

ORIGINAL

P R O C E E D I N G S

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C O E U R   D ' A L E N E ,   I D A H O

**John C. Tucker & Associates**

COURT AND DEPOSITION REPORTERS

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1 1974 ANNUAL BUSINESS SESSION

2 of the

3  
4 IDAHO STATE BAR

5 COEUR D'ALENE, IDAHO

6  
7 Saturday Morning

August 3, 1974

8 NORTH SHORE MOTOR HOTEL  
9 Convention Center

10  
11 9:15 A.M.

CALL TO ORDER

JOHN H. BENGTON

12  
13 PRESIDENT BENGTON: Ladies and gentlemen,  
14 pursuant to official notice which was contained in  
15 the program mailed to each member of the Idaho  
16 State Bar, I will now call to order the 1974 Annual  
17 Business Session of the Idaho State Bar.

18 As you know, we are running in a little  
19 competition this morning with the ITLA program,  
20 and I am sure many of you will be interested in  
21 getting over there. I know Tom Mitchell has to get  
22 over there and make some sort of a presentation  
23 this morning.

24 Last year our attendance at the business  
25 meeting was much greater, as you are aware. Of course,

1 we had a great deal of controversial matters which  
2 were discussed. I don't think our meeting here this  
3 morning is going to take very much time.

4 I would at this time acknowledge the  
5 presence of Grace Tucker, of the firm of John Tucker  
6 & Associates, who will be reporting these proceedings.

7 At this time the chair appoints Ed Benoit,  
8 our past-president, as parliamentarian, as he has  
9 been traditionally in the past. If he had known that,  
10 I'm sure he wouldn't have --

11 MR. BENOIT: And I don't know anything about  
12 parliamentary law.

13 PRESIDENT BENGTON: Well, here's a book to  
14 help you out, if you want. (Laughter.)

15 As you are aware, one of the substantial  
16 changes to the bar policy was a rule change relating  
17 to Rule 185, which was adopted by the bar at the  
18 mid-winter meeting of the local bar association  
19 delegates held last December and which was approved  
20 by the Supreme Court thereafter.

21 Pursuant to the rule change, resolutions  
22 relating to policy matters, government of the State  
23 Bar, government of local bar associations, proposed  
24 rule changes, and legislation are now presented at  
25 the mid-winter meeting of the local bar delegates.

1                   The procedure is for resolutions  
2 relating to these matters to be presented to the  
3 secretary of the Idaho State Bar on or prior to  
4 September 25. Thereafter, a meeting of the local  
5 bar delegates held in October at which the  
6 resolutions are presented and discussed; then they  
7 are taken back by the local bar delegates assembled  
8 at the December mid-winter meeting.

9                   This format was developed last year and  
10 it worked very well last fall. However, Rule 185,  
11 as amended provides that delegates of local bar  
12 associations may adopt resolutions relating to  
13 policy, rule changes, or legislation as are presented  
14 at the Annual Meeting by either the Board of  
15 Commissioners of the Idaho State Bar, its committees  
16 in local bar associations, or any member of the  
17 Idaho State Bar.

18                   I would report to you at this time that  
19 no resolutions relating to policy matters, rule  
20 changes, legislation, or government of the state or  
21 local bar associations has been presented for  
22 consideration at this meeting.

23                   I would remind you, however, that  
24 resolutions concerned with these matters must be  
25 presented to the executive director or the secretary

1 of the bar by September 25 for consideration at this  
2 winter's mid-winter meeting.

3 I would direct your attention to the  
4 July issue of The Advocate, our State Bar publication,  
5 wherein are contained reports from each of our  
6 standing committees.

7 It was decided that it would be best to  
8 promulgate these reports through the medium of  
9 The Advocate rather than have the reports presented  
10 at length at this meeting and have a handout as we  
11 did at the last Annual Meeting.

12 Several years ago, those of you who  
13 attended the Annual Meeting which was held at Boise  
14 when Ed Benoit was giving his swan song, were  
15 charmed by his address. As you will recall, when Ed  
16 got to that part of the program, he said, "I note on  
17 the program that the next order of business is the  
18 President's address. My address is Twin Falls Bank  
19 and Trust Building, Twin Falls, Idaho." And to the  
20 wild applause of those assembled, he moved on to the  
21 next order of business.

22 Being neither as witty or as original  
23 as Ed, but recognizing that brevity is the sole of  
24 wit, I am going to make a very abbreviated report.

25 There have been several basic changes

1 this past year in bar policy and bar government. As  
2 I am sure you are aware, the bar, as the result of  
3 the resolution adopted by the local bar delegates  
4 at the December mid-winter meeting, proposed  
5 legislation to create a new division of the Idaho  
6 State Bar and providing for the increase in the  
7 number of commissioners from three to five.

8 The legislation was so drafted that  
9 this year we will have four commissioners as of  
10 this meeting. Next year we will have five  
11 commissioners, each of whom will serve a three-year  
12 term.

13 The reason for so doing, for gradually  
14 increasing the number of commissioners, was, of course,  
15 to permit the same pattern of revolving commissioners  
16 every three years. So we will have four commissioners  
17 of the Idaho State Bar during the next year and,  
18 thereafter, five commissioners.

19 Again, I have explained the basic changes  
20 in Rule 185, governing policy matters, rule changes,  
21 and legislation. And again I would report to you that  
22 we have no basic resolutions along those lines to  
23 present at this meeting.

