE

DATE: MAY 31, 1972

SUBJECT: RESOLUTION CONCERNING AN ECONOMIC SURVEY OF IDAHO LAWYERS

RESOLVED, that the Idaho State Bar approve and sponsor an economic survey of Idaho Lawyers within the next year. The survey should develop information in the following areas: Gross Income, Expenses (by category), Net Income, Equipment used, time records kept, economic efficiency and internal operating practices followed. The survey should also result in information to be compared to the results of similar surveys conducted in other states. The results of the survey shall be distributed to all members of the Idaho State Bar. The survey shall be conducted with the utmost confidentiality.

PROPOSED RESOLUTION

TO: THE MEMBERS OF THE IDAHO STATE BAR

FROM: THE ECONOMICS OF LAW PRACTICE COMMITTEE

DATE: MAY 31, 1972

SUBJECT: RESOLUTION CONCERNING DEVELOPMENT AND PUBLICATION OF DESK BOOKS COVERING INTERNAL LAW OFFICE OPERATIONS

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RESOLVED, that the Idaho State Bar sponsor a project to develop and publish for the members of the Idaho State Bar desk books covering internal law office operations. This project should incorporate these guidelines: (1) uniformity of routine operation among all lawyers should be promoted; (2) existing procedures should be streamlined to avoid the needless waste of time for the busy lawyer; (3) New lawyers should be afforded the opportunity to learn the most efficient method of operation from the deskbook rather than from years of frustrating experience; (4) Legal secretaries and paraprofessional assistants should be able to use the deskbook as source of operating instructions rather than rely on the time-consuming method of verbal instruction from the lawyer, himself.

PROPOSED RESOLUTION

TO: THE MEMBERS OF THE IDAHO STATE BAR

FROM: THE ECONOMICS OF LAW PRACTICE COMMITTEE

DATE: MAY 31, 1972

SUBJECT: RESOLUTION CONCERNING THE USE OF LETTER SIZE PAPER

RESOLVED, that the Idaho State Bar approve and diligently strive to implement the changes necessary to require the use of letter-size paper at all levels of the legal process.

PROPOSED RESOLUTION

TO: THE MEMBERS OF THE IDAHO STATE BAR

FROM: THE ECONOMICS OF LAW PRACTICE COMMITTEE

DATE: MAY 31, 1972

SUBJECT: RESOLUTION CONCERNING ECONOMICS WORKSHOPS AT THE ANNUAL MEETING

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RESOLVED, that the Idaho State Bar at its Annual Meeting conduct three workshops on law office procedures and practices covering each of these three areas:

(1) The use and operation of automatic typewriters and other office equipment becoming more and more common to law offices.

The current and future uses of videotape in the legal profession

(2) Law Office Management Records and Procedures including various timekeeping methods, Accounting systems, Office layout, Secretarial and staff assistants, and filing systems.

(3) Techniques of attorney relationships and operations with the general legal process, clients, other attorneys and the legal profession including the recognition of acceptable uniform approaches to common problem areas.

STRICT LIABILITY

IN

CALIFORNIA

Richard M. Sangster
One Embarcadero Center
San Francisco, CA 94111

I

INTRODUCTION

In ancient legal history, the vendors of food and drink were punished by criminal sanctions for supplying "corrupt" food and drink. Subsequently, the vendors of food and drink were not held responsible even in civil actions for defects in their products in the absence of privity or finding of fault or negligence. In the late 1800's, the courts in civil cases began to return to the ancient rule of absolute liability to the consumer who suffered injuries because of defective food or drink. Food cases became an exception to the general rule that the supplier or seller of chattels was not liable to third parties for personal injuries or property damage unless there was a finding of negligence or a finding of privity of contract. The courts in the food cases displayed considerable legal dexterity in the invention of various theories on which to justify the imposition of what amounted to strict liability or absolute liability in the food and drink cases.

In more recent times, the courts have extended the rules of strict liability in the food and drug cases to other products used for "intimate bodily use" such as cosmetics, hair preparations, perfumes and the like even though they were used externally.

II

STRICT LIABILITY GENESIS

Mr. Justice Cardozo, in 1916, in the famous landmark case MacPherson v. Buick Motor Co. extended the theory of these food, drink and intimate bodily use cases to the manufacturer of a chattel which if negligently made was "innerently dangerous". This decision marked the beginning of the "assault upon the citadel of privity".

In 1944 Justice Roger J. Traynor wrote a concurring opinion which was later to become the basis of California's first strict liability decision. In Escola v. Coca Cola Bottling Co., 24 Cal.2d 453 (1944), 150 P.2d 436, Gladys Escola was a waitress in a cafe who picked up several bottles of Coke to place them in a refrigerator. One of the Coke bottles exploded while she was holding it in her hand. At the trial, the Court instructed the jury on the doctrine of res ipsa loquitur. The defendant appealed claiming that the doctrine did not apply. The Supreme Court affirmed holding that it did apply and that it supplied an inference of negligence on which the jury verdict should be sustained. The concurring opinion by Justice Traynor pointed out that he thought the court was straining various legal doctrines unnecessarily to achieve a desirable result. He thought the defendant should be absolutely liable and stated his reasons as follows:

"In my opinion it should now be recognized that the manufacturer incurs an absolute liability when an article that he has placed on the market, knowing that it is to be used without inspection, proves to have a defect that causes injury to human beings." (Page 461)

"Even if there is no negligence, however, public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market. It is evident that the manufacturer can anticipate some hazards and guard against the recurrence of others, as the public cannot. Those who suffer injury from defective products are unprepared to meet its consequences. The cost of an injury and the loss of time or health may be an overwhelming misfortune to the person injured, and a needless one, for the risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business. It is to the public interest to discourage the marketing of products having defects that are a menace to the public. If such products, nevertheless, find their way into the market, it is to the public interest to place responsibility for whatever injury they may cause upon the manufacturer, who, even if he is not negligent in the manufacture of the product, is responsible for its reaching the market. However intermittently such injuries may occur and however haphazardly they may strike, the risk of their occurrence is a constant risk and a general one."

"As handycrafts have been replaced by mass production with its great markets and transportation facilities, the close relationship between the producer and consumer of a product has been altered. Manufacturing processes, frequently valuable secrets, are ordinarily either inaccessible to or beyond the ken of general public. The comsumer no longer has means or skill enough to investigate for himself the soundness of a product, even when it is not contained in a sealed package, and his erstwhile vigilance has been lulled by the steady efforts of manufacturers to build up confidence by advertising and marketing devices such as trademarks. Consumers no longer approach products warily but accept them on faith relying upon the reputation of the manufacturer or the trademark. Manufacturers have sought to justify that faith by

increasing the high standards of inspection and a readiness to make good on defective products by way of replacements and refunds. The manufacturer's obligation to the consumer must keep pace with the changing relationship between them; it cannot be escaped because the marketing of a product has become so complicated as to require one or more intermediaries. Certainly there is greater reason to impose liability on the manufacturer than on the retailer who is but a conduit of a product that he is not himself able to test."

This concurring opinion is referred to repeatedly in subsequent strict liability opinions and is for that reason set forth at length.

In 1958, Mr. Justice Voelker of the Michigan Supreme Court decided Spence v. Three Rivers Building & Masonry Supply, Inc. This case imposed strict liability and tort upon the manufacturer of cinder building blocks on the basis that the product was "inherently dangerous."

In 1960, the New Jersey Supreme Court decided Henningsen v. Bloomfield Motors, Inc. Mrs. Henningsen was injured while driving an automobile purchased by her husband. She alleged that the accident was caused by a defective steering gear. The court held both the manufacturer and dealer liable without proof of negligence or privity.

In 1960, the California Supreme Court rejected an invitation to impose strict liability upon the manufacturer of a grinding wheel which exploded in the face of an employee of the purchaser of the grinding wheel. The Court side-stepped the "privity" problem by expanding the definition of a term so broadly as to include anyone with a mutual or successive right to possession of the property which included the plaintiff. The Court said that the employee using the grinding wheel should be considered a member of the industrial "family" of the employer and should thus stand in privity to the manufacturer so as to permit the employee to recover against the manufacturer on a breach of implied warranty of fitness theory. Peterson v. Lamb Rubber Co., 54 Cal.2d 339; 5 Cal.Reptr. 863; 353 P.2d 575 (1960).

These strained mental gymnastics finally were put to rest in California by Justice Roger J. Traynor in the landmark case Greenman v. Yuba Power Products, Inc., 59 Cal.2d 57, 27 Cal.Rptr. 697.

Mrs. Greenman purchased a "shopsmith" which was a combination power tool, saw, drill and wood lathe for her