24 One of the single accomplishments of  
25 the Idaho State Bar this year was the result again

1 of action taken by the local bar presidents at the  
2 mid-winter meeting to propose and shepherd through --  
3 that's maybe a bad word at this point -- but shepherd  
4 through the legislature a bill providing for a  
5 substantial pay increase for the members of the  
6 Bench.

7           This committee was ably headed by  
8 Jay Webb. And, Jay, I extend to you formally at  
9 this time the thanks of the Idaho State Bar, and  
10 you did yeoman's work and we have appreciated it and  
11 I know the members of the judiciary also appreciate  
12 it.

13           As you are aware, there have been  
14 efforts in the past to provide for pay increases for  
15 our judges, but they were unsuccessful. And the bar  
16 got behind this and Jay handled it beautifully and  
17 we are very proud of the fact that at least we are  
18 not No. 48 now in the salary structure for the members  
19 of our judiciary.

20           Steps have been taken this year to  
21 propose some innovations. Those of you who attended  
22 the first session Thursday morning were advised, and  
23 those of you who read The Advocate several months ago  
24 had been advised, that a committee on recertification  
25 to assure the maintenance of professional competence



1 has been formed as a result of action of the Board  
2 of Commissioners of the Idaho State Bar.

3 At the meeting Thursday morning,  
4 Leonard Janofsky and Deryl Gotcher, the president  
5 of the Oklahoma Bar, discussed some of the pros and  
6 cons of recertification.

7 Since recertification will require a  
8 rule change and since it is a basic policy matter,  
9 the question of recertification, or the proposed  
10 format, will be presented either at a future Annual  
11 Meeting or at one of the future mid-winter meetings  
12 for adoption or rejection by the Idaho State Bar.

13 I just wish to report to you that we  
14 felt that in light of comments made by  
15 Chesterfield Smith and in light of comments made by  
16 the Chief Justice of the United States, in light of  
17 action taken in a number of other states by bar  
18 associations or by legislatures, we felt it advisable  
19 to at least consider the question of whether or not  
20 some program for recertifying periodically the  
21 attorneys in the state in order to be qualified to  
22 continue practice should be looked into.

23 We have made, as a Board, no specific  
24 recommendation to the committee. I anticipate that  
25 it will be some time before a proposal is made to

1 the bar.

2 In the State of Washington, the Board  
3 of Governors of the Washington State Bar, recently  
4 commissioned a group, a committee, to make such a  
5 study and provided that they should report back in  
6 three years. I trust that it will not take us  
7 three years to come up with some sort of  
8 recommendation to the bar concerning recertification.

9 Another very active committee which is  
10 innovating was headed by Allen Derr this year. Allen  
11 has, together with the members of his committee,  
12 and Ron Kull, and the help of a number of other  
13 people, some of them out of state, members of the  
14 bars of other states, have developed a proposed  
15 prepaid legal services program.

16 Now, since this will be strictly a  
17 voluntary program, it is not necessary that we take  
18 any action as a bar upon this program.

19 Al will, a little later, present a brief  
20 report outlining the recommendations of his  
21 committee and how the program will be implemented.

22 Again this year the Idaho State Bar has  
23 sponsored a number of successful continuing legal  
24 education programs which were held at various places  
25 throughout the state. In a few minutes Ron Kull

1 will present to you a report on our CLE activities.

2 As a result of the  
3 constitutionally-mandated government reorganization,  
4 Tom Miller and his committee worked toward the  
5 adoption of legislation which would place the Idaho  
6 State Bar in the Department of Self-Governing  
7 Agencies.

8 The legislation was approved and we  
9 are now recognized, at least to some extent, as a  
10 quasi-executive arm of the government, recognizing  
11 the fact that the ultimate determination of who  
12 shall or who shall not practice law or who shall  
13 or shall not be disciplined as attorneys in Idaho  
14 rests with the Supreme Court.

15 Tom's committee did a tremendous amount  
16 of work. He has a rather extensive report on the  
17 activities of his committee which will be found on  
18 Page 7 of the July issue of The Advocate.

19 The number of bar applicants has  
20 dramatically increased. I can recall when I first  
21 started grading bar examinations in 1963, we thought  
22 we had a large group of applicants when they  
23 numbered 36 or 38.

24 As the result of the dramatic increase  
25 in the number of bar applicants, more and more time

1 is devoted by the commissioners and by the office  
2 staff to the planning and administration and grading  
3 of bar examinations.

4 Last summer we had 88 applicants to take  
5 the bar exam, 74 of whom were successful.

6 This spring, after some discussion with  
7 the Supreme Court and its appointed committee on  
8 the development of new rules and standards relating  
9 to the administration of bar examinations, we again  
10 innovated by employing the multi-state bar  
11 examination as one phase of our examining procedure.

12 We had 22 applicants take the spring bar,  
13 18 of whom were successful. We administered a bar  
14 examination this past week to 104 applicants. The  
15 format of the examination this past week was the same  
16 format which was employed this spring. That is, one  
17 day of essay questions followed by the multi-state  
18 examination, which was then followed by another day  
19 of essay questions. So we now give 20 essay  
20 questions and the multi-state bar examination.

21 The results of the multi-state bar  
22 examination and the essay examination showed a  
23 substantial correlation. We feel that the results  
24 indicated and were substantial evidence of the  
25 validity of the essay portion of the examination.

1 As a matter of fact, of the 22 applicants who took  
2 the spring examination, 10 of them failed to receive  
3 a passing grade on the multi-state examination. Six  
4 of them were saved by virtue of the essay portion of  
5 our examination, our Idaho original questions.