husband as a gift. Her husband had seen the "shopsmith" demonstrated by the retailer and had studied a brochure prepared by the manufacturer. Mrs. Greenman purchased the shopsmith for her husband as a Christmas present in 1955. In 1957, Dr. Greenman bought the necessary attachments to use the shopsmith as a lathe for turning a large piece of wood. After working on a piece of wood several times without difficulty, it suddenly flew out of the lathe and struck Dr. Greenman on the forehead and inflicted serious injuries. Approximately 10 1/2 months later, he gave the retailer and the manufacturer of the shopsmith written notice of claimed breaches of warranties and then filed a complaint against both the retailer and manufacturer of the shopsmith alleging breach of warranty and negligence. The case was tried to a jury. The trial judge ruled that there was no evidence that the retailer was negligent and no evidence that the retailer had breached any express warranty and further ruled that the manufacturer was not liable for breach of any implied warranty. The case was submitted to the jury only on the issue of breach of implied warranty against the retailer and on the issue of negligence and breach of express warranties against the manufacturer. The jury returned a verdict in favor of the retailer and against the plaintiff. The jury, however, returned a verdict in favor of the plaintiff and against the manufacturer in the sum of $65,000. A motion for a new trial was denied and the manufacturer appealed and the plaintiff filed a protective cross-appeal against the retailer. The plaintiff introduced substantial evidence that his injuries were caused by defective design and defective construction of the shopsmith. His experts testified that the set screws were inadequate and would not hold the parts of the machine together so that normal vibration would cause the tailstock of the lathe to move away from the piece of wood thus permitting it to fly out. There was also testimony that there were other more positive ways of fastening the parts of the machine together and that had these other methods been used, the accident would have been prevented. There was therefore substantial evidence from which the jury could have concluded that the manufacturer negligently designed and constructed the shopsmith. The jury could also have concluded that statements in the manufacturer's brochure were untrue and therefore constituted a breach of express warranties. The manufacturer contended that the breach of warranty cause of action was barred because the plaintiff had failed to give a timely notice of breach of warranty as required by a California Statute which was a part of the Uniform Sales Act. The Court held that the notice requirement of the sales act was inappropriate in actions by customers not in privity with the manufacturer and was a "bobby trap for the unwary".

The Court adopted the California rule of strict liability in tort in the following language:

> "A manufacturer is strictly liable in tort when an article he places on the market knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being."

The Court made it clear that strict liability is not based upon a theory of express or implied warranty but rather it is "an obligation imposed by law". Liability is not one governed by the law of contract warranties, but rather is governed by "the law of strict liability in tort."

> "The purpose of such liability is to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market rather than by the injured persons who are powerless to protect themselves." (page 63)

The Court noted that sales warranties served this purpose "fitfully at best" and that "the remedies of injured customers ought not to be made to depend upon the intricacies of the law of sales."

The following is necessary to establish liability:

> "To establish the manufacturer's liability, it was sufficient that the plaintiff proved that he was injured while using the shopsmith in a way it was intended to be used as a result of a defect in design and manufacture of which the plaintiff was not aware that made the shopsmith unsafe for its intended use."

In the meantime, the members of the American Law Institute were working on the second edition of the Restatement of Torts. Section 402 A of the Second Edition in its draft form in 1961 was limited to food cases. A revised draft in 1962 expanded the scope of the proposed new section to include products "for intimate bodily use." The Greenman case was decided in January of 1963. Justice Traynor, who wrote the Greenman opinion, was one of the advisers who was working on the Restatement of Torts 2d. Professor William L. Prosser of Hastings College of the Law of San Francisco, was another one of its distinguished advisers. In 1964, the advisers working

on the Restatement revised Section 402 A by expanding its strict liability provisions to "any product". Section 402 A of the Restatement of Torts 2d was adopted in the following language in May of 1964:

"STRICT LIABILITY

Special Liability of Seller of Product for Physical Harm to User or Consumer

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller."

The Greenman Rule of Strict Liability was adopted by court decision or statute in approximately twenty other jurisdictions within a year and a half. Its rapid development and wide acceptance persuaded the drafters of the Restatement that the Limitation of Strict Liability to food products and products for intimate bodily use was too narrow and already outdated. They therefore expanded the Rule of Strict Liability to all products so as to conform it to what they considered to be an acceptable development in tort law.

III

PARTIES STRICTLY LIABLE

GENERALLY

Section 402 A of the Restatement of Torts Second specifically limited to a seller engaged in the business of selling a product. It therefore applies in generally to any

manufacturer of an assembled product, any manufacturer of a component part, to a distributor, wholesaler and retailer. The Rule does not apply to a person not generally engaged in the business of selling a product. It would not, for example, apply to an individual who has sold his automobile to a friend. The historical basis for the Strict Liability Rule includes the imposition of liability upon those who have undertaken to enter into the business of selling products which, if defective, might cause injury or endanger the safety of persons and property. This basis does not exist in the case of the occasional seller. Furthermore, one of the other foundations of the Rule is the presumption that the manufacturer is in a position to insure himself against losses and to add that cost to the product and pass it on to the consumer. The occasional seller is not in this position.

MANUFACTURERS

See Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57.

RETAILERS

A retailer engaged in the business of distributing goods to the public, such as an automobile dealer, is stricktly liable in tort for personal injuries caused by defects in cars sold by it.

Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 37 Cal. Rptr. 896, 391 P.2d 168 (1964)

Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E. 2d 182 (1965)

Barth v. B. F. Goodrich Tire Co., 265 Cal. App. 2d 228; 71 Cal. Rptr. 306 (1968)

Preissman v. Ford Motor Co., 1 Cal. App. 3d 841, 82 Cal. Rptr. 108 (1969)

Elmore v. American Motors Corp., 70 Cal. 2d 578, 75 Cal. Rptr. 652, 451 P.2d 84 (1969)

WHOLESALERS

The wholesaler of a product, such as dynamite and blasting supplies, who passes them on to a manufacturer who then assembles the products and ships them to a consumer is included in the rule that one who sells a product in a defective condition unreasonably dangerous to the user or consumer is subject to liability for physical harm thereby caused to the ultimate user or consumer.

Canifax v. Hercules Powder Co.,
237 Cal. App. 2d 44, 46 Cal. Rptr. 552 (1965)

Casetta v. United States Rubber Co.,
260 Cal. App. 2d 792, 67 Cal. Rptr. 645 (1968)

MASS PRODUCED HOMES

The contractor who built and sold 4,000 mass produced homes is strictly liable in tort to the purchaser of the home when the steel tubing imbedded in the concrete slab floor for heating corroded and developed leaks 9 years after the home was built.

Kriegler v. Eichler Homes, Inc.,
269 Cal. App. 2d 224, 74 Cal. Rptr. 749 (1969)

Shipper v. Levitt & Sons, Inc.,
44 N.J. 70, 207 A.2d 314 (1965)

DEVELOPERS OF BUILDING LOTS

One who manufacturers a lot for building purposes by cutting, filling, grading, compacting, and the like, may be held strictly liable in tort for damages suffered by the owner as a proximate result of any defects in the manufacturing process of the lot.

Avner v. Longridge Estates,
272 Cal. App. 2d 607, 77 Cal. Rptr. 633 (1969)

LESSORS OF PERSONAL PROPERTY

The lessor of personal property, such as step ladders, trucks with step ladders attached, or motor vehicles themselves are strictly liable in tort if the product they lease proves to have a defect that causes injury to a human being.

McClaflin v. Bayshore Equipment Rental Co.,
274 Cal. App. 2d 446, 79 Cal. Rptr. 337 (1969)

Price v. Shell Oil Co.,
2 Cal. 3d 245, 85 Cal. Rptr. 178, 446 P.2d 722 (1970)

Ettin v. Ava Truck Leasing, Inc.,
53 N.J. 463, 251 A.2d 278

Bachner v. Pearson (Alaska),
479 P.2d 317

Garcia v. Halsett,
3 Cal. App. 3d 319, 82 Cal. Rptr. 420 (1970)

Cintrone v. Hertz Truck Leasing & Rental Service,
45 N.J. 434, 212 A.2d 769 (1965)

IV

PRODUCTS COVERED

Generally speaking, strict liability covers all products made, sold or leased (by individuals in that business) where such products prove to be defective and reach the user or consumer without further processing or alteration.

The old rules limiting such strict liability to food and drink cases or to products for intimate bodily use have been abolished. The new rule extends to any product sold in the condition in which it is expected to reach the ultimate user or consumer. It thus applies to automobiles, tires, grinding wheels, water heaters, gas stoves, power tools, riviting machines, chairs, component parts of automobiles such as steering gears, cinder building blocks, electric cable, golf carts, childrens' playground equipment, polio vaccine, drugs, deodorants, bottles, dynamite fuses, cathethers, ladders, solvents and washing machines.

See the sample list of products involved in strict liability cases in California in the appendix.

Some products are excluded because they are considered to be "unavoidably unsafe products. Comment k under Section 402 A of the Restatement Second cites as an example the vaccine for the Pasteur treatment of rabies. This vaccine sometimes leads to very serious injuries. The vaccine is given, however, because rabies invariably results in a dreadful death. This product is therefore deemed to be not unreasonably dangerous because it is unavoidably unsafe.

The manufacturer of an unavoidably unsafe prescription drug is not to be held to strict liability for unfortunate consequences, but only if the drug falls within this special category and then only if the drug company can show that the drug was properly tested, prepared and marketed and that a proper warning was given to the consumer or to the consumer's physician. Drug companies argue that this comment applies to all prescription drugs. Obviously, all such drugs are not involved with the problem of balancing the risk of a horrible death with the unavoidable risk of a possibly life saving prescription drug as an alternative.

Oral contraceptives certainly should not come in this category since there are many other contraceptive methods which do not involve the risk of such catastrophic side effects as blindness, paralysis and serious blood clotting complications. Oral contraceptives are in a unique category. This medication is not prescribed by physicians to patients who are ill. The drug companies admit in their drug package insert that retrospective studies show that women who ingest oral contraceptives are statistically four to seven times more likely to suffer serious blood clots, but the companies strenuously deny any cause and effect relationship.

There are products which have "natural" dangers which are reasonably unavoidable. Small bones in fish, for example, are reasonably unavoidable as are cherry pits in a piece of cherry pie.