6 Glenn Coughlan and his committee on  
7 peer review has done yeoman's but unheralded work in  
8 the field of fee disputes and, Glenn, we thank you  
9 very much for the efforts of your committee.

10 One of the more distasteful functions  
11 performed by the Board of Commissioners relates to  
12 the disciplining of attorneys. This year we  
13 received 67 informal complaints. Fortunately, the  
14 vast majority of them were weeded out without the  
15 necessity of filing of a formal complaint or  
16 conducting of any hearing.

17 As the result of our investigations and  
18 our actions, the Supreme Court, upon recommendation  
19 of the Board of Commissioners of the Idaho State Bar  
20 suspended one attorney and issued one formal  
21 reprimand to an attorney.

22 Speaking of the Supreme Court, I want  
23 to report that I am pleased to report that our  
24 relationship with the court is a very healthy one  
25 at this time. There has developed, particularly

1 over the past year, a spirit of cooperation between  
2 the bar and the court which, I think, is manifested  
3 by the fact, first, that the Board of Commissioners  
4 worked with the Supreme Court and its committee in  
5 developing new grading standards, standards for the  
6 preparation and grading of bar examinations.

7           Within the past month these new standards  
8 and new rules were adopted by the Board of  
9 Commissioners of the Idaho State Bar and approved by  
10 the Supreme Court.

11           The spirit of cooperation is further  
12 manifested by the fact that in each discipline  
13 matter which has been presented to the court this  
14 past year, the Supreme Court has sustained the  
15 commission's recommendation.

16           Furthermore, while a number of applicants  
17 who took the last two bar examinations which have  
18 been administered this past year were unsuccessful,  
19 and a number of them petitioned the court for review  
20 of their examinations, the court has seen no merit  
21 in any of these petitions and has sustained the  
22 decision of the Board of Commissioners and the  
23 examining committee of the Idaho State Bar with  
24 respect to the fact that these particular applicants  
25 just did not demonstrate sufficient proficiency to

1 be issued a license to be admitted to practice law  
2 in the State of Idaho.

3                   The feeling which has developed in the  
4 past years is considerably better in this meeting  
5 than it was a year ago, Judge McFadden, as I am sure  
6 you are aware.

7                   I have enjoyed my work with the bar --  
8 well, ever since 1963 when I started grading bar  
9 examinations, and that was the result of some action  
10 on the part of Alden Hull who had me fill in as a  
11 grader.

12                   The past three years have been  
13 particularly rewarding to me. I have had the  
14 opportunity to work with Gene Thomas, John Sharp --  
15 whom we sometimes dearly refer to as  
16 Captain Hemorrhoid as a result of some comments  
17 made by him a year ago -- Tom Nelson, Jerry Olson,  
18 as my fellow commissioners.

19                   I have had the opportunity of working  
20 with, well, really, the finest members of the  
21 profession in the State of Idaho.

22                   I want to recognize the work of  
23 Ron Kull this year. Ron has been extremely helpful,  
24 not just to me, but to the commissioners and to the  
25 committee chairmen.

1                   And, Arcie, we have appreciated your  
2 efforts, the parties you put on for us, your lovely  
3 gourmet dinners, your cocktail parties, and I  
4 especially appreciate that lovely picture which  
5 appeared at the past-president's cocktail party.

6                   And I guess Gloria is not here yet,  
7 Gloria Rinehart, our chief secretary at our office.  
8 She has been superb. We have appreciated her work.

9                   I have two partners that I must thank.  
10 One is my marital partner -- who I notice is not here  
11 yet; still eating breakfast -- for her understanding  
12 as to why I was gone from home so often in the last  
13 three years, particularly the last year; and also  
14 my legal partner, Russ Randall, for his understanding  
15 as to why I was gone from the office so much.

16                   I will have just a few more comments  
17 before I turn the meeting over to Tom Nelson. But  
18 before so doing, we have a few short reports. And  
19 at this time I will ask Ron to render an abbreviated  
20 report on the activities of the Continuing Legal  
21 Education Committee.

22                   SECRETARY KULL: Thank you, John. This will  
23 be a very brief report because the full report of  
24 the Continuing Legal Education Committee is set out  
25 in the July issue of The Advocate.



1                   Possibly you might be interested in some  
2 of the things we had planned for the fall and for  
3 next year. You know, in this work, advance planning  
4 is very important. You have to really start about  
5 six or nine months ahead of time to get anything  
6 done in this area.

7                   Phil Peterson and Bob Jones, sitting  
8 in the back of the room, will attest to this. Both  
9 of them, among many, many other members of this bar,  
10 and bars throughout the United States, have really  
11 accomplished great things. We feel, really, that  
12 the Idaho Continuing Legal Education program is  
13 probably the finest program for a state of this  
14 size in the United States. We have some bigger bars,  
15 of course, who are operating with full-time staffs  
16 and paid employees, publication personnel, and so  
17 forth. We do this all on a voluntary basis, and  
18 I mean voluntary.

19                   I hesitate to single out anyone, because  
20 so many people have done so much work on this over  
21 the past years. As you know, we had last year,  
22 among the programs we had, were the very successful  
23 pattern jury instruction institute which Bob and I  
24 traveled in all seven districts to put on. We used  
25 some local people, members of the Supreme Court,

1 local judges to help with these programs. But,  
2 really, it was Bob Jones' program, and I know we all  
3 appreciate his effort in that field.