There are products which are dangerous potentially, but are not regarded as "unreasonably dangerous" within the meaning of that requirement in strict liability. For example, ordinary sugar may have catastrophic effects to a diabetic. Good whiskey may be fine for a reasonably prudent person and yet may have serious effects when ingested by an alcoholic. An ordinary hatchet or carving knife may be quite dangerous if misused and yet not considered to be "unreasonably dangerous". Butter may deposit cholesterol in veins and arteries and produce heart attacks in some people. It is for this reason that the rule of Strict Liability is limited to products "in a defective condition unreasonably dangerous."

V

PROTECTED PLAINTIFFS

Persons entitled to the protection of the Rule of Strict Liability include those who use the product for the intended purpose and those who would be expected to be endangered by the probable use of the product if it were defectively made.

The justification for the Rule of Strict Liability is based upon both (1) "risk distribution" and (2) an implied representation of safety which a manufacturer makes simply by placing the product on the market.

The user or consumer of the product is clearly entitled to the protection of strict liability as are such persons as members of his family, guests, passengers in a motor vehicle or aircraft, donees, vendees, licensees and the like.

If the risk distribution theory is followed, all those persons endangered by the use of a defective product would be entitled to protection of strict liability and would include pedestrians, bystanders and occupants of other vehicles struck by the defective vehicle. The courts which have based the adoption of the strict liability doctrine on a theory of implied representation have denied recovery to pedestrians struck by defective vehicles, passengers in another vehicle struck by the defective product and bystanders who were injured by defective products on the theory that no implied representation was made to them and they are therefore not entitled to its benefits.

Michigan permitted recovery on a strict liability theory by a bystander who was injured by an explosion from an allegedly defective shotgun.

Piercefield v. Remington Arms Co.,
375 Mich. 85, 133 N.W. 2d 129 (1965)

The California Supreme Court in 1969 held that a bystander is entitled to the benefit of the Rule of Strict Liability in an action for personal injuries sustained when an automobile was struck by an allegedly defective motor vehicle manufactured by American Motors Corp.

Elmore v. American Motors Corp.,
70 Cal. 2d 578, 75 Cal. Rptr. 652, 451 P.2d 84 (1969)

The Court in the Elmore case noted that:

> "If anything, bystanders should be entitled to greater protection than the consumer or user where the injury to bystanders from the defect is reasonably foreseeable. Consumers and users, at least, have the opportunity to inspect for defects and to limit their purchases to articles manufactured by reputable manufacturers and sold by reputable retailers, whereas the bystander ordinarily has no such opportunities." (p. 586)

A pedestrian who was struck by a runaway motor vehicle was entitled to strict liability.

Preissman v. Ford Motor Co.,
1 Cal. App. 3d 841, 82 Cal. Rptr. 108 (1969)

A parking lot attendant was held to be entitled to the benefit of the strict liability doctrine where an allegedly defective motor vehicle, which was parked on an incline, suddenly released because of a defect in the "park" gear and struck him. He was entitled to strict liability against both the automobile dealer and the manufacturer of the automobile.

Preissman v. Ford Motor Co.,
1 Cal. App. 3d 841, 82 Cal. Rptr. 108 (1969)

VI

PRESCRIPTION DRUGS

Strict liability may apply to prescription drugs where there is evidence that the product was not accompanied by proper directions and proper warnings of side effects.

> "If the vendor has properly prepared the product and has accompanied its sale with proper directions and warnings, he will not be held to strict liability for unforeseen results. But where the facts disclose the drug has not been properly prepared or has been placed upon the market and sold without adequate and proper warning, strict liability for resulting injury may be found."

Toole v. Richardson-Merrell, Inc.,
251 Cal. App. 689, 60 Cal. Rptr. 398 (1967)

VII

CONTRIBUTORY NEGLIGENCE

There are at least three basic arguments which a defendant might make in a products case, namely: (1) Plaintiff negligently failed to discover the defect; (2) plaintiff assumed the risk; (3) plaintiff's misuse of the product proximately contributed to the occurrence of the accident.

The authors of the Restatement point out in Comment n that since strict liability is not based on negligence and contributory negligence of the plaintiff is not a defense at least insofar as the plaintiff's failure to discover the defect is concerned or to guard against the possibility of its existence. The plaintiff's act of proceeding to expose himself to a known danger (which is often erroneously described as assumption of the risk), is described by the authors as a defense. For example, if the plaintiff discovers a defect and is aware of its danger and nevertheless proceeds unreasonably to make use of the product and is thereafter injured, he is barred from recovery.

Contributory negligence in the classic sense is not a defense in a strict liability case. Thus, the retailer and manufacturer of a "surface preparer" could be applied as the first step of painting a wall was not entitled to a contributory negligence instruction where the user of a product claimed that the warning label failed to advise the consumer that it could produce fumes when applied which could be ignited and might explode.

Crane v. Sears, Roebuck & Company,
218 Cal. App. 2d 855, 32 Cal. Rptr. 754 (1963)

MISUSE

The plaintiff must allege and prove that he was using the product as it was intended to be used. If he has altered the product in some substantial manner or if the product is being used in a manner for which it was not originally designed, this misuse of the product is a bar to recovery.

Martinez v. Nichols Conveyor and Engineering Co., Inc.,
243 Cal. App. 2d 795, 52 Cal. Rptr. 842 (1966)

FORESEEABLE MISUSE

A manufacturer may be strictly liable even where the product he placed on the market has been changed in some way or misused in some way if such change or such misuse was reasonably foreseeable and the manufacturer failed to adopt a safe plan or design for the purpose of avoiding such reasonably foreseeable misuse. Thus, a laudromat owner and the manufacturer of a washing machine were strictly liable to a 6 year old child injured when she leaned on a washing machine in operation and the glass top

of the washing machine gave away and caused injuries. The manufacturer persuaded the trial judge to give an instruction to the effect that a manufacturer is under no duty to anticipate the "misuse, mismounting, or abuse" of his product and that if a rubber bead used to hold the glass in the washing machine lid had been "removed", the machine was not being used for its intended purpose. Appellate Court held that this instruction was erroneous and that whether the design was reasonable was a jury question and that the manufacturer must use reasonable care to design his product to make it safe for the use for which it was intended and that it had a duty to anticipate some misuse.

Thomas v. General Motors Corp.,
13 Cal. App. 3d 81, 91 Cal. Rptr. 301 (1970)

VIII

RENTED FURNITURE

A landlord is generally not liable to a tenant for injuries due to a defective condition or faulty construction of the leased premises in the absence of fraud, concealment or a covenant in the lease to repair. The tenant of a furnished apartment was sitting on a couch in the apartment when she fell through and injured her back on the edge of the couch. After the accident, she saw for the first time that wires supporting the cushion were loose and not on the hooks provided to support them. The couch was approximately one year old. The manager of the apartment inspected the couch after the accident and found that two supporting straps under the cushion were missing. There was evidence that the landlord had furnished two other apartments in San Francisco and three other apartments in another city with the same type of couch purchased by him from the same furniture seller. The Court concluded that

> "... the doctrine of strict liability does apply to the landlord, not as lessor of real property, but as lessor of the furniture."

Fakhoury v. Magner,
25 Cal. App. 3d 58, ___ Cal. Rptr. ___ (April, 1972)

IX

ELEMENTS OF PROOF

In order to prevail, the plaintiff in a strict liability case must prove the following:

(1) That the defendant placed on the market a product which the defendant knew, or should have known, would be used without inspection for defects in the particular part, mechanism or design which is claimed to have been defective; and

(2) That the product was in a defective condition unreasonably dangerous to the plaintiff (or user or consumer) or to his property at the time it was placed on the market and delivered; and

(3) That the plaintiff was unaware of the claimed defects; and

(4) That the claimed defect was a proximate cause of the injury to the plaintiff and that it occurred while the product was being used in a way and for the general purpose or purposes for which it was designed and intended to be used, and

(5) The defect, if it existed, made the product unreasonably dangerous and unsafe for its intended use.

BAJI (Book of Approved Jury Instructions - Civil) Fifth Edition, 9.01.

An article is unreasonably dangerous if it is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it with the ordinary knowledge common to the community as to its characteristics.

Dean Prosser is of the opinion that:

"The proof of strict liability for a defective product does not appear to differ in any significant respect from the proof of negligence."

"Strict Liability to the Consumer in California," by William Prosser, 18 Hastings Law Journal 9, 50 (1966)

X

DEFINITION OF "DEFECTIVE"

The Restatement of Torts Second does not offer a definition for the word "defective" nor does it further define the phrase "unreasonably dangerous." California courts now instruct the jury that:

> "An article is unreasonably dangerous if it is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it with the ordinary knowledge common to the community as to its characteristics." (BAJI 9.01)

Greeno v. Clark Equipment Co., 237 F.Supp. 427 (1965, DC IND)

The product may be deemed to be "defective" and unreasonably dangerous because of an inherent defect in the product or because of a negligent design or because of inadequate warning or instructions.

In California, the defendant is entitled to Jury Instruction BAJI 9.10 which contains the phrase:

> "The defendant manufacturer (or seller or lessor) is not required under the law so to create and deliver its product as to make it accident proof..."

The manufacturer of a machine, patently dangerous in its function, has been held to have a duty to design the machine so that it operates properly for its intended use and is free from latent defects and concealed dangers, but it is not necessarily required to equip the machinery with all possible protective safeguards.

Campo v. Scofield, 301 N.Y. 468, 95 N.E. 2d 802 (1960)

An automobile manufacturer is not under a duty to make the automobile accident-proof or foolproof nor must they render the vehicle as safe as it could possibly be from obvious dangers.