4 We keep going with some probate matters.  
5 We are still kind of getting used to the idea of the  
6 Uniform Probate Code. And Phil Peterson, of course,  
7 has been most helpful, and he gave us the thing and  
8 now he is instructing us on it.

9 Probably our most successful program this  
10 year was the estate administration institutes held in  
11 three locations. We had a dozen authors write a  
12 book for this program and Phil edited the book which  
13 means that he really put it together. I think this  
14 was a most successful program.

15 We did something else this past year  
16 which we think was a pretty good idea and we will  
17 be continuing to do. We cooperated with the state  
18 bars of Utah and Arizona to put on a bankruptcy rules  
19 program. The new bankruptcy rules which went into  
20 effect we felt should be covered. We realized that  
21 bankruptcy would be not a very popular topic and  
22 we thought we could maybe spread our costs over the  
23 three bars. As it turned out, we had 171 people  
24 at this institute. And if all of you who were there  
25 will recall, you were almost sitting on each other's

1 laps. The attendance far exceeded our expectations.

2 There have been some changes in  
3 Chapter 13 of the bankruptcy rules or Bankruptcy Act.  
4 We are going to have another institute on this  
5 topic in October. The same three speakers, as a  
6 matter of fact, who did the bankruptcy rules institute  
7 will be on this. Again, we are cooperating with the  
8 state bars of Utah and Arizona. And they will be in  
9 Boise on Thursday for an institute and in Salt Lake  
10 on Friday and end up in Phoenix on Saturday. We  
11 will have our usual golf tournament with them on  
12 Wednesday and this is really why they come out.

13 We also are going to have an institute  
14 which I hope all of you will be interested in on  
15 office management called "Salvation for the Sole  
16 Practitioner and Small Firm." The keynoter on this  
17 will be J. Harris Morgan from Greenville, Texas, who  
18 many of you have heard before. We had him out for  
19 an annual meeting a couple of years ago and he was  
20 very popular. Then a couple of Harris' friends, one  
21 from New York and the other from Florida, will be on  
22 this program. This was a tremendous success when it  
23 was originally given in Texas. We hope that the  
24 lawyers of Idaho will enjoy it.

25 Again, we are cooperating with the

1 Montana Bar Association with this one. They will  
2 give it one day in Great Falls and come over to  
3 Boise the next day for that.

4 The institute that I am sure all of you  
5 are going to be concerned with, like it or not, will  
6 be a triple series we will be offering on the new  
7 civil rules which are, as far as I know now, likely  
8 to go into effect on next January 1. This program  
9 will be given in Eastern Idaho, Northern Idaho and  
10 in Boise in November.

11 We also are in the early planning stages  
12 of a workshop-type of program on estate planning for  
13 farmers and ranchers. This will be a limited  
14 enrollment workshop. It will be held in May,  
15 probably in Burley. But for those of you who are  
16 interested in this topic, you might kind of keep that  
17 in mind. I think this will be a new experience for  
18 many of you. The idea of small discussion sessions  
19 as opposed to simply lectures.

20 We will, of course, have our workshop  
21 for corporate counsel. We have had this for the  
22 past two years. This will be the third year. This  
23 is scheduled for late February at Sun Valley. This  
24 has been a very popular program for people interested  
25 in the corporate field. I think Hal McIntire,

1 sitting in back, has attended; I believe Blaine Evans  
2 registered one year. Again, it is a small, rather  
3 specialized workshop, but we feel that, as a part  
4 of a healthy overall CLE program, this should be done.

5           Again, next fall we intend to repeat  
6 the basic practice institute, which we gave last year,  
7 and we thought we could probably do it every two  
8 years instead of every year. I was amazed; we  
9 designed the basic practice institute to help the  
10 young lawyers to kind of give the kids who were just  
11 out of law school a little taste of the practice and  
12 practicalities. We had such young kids at the last  
13 one as Laurel Elam and Karl Jeppesen and many people  
14 like this. I think the older lawyers enjoyed the  
15 basic practice institute we held last time as much  
16 as the younger lawyers, and for that reason we want  
17 to have that again.

18           I did neglect to mention that you have  
19 in the mail now the brochure announcing the advocacy  
20 institute. Again, one of our annual programs. This  
21 will be held this year in early September. We will  
22 be talking about using accident reconstruction  
23 experts. I think all of you might be interested in  
24 this program. I think it will be an entertaining and  
25 constructive one.

1                   Naturally, continuing legal education  
2 involves a lot of work but also a lot of stargazing.  
3 We are never really quite sure if we are hitting the  
4 topics that you want us to. Therefore, anytime you  
5 have some ideas as to topics, as to speakers,  
6 anything that would be of use in this area, I would  
7 really appreciate it if you would contact me, contact  
8 Bob Alexander who is chairman of the continuing legal  
9 education; in Eastern Idaho contact Gene Bush who  
10 is a member of this committee; and in Boise contact  
11 Byron Johnson. But we would really appreciate your  
12 input on this area of activity of the Idaho State Bar.

13                   Again, I didn't really mean to single  
14 out Pete and Bob as workers in this area, because  
15 many others of you have helped us; Bob Koontz has  
16 served as a speaker; Mack Redford, of course.

17                   Our friend, John Bengtson, who did a  
18 terrible thing: This year, in addition to being  
19 president of the bar, he went on the triple institute  
20 with us and, of course, did an excellent job. As a  
21 matter of fact, at each place, I introduced him as the  
22 best speaker, the finest speaker on the entire panel,  
23 explaining that as long as he had control of the  
24 budget of the Idaho State Bar, he would continue to be  
25 the best speaker on the panel. (Laughter.)

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(Applause.)

PRESIDENT BENGTON: Thank you, Ron.

Ron has acquired a new name this year. He calls my office so frequently that the secretary says, "It's Ron Kull-again." (Laughter.)

Those who were at the session yesterday morning heard the president of the Utah Bar, Joe Novak, discuss the infant prepaid legal services program now in operation in the State of Utah.

The chairman of our prepaid legal service committee, Allen Derr, is here now and he is going to give a short report explaining the basic format of how a prepaid legal services program which we hope will be in operation in the very near future.

MR. ALLEN R. DERR (Boise): Thank you, John.

I don't know why, but since we have got a new Chief Justice, I always start an address to attorneys with this comment: "The Shepard is my lord." (Laughter.)

But we in the June issue of The Advocate, set forth the basic concepts of a plan for Idaho which largely was adopted from the State of Utah. And I would ask that the writings from the June issue of The Advocate be made part of the minutes of this meeting.

1           PRESIDENT BENGTON: Your report will be  
2 considered a part of the minutes of this meeting.

3           MR. DERR: Thank you, John.

4                   When we started into this -- of course,  
5 prepaid legal services is a relatively new concept  
6 except in the closed-panel idea. Ron was really the  
7 workhorse on this thing. I will have to give him  
8 a great deal of credit for it.

9                   We even went to the State of Utah where  
10 they had their plan in operation, which we heard  
11 about yesterday, to get as much detail about this  
12 as we could.

13                   Now, we started out at the outset with  
14 problems as to whether or not there would be any fee  
15 getting or any anti-trust problems. We avoided that,  
16 because our plan, as Utah's plan, allows the attorney  
17 to set any fee he desires to set. If there is a fee  
18 dispute, it goes to the peer review committee.

19                   But the plan does have the coverages  
20 as outlined yesterday and I don't think it is really  
21 necessary to go into it again because it is also in  
22 the report and you heard it yesterday.

23                   Our fee structure, as far as coverage  
24 under the plan, will be the same as Utah's.

25                   We also worried about insurance, whether



1 or not this plan would be insurance. And we have  
2 visited with the Attorney General. And I guess the  
3 thing that really worried them most were the areas  
4 where a person didn't have a choice. In other words,  
5 can have a will drawn, and this sort of thing; the  
6 client controls this sort of thing. But where a  
7 person is a defendant, then it was finally concluded  
8 that this was just a small portion of the overall  
9 plan and why throw the baby out with the bath water.

10 But we do have, and I can report,  
11 clearance from the state to operate, put into  
12 operation, this plan without any problems with  
13 insurance. Now, that doesn't mean that we won't be  
14 sued or we may not be questioned about the insurance  
15 aspect or the anti-trust aspect.

16 But we feel, from the statistics, that  
17 we have been able to get hold of, it is said that  
18 some 90 per cent of the American public is underserved  
19 and some 70 per cent of the American public never  
20 consults an attorney. And we all know that everyone  
21 at one time or another has things that they should  
22 talk to attorneys about.

23 And the whole concept of the plan is  
24 basically preventative law so that people can go and  
25 consult an attorney without being fearful that they

1 are going to get charged several hundred dollars just  
2 for talking to an attorney.

3 At any rate, we think the plan is good.  
4 We think the concept is good. The details of the  
5 plan, as I said, you heard a lot of them yesterday,  
6 because our plan is just almost exactly the same as  
7 Utah's. We urge that the Idaho State Bar move  
8 forward in prepaid legal services.

9 (Applause.)

10 PRESIDENT BENGTON: Thank you, Allen.

11 If the proposed prepaid legal services  
12 program does for the bar what Blue Cross has done for  
13 the medical profession, we will be forever indebted  
14 to you. (Laughter.)

15 But, regardless of that, I think we will  
16 be performing a substantial public service by making  
17 such a program available to people who might  
18 otherwise, for fear of cost, not avail themselves of  
19 legal services which might be necessary.

20 As you know, Idaho is served in the  
21 House of Delegates of the American Bar Association  
22 by two delegates in addition to having a member of  
23 the Board of Governors: Judge Blaine Anderson is  
24 a member of the Board of Governors of the ABA --

25 We are represented also in the House

1 of Delegates by Ed Benoit, who is our state delegate  
2 and Gene Thomas, another past-president of the  
3 Idaho Bar, who is our appointed State Bar delegate.

4 Now, Gene is not with us here today.  
5 We requested that he represent the Idaho State Bar  
6 at the Ninth Judicial Circuit Conference which is  
7 being held at the same time as our meeting.

8 Gene is not with us, but we are  
9 fortunate to have with us a friend of all of us,  
10 Ed Benoit, who is going to give a few words to us  
11 concerning the activities of the American Bar  
12 Association, our state delegate to the ABA House of  
13 Delegates, Ed Benoit.

14 (Applause.)

15 MR. EDWARD L. BENOIT (Twin Falls): I might  
16 state that it is a real pleasure to appear before you  
17 today with a sound, strong body and a clear mind.

18 (Laughter.)