> Evans v. General Motors Corp., 392 F.2d 822 (7th Cir. 1966), Cert. denied 385 U.S. 836, 8787 S. CT. 83 17 L.Ed. 2d 70 (1966)

There is good reason to believe that California might nold that manufacturers of automobile have a duty to anticipate the occurrence of accidents and that they may have a duty to design their motor vehicles so that they are reasonably "crash-worthy". Our Court of Appeal declined to follow the Evans case. A Corvette Sting Ray Fastback was struck in the rear with sufficient impact to cause the fuel tank of the Corvette to rupture and to spill the gasoline into the cockpit of the Corvette which caused serious bodily injuries to one occupant and the death of the other. There is evidence that the gas tank of the Corvette was separated from the passenger cockpit by only a thin piece of fiberglass bulkhead. General Motors argued that they were under no duty to make a crash-proof car. The California Court of Appeal agreed that it was not feasible to require the manufacturer to design a car which would look or drive like a Sherman Tank. But concluded, however, that there was a vast difference between a crash-proof car and a "crashworthy" car. The Court decided with approval the following language from a commentator in a 1966 Utah Law Review article as follows:

> "Decisions holding that the manufacturer has no duty when the product is used in a highly unusual manner are, of course, entirely reasonable; the manufacturer should not be required to foresee every unusual use that might be made of his product, nor should he be required to produce a chattel that is devoid of risk. But when the abnormal use is a common occurrence, as is an automobile accident, public policy is disserved by shielding the manufacturer from the duty to anticipate this use. Courts should impose a duty upon automobile manufacturers to produce a reasonably crashworthy car." (p. 467)
>
> "...We hold that such manufacturers are strictly liable for enhanced injuries ('the second accident') caused by unreasonably dangerous defective design and construction of their products." (p. 470)
>
> Badorek v. General Motors Corp., 12 Cal. App. 3d 447 (1970)

The Badorek case, a Court of Appeal decision, was set aside when the Supreme Court of California granted a hearing. It was then settled before the Supreme Court could decide it. It is therefore not presently the law of California, but it is a clear indication of the direction the Court will take with the question squarely presented.

CONCLUSION

> "It is the business of the law to remedy wrongs that deserve it, even at the expense of a 'flood of litigation' and it is a pitiful confession of incompetence on the part of any court of justice to deny a relief on such grounds."
>
> (Handbook of the Law of Torts, 3d Ed. 1964, Prosser).

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PRODUCTS IN CALIFORNIA

STRICT LIABILITY CASES

1. Adhesive, Toxic Fumes:

Ruiz v. Minnesota Mining & Mfg. Co.,
15 Cal. App. 3d 462, 93 Cal. Rptr. 270 (1971).

2. Ammunition:

Kasel v. Remington Arms Co.,
22 Cal. App. 3d 391, _____ Cal. Rptr. _____ (1971)
24 Cal. App. 3d 711, _____ Cal. Rptr. _____ (1972)

3. Automobile and Truck:

a. Elmore v. American Motors Corp.,
70 Cal. 2d 578, 451 P.2d 84, 75 Cal. Rptr. 652 (1969)

b. Seely v. White Motor Co.,
63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1969)

c. Vandermark v. Ford Motor Co.,
61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964)

d. Cronin v. J. B. E. Olson Corp.,
20 Cal. App. 3d 33, ____ Cal. Rptr. ____ (1971)

e. Gherna v. Ford Motor Co.,
246 Cal. App. 2d 639, 55 Cal. Rptr. 94 (1966)

4. Bailer - (Paper):

Martinez v. Nichols Conveyor and Engineering Corp.,
243 Cal. App. 2d 795, 52 Cal. Rptr. 842 (1966)
(Alteration of product as a defense).

5. Drugs

a. Grinnell v. Charles Pfizer and Co. Inc., 274 Cal. App. 2d 424, 79 Cal. Rptr. 369, hearing den. Aug. 27, 1969, (1969). (Polio vaccine)

b. Toole v. Richardson-Merrell Inc., 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967). (MER/29).

c. Love v. Wolf, 226 Cal. App. 2d 378, 38 Cal. Rptr. 183 (1964). (Chloromycetin).

6. Deodorant:

Hutchinson v. Revlon Corp. of California 256 Cal. App. 2d 517, 65 Cal. Rptr. 81 (1967).

7. Exploding Bottle:

Read v. Safeway Stores, Inc., 264 Cal. App. 2d 404, 70 Cal. Rptr. 454 (1968). (Canada Dry Bottle).

8. Explosive Fuse:

Canifax v. Hercules Powder Co., 237 Cal. App. 2d 44, 46 Cal. Rptr. 552 (1965). (Failure to warn - fast fuse).

9. Catheter:

Putensen v. Clay Adams, Inc., 12 Cal. App. 3d 1062, 91 Cal. Rptr. 319 (1970).