19 As Ron said, there are three of us who  
20 have a vote in the House of Delegates.  
21 Blaine Anderson, when he became a member of the Board  
22 of Governors, resigned as state delegate at the time  
23 I was State Bar delegate and automatically, as senior  
24 State Bar delegate from Idaho, being the only one,  
25 I became the interim state delegate and then ran for

1 election, and Gene Thomas was appointed by the bar  
2 to represent the State Bar in the House of Delegates.

3           Theoretically, I represent the members  
4 of the American Bar Association in the House of  
5 Delegates while Gene represents all members of the  
6 State Bar. And Blaine's term as a member of the  
7 Board of Governors expires at the end of the  
8 Honolulu meeting. Blaine actually represents members  
9 of the American Bar from Alaska, Washington, Oregon,  
10 Montana, and Idaho.

11           While Blaine and I theoretically are not  
12 bound by any suggestions from members of the  
13 Idaho State Bar, I know, as well as Gene, your  
14 delegate, Blaine and I, under no circumstances would  
15 ever take a position in the House of Delegates which  
16 was not approved by the members of the Idaho State  
17 Bar.

18           I think every year we have asked if  
19 any of you have any suggestions after you have  
20 read the American Bar Association Journal of what  
21 position we should take on any issue, we wish you  
22 would phone us or write us, because we are  
23 interested in what you want us to do.

24           Last February in Houston there were  
25 two big issues that caused a lot of debate and

1     consternation. The first one, of course, was the  
2     resolution by the law students division that the  
3     House of Delegates to the American Bar Association  
4     immediately adopt a resolution in the House of  
5     Delegates calling for the immediate impeachment of  
6     the President of the United States.

7                     It was the position of most of the  
8     people there, regardless of how you personally felt  
9     about the President and his aides, to take the  
10    position in Houston prior to hearings before the  
11    House of Representatives was something like telling  
12    a grand jury what should be the results of their  
13    deliberations in returning or not returning an  
14    indictment.

15                    And after hearing a rather eloquent  
16    plea by the president of the law students division,  
17    the House of Delegates in effect adopted a resolution  
18    calling for an investigation but refused to adopt  
19    the resolution calling for the immediate impeachment,  
20    feeling that it was improper.

21                    And one of the closest votes was on the  
22    question of prepaid legal services, whether or not  
23    you should have a closed panel or an open panel.

24                    Briefly, to explain, the organization  
25    sets up a plan where people contribute to pay for

1 legal services. One plan is that the panel would  
2 consist of, say, five lawyers employed by the group  
3 which sponsors the prepaid plan. The other concept  
4 of the open panel was that members who register for  
5 prepaid legal services would not be required to  
6 retain the services of those lawyers named in the  
7 closed panel, but would have a free choice of lawyers.

8           The original proposal of the committee  
9 of the American Bar Association, while they did say  
10 it did not restrict to a closed panel, it was the  
11 general consensus of the general practice section,  
12 which really is the section, I feel, that represents  
13 the lawyers in the smaller states throughout the  
14 nation, that the report in effect encouraged a  
15 closed-panel system.

16           Therefore, the general practice section  
17 proposed some amendments to the Code of Professional  
18 Ethics relative to open or closed panels, and the  
19 general practice section specifically set up rules  
20 and procedures for filing with an appropriate agency  
21 a plan for prepaid legal services that  
22 specifically spelled out that it was going to be an  
23 open-panel choice.

24           The general practice section prevailed  
25 by a rather close vote in insisting upon an open

1 panel. And I report that both Gene and I supported  
2 the general practice section under the open-panel  
3 system, feeling that is what the lawyers in Idaho  
4 desired.

5 I think we were correct. I am not sure  
6 if it is going to come up again, but that is the  
7 position we will take unless we are instructed  
8 otherwise.

9 Now, I am not going to be in Honolulu  
10 at the Annual Meeting. It will be the second  
11 Annual Meeting I have missed in ten years. I have  
12 two reasons for not going: one, I thought Honolulu  
13 would be rather hot and kind of like an anthill.  
14 And the second is that among the other hobbies, I am  
15 a defendant in a lawsuit against the State Board of  
16 Education, individually sued for \$2-million dollars.  
17 The case starts the same day that the House of  
18 Delegates open, and my attorney, Jess Hawley, suggests  
19 it might be to my interest to appear in court rather  
20 than Hawaii. (Laughter.)

21 We have arranged, however, under the  
22 rules of the ABA, the State Bar delegate becomes an  
23 interim delegate, meaning Gene Thomas will cast that  
24 vote. We have already arranged, then, for Tom Nelson,  
25 who will be your president, to be certified as an

1 interim state delegate and Blaine, as a member of the  
2 Board, will be there, so you will have your three  
3 votes.

4 And I am sure that Tom or Gene or  
5 Blaine would appreciate hearing from you, if you  
6 have any suggestions as to what actions they ought  
7 to take on issues coming before the meeting in  
8 Honolulu.

9 Among some of the interesting ones,  
10 there is a section called Individual Rights and  
11 Responsibilities. And they always come up with  
12 some very interesting resolutions which manage to  
13 get before the House of Delegates. And the  
14 important one this year is to really abolish the  
15 crime of prostitution on the grounds that it is  
16 discriminating against women.

17 So if you have any suggestions to  
18 Tom about whether he should -- (Laughter.)

19 Another one, the same section, is  
20 about some amnesty for draft dodgers.

21 Another one that I think you will be  
22 interested in is a special committee in coordination  
23 of judicial improvement recommends reducing the  
24 number of jurors to six persons in federal court  
25 civil trials. Personally, if I were there, I would



1 vote against that. I am strongly opposed to  
2 reducing a jury trial from twelve to six. But it  
3 will come up and if you could tell the fellows how  
4 you feel they should vote, I think they would  
5 appreciate hearing from you.

6 Then there is another concept which will  
7 be before the House, whether or not we should have  
8 less than unanimous verdicts in criminal cases.

9 There is another recommendation in the  
10 section of criminal justice, endorsement by the ABA,  
11 the privacy of financial records as protected by  
12 amendments to the Bank Secrecy Act.

13 Another one, support of the so-called  
14 government and the Sunshine Act, which will open  
15 all governmental proceedings to the press.

16 And there are going to be a number of  
17 environmental recommendations as to positions by  
18 the State Bar.

19 And, again, as I say, the matter of  
20 closed panels or open panels or prepaid legal  
21 services will be before them again.

22 And then, of course, there will be  
23 many other resolutions. Prior to the meeting of  
24 the House of Delegates, a large book about this  
25 thick, comes in a month ahead of time which gives

1 every delegate an opportunity to read the various  
2 reports and, hopefully, be prepared to vote one way  
3 or the other.

4 Now, really the only advice I gave Tom  
5 was that if a technical amendment to the Internal  
6 Revenue Code was presented, I have always voted for  
7 whatever the tax lawyers recommended, because I  
8 never did understand what it was all about.

9 Now, Blaine as a past member of the  
10 Board of Governors will also serve automatically for  
11 another two years. So we will have three  
12 representatives in the House.

13 I might say that I have enjoyed working  
14 in the House and I know that Blaine has. It is  
15 another one of those expensive hobbies; you get to  
16 know a lot of people and enjoy it. Norma Lou has  
17 often said if I quit going to these darn conventions,  
18 we could afford a nice trip each year, but I am not  
19 much of a sightseer and I kind of enjoy being with  
20 my fellow lawyers.

21 As I say again, anytime you read  
22 anything in the Journal or hear of anything that  
23 might come before the American Bar Association,  
24 let your delegates know because everybody will  
25 follow your wishes.

1                   In closing, I would like to comment  
2 a moment about our colorful president,  
3 Chesterfield Smith. A number of you met him in  
4 Boise and heard him speak. Chesterfield is one of the  
5 youngest presidents of the American Bar Association  
6 we have had in a long time. He is very outspoken,  
7 but he is a very charming and earnest individual.

8                   If you will recall, when he first came  
9 into office, he insisted that we go on record asking  
10 for a special investigator for the Watergate situation,  
11 and he had called a special meeting of the  
12 House of Delegates to ratify the authorization of  
13 the Board of Governors for him to call for such a  
14 special investigation.

15                   In the meantime, Leon Jaworski, a  
16 past-president, was appointed by President Nixon as  
17 an investigator. While he was not appointed  
18 entirely independent, it became obvious that  
19 Mr. Jaworski, who is an eminent trial lawyer, was  
20 beholden to no one, and that meeting of the  
21 House of Delegates was cancelled and no further  
22 action has been taken by the ABA on the Watergate  
23 matter, and I doubt that anything will come before  
24 the convention in Hawaii.

25                   Unless there are any questions, that is

1 about it. And as I said, if you have any  
2 suggestions to Tom, especially on the prostitution  
3 issue, I'm sure he'll be happy to listen to you.

4 MR. DERR: One question: Does this  
5 prostitution issue come under consumer protection?  
6 (Laughter.)

7 MR. BENOIT: I will defer to someone from  
8 Wallace, Idaho. (Laughter.)

9 (Applause.)

10 PRESIDENT BENGTON: Thank you, Ed.

11 I will say this, with respect to  
12 Chesterfield Smith; I think more has been written  
13 in the press, more has been said of and about the  
14 American Bar Association this past year than I  
15 can remember -- at least we are being heard, and  
16 he is a delightful gentleman and I know Ed is very  
17 well acquainted with him.

18 While we have resolutions relating  
19 to policy decisions, legislative and so forth, we  
20 do have a number of housekeeping resolutions which  
21 our president-elect Tom Nelson will present.

22 PRESIDENT-ELECT NELSON: Thank you,  
23 Mr. President.

24 With the consent of the Chair, I will  
25 present these in two groups and save time.

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I will read the first resolution:

WHEREAS, Governor Cecil D. Andrus, who gave of his time in speaking before the 1974 Annual Meeting of the Idaho State Bar, at Coeur d'Alene, Idaho; and

WHEREAS, the efforts of Governor Andrus in speaking before the Idaho State Bar were of great merit;

NOW, THEREFORE BE IT RESOLVED, that the Idaho State Bar does express its sincere appreciation to Governor Andrus for his contribution toward the success of its 1974 Annual Meeting.

I have similar resolutions for:

Chief Justice Alan G. Shepard

Deryl Lee Gotcher

Joseph Novak

Leonard S. Janofsky

Fred Anderson

Tom Lambert

Ted Borillo

At this time I would move the adoption

1 of these resolutions.

2 A VOICE: Second.

3 PRESIDENT BENGTON: It has been moved and  
4 seconded that these resolutions thanking our guests  
5 and speakers be approved.

6 All those in favor signify by  
7 saying "Aye."

8 (A chorus of "Ayes.")

9 PRESIDENT BENGTON: The motion is carried.

10 PRESIDENT-ELECT NELSON: Mr. President, I  
11 have three further resolutions, and I would anticipate  
12 that Ed Benoit would abstain voting on these  
13 particular resolutions. I understand that since  
14 Ed quit partaking of our cocktail hours, he has  
15 found out that people that don't drink, don't live  
16 longer; it just seems that way. (Laughter.)