10. Ladder:

a. Jiminez v. Sears, Roebuck & Co., 4 Cal. 3d 379, 482 P.2d 681, 93 Cal. Rptr. 769 (1971)

b. McClaflin v. Bayshore Equipment Rental Co., 274 Cal. App. 2d 446, 79 Cal. Rptr. 337 (1969)

c. Johnson v. Standard Brands Paint Co., 274 Cal. App. 2d 331, 79 Cal. Rptr. 194 (1969).

d. Erickson v. Sears, Roebuck & Co., 240 Cal. App. 2d 793, 50 Cal. Rptr. 143 (1966) (Alteration by plaintiff as defense).

11. Paint Bonder:

Crane v. Sears, Roebuck & Co., 218 Cal. App. 2d 855, 32 Cal. Rptr. 754 (1963). (Insufficient warning of possible explosive propensity).

12. Heating Pipes in Concrete Floor:

Kriegler v. Eichler Homes, Inc., 269 Cal. App. 2d 224, 74 Cal. Rptr. 749, hearing den. March 26, 1969 (1969).

13. Sofa:

Fakhoury v. Magner, 25 Cal. App. 3d 59, ____ Cal. Rptr. ____ (1972).

14. Shoes:

Bennett v. International Shoe Co., 275 Cal. App. 2d 797, 80 Cal. Rptr. 318 (1969) (Refusing to apply strict liability).

15. Tires:

a. Barth v. B. F. Goodrich Tire Co., 265 Cal. App. 2d 228, 71 Cal. Rptr. 306, hearing den. October 23, 1968 (1968). (Failure to warn of overload possibilities).

b. Casseta v. United States Rubber Co., 260 Cal. App. 2d 792, 67 Cal. Rptr. 645 (1968).

16. Tools - (Combination Lathe):

Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963)

17. Washing Machines:

a. Garcia v. Halsett, 3 Cal. App. 3d 319, 82 Cal. Rptr. 420 (1970)

b. Thomas v. General Motors Corp., 13 Cal. App. 3d 81, 91 Cal. Rptr. 301 (1970)

TABLE OF CONTENTS

CALIFORNIA CASES

OUTLINE OF LECTURE AT IDAHO STATE BAR CONVENTION,
SUN VALLEY, IDAHO
JUNE 29, 1972

NORMAN GAAR

"Practice Tips for Local Counsel in the Authorization of Municipal Bonds"

I. The art of compliance with Constitutional and statutory requirements in the issuance of municipal bonds.

A. The starting point is not always self-evident and careful attention to a proper beginning often saves later grief.

1. Local questions should always be considered such as identifying groups or organizations who will support or oppose the capital improvement, etc.

2. The method of financing should be analyzed to determine whether repayment of the debt should be made through tax levies or a revenue producing facility or a combination of both.

a. If a tax levy is involved, detailed consideration should be given to the amount and its effect on the overall property tax structure.

3. No capital improvement is free of political questions, particularly if an election is required.

a. It is often valuable to consider seeking or avoiding local politician endorsement, the community mood needs to be analyzed and the possibility of a special election, if authorized by statute, should be considered.

II. The role and ethics of bond counsel.

A. The development of the concept of a "bond attorney".

1. Relationship between local attorney and bond attorney. If this role is understood by both parties, the maximum effort is obtained toward assisting the municipality in its capital improvement financing.

B. Preparation of proceedings. Often a sensitive matter, it need not be if the parties involved are willing to talk about it.

C. Consider whether the bond attorney has a market opinion or whether a "Topping" opinion will be necessary.

1. Generally this question can be answered by any investment banker or commercial banker with an adequate reference manual.

D. Fee questions - who pays, who earns what, how much and how is the division made between local attorney and bond counsel.

III. Questions relating to the sale of municipal bonds.

A. The role of the bond attorney should be considered in preparing the necessary sale information.

1. The merits of hiring a financial consultant should be considered.

B. Advance planning should be made if there is a question of public or private sale.

1. In revenue financing the role of the engineer is critical to provide data upon which to base repayment ability opinion.

C. Attention should be given to the dull but vital subject of the transcript evidencing the authorization of the bonds:

1. Some documents can be copies, others should be original and there is an in between for certified copies.

D. The requirements of the appropriate state agency may be different than those of the bond purchaser or the bond attorney.

1. Questions need to be answered relative to the Attorney General's role in the issuance of revenue bonds.

2. The statutory requirements, if any, of other state agencies must be met.

IV. The import of the closing cannot be underestimated.

A. In order to close a transaction, bonds must be delivered and paid for in the finest technical, legal sense of the terms.

1. Consider exactly what is good "delivery" for the bonds.

2. Consider exactly what is good "payment" for the bonds.

B. Items to consider before transferring the file to an inactive status.