17 Again, I will present these as a  
18 group. The first one:

19  
20 *WHEREAS, the First Security Bank of*  
21 *Idaho provided refreshments to the 1974*  
22 *Annual Meeting of the Idaho State Bar,*  
23 *and*

24 *WHEREAS, these refreshments*  
25 *contributed to the success of this*

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*Annual Meeting;*

NOW, THEREFORE BE IT RESOLVED, *that the Idaho State Bar does express its appreciation to the First Security Bank of Idaho for its contribution toward the success of its 1974 Annual Meeting.*

I have a similar resolution thanking:  
Title Insurance Company  
Bank of Idaho

I would move the adoption of these resolutions.

A VOICE: Second.

PRESIDENT BENGTON: It has been moved and seconded that these resolutions thanking our hosts be adopted.

All those in favor signify by saying "Aye."

(A chorus of "Ayes.")

PRESIDENT BENGTON: The motion is carried.

The record will show that Past-President Benoit abstained in more respects than one. (Laughter.)

Well, this is the time traditionally

1 grown men cry and I am not an emotional man, but the  
2 past three years have taken so much time out of my  
3 office that I have suffered financially, so I found  
4 it necessary to place a few small wagers with  
5 Mack Redford and with Ron Kull and with Tom Nelson  
6 that I could make it through without choking up or  
7 at least shedding any tears.

8 Tom asked me how I was doing earlier,  
9 and I said, well, I was not going to weep at all as  
10 I turned the gavel over to him. Actually, what I  
11 was doing, was going back to my motel room in the  
12 evenings and going to bed and thinking about it and  
13 crying.

14 And Tom said, "When you go to bed and  
15 cry, that's not the reason you're crying." (Laughter.)

16 If I need the money, I've got \$12.50  
17 bet that Olson was smart enough not to bet against me.

18 In just a few moments I will be carrying  
19 on a tradition that was broken only by John Sharp  
20 last year, and that is going into the bar and having  
21 a double martini and contemplating what I will do  
22 with the new found spare time.

23 Before so doing, I have one more  
24 official act, and that is to introduce to you your  
25 new president. I previously, prior to the time some



1 of you arrived at this meeting -- I did extend my  
2 thanks to Tom and Jerry, and Ron and Darcie, to my  
3 wife and my law partner.

4 I have made some tremendous friendships.  
5 I know that although my visits with you will be less  
6 frequent, I trust our relationship will be as fond  
7 as our memories will be mutual.

8 Tom if you would stand at this time,  
9 my friend, I will turn over the traditionally  
10 symbolic gavel to you. It is so symbolic, it  
11 doesn't even exist. But I do extend you my hand for  
12 friendship in the work, and everything. Give me the  
13 five bucks, you bastard. (Laughter.)

14 (Applause.)

15 PRESIDENT-ELECT NELSON: Thank you, John. I  
16 might say that you are not through yet. It has been  
17 traditional that the remaining members of the Board  
18 of Commissioners presents to the outgoing president,  
19 and John has been a little bit concerned recently  
20 about whether or not we thought enough of him to  
21 give him any presents.

22 And I had it in my power to cinch this  
23 bet completely by withholding the presents until  
24 this morning, but I relented and we gave him  
25 informal presents from the commission last night.

1 The first one he got was a rather scurrilous card  
2 with five dollars in it, and he thought that that  
3 was the extent of our appreciation for him. But  
4 we did manage to spend another two and a half  
5 (Laughter) which got him up to about the realm of  
6 our regard, I guess.

7 At this time I would like to call on  
8 Ray Kuhn to come forward, if he would, and make the  
9 traditional presentation on behalf of his company.

10 MR. RAYMOND L. KUHN (Mutual of Omaha):  
11 Thank you, Tom.

12 Mr. President, commissioners, honored  
13 guests and members of the Idaho State Bar: This is  
14 always a highlight in my year when I am privileged  
15 to attend your Idaho State Bar Convention and pay  
16 honor to your outgoing president.

17 I had a cup of coffee with John this  
18 morning, and the very thing that I have mentioned  
19 to the other outgoing presidents, he mentioned this  
20 morning that he was going to take a sigh of relief  
21 when all of this was over, and I think that is  
22 understandable.

23 The hours, the devotion, and the actual  
24 work and time that you have displayed during this  
25 past year cannot be overemphasized. And it is a

1 great, great pleasure for me on behalf of your  
2 personal insurance carrier, Mutual and United of  
3 Omaha, and on my own behalf and on behalf of my  
4 general agent, John Squires, to present to you, John,  
5 a plaque which I know you will hang on your wall and  
6 will adorn your office as a very pleasant reminder  
7 of the hours and the time and the real pleasure you  
8 have had.

9 PRESIDENT BENGTON: Thank you, Ray, very  
10 much. I appreciate that.

11 (Applause.)

12 PRESIDENT BENGTON: I am very pleased  
13 to see that the recent premium increase by Mutual  
14 of Omaha went to such a good use. (Laughter.)

15 Thank you, Ray, very much.

16 There is one other thing I want to do.  
17 Perhaps it is Tom's function to do so. But I am  
18 going to usurp one of your first functions, Tom, and  
19 I would like to introduce to you the two gentlemen  
20 whom the members of the Idaho State Bar, through their  
21 respective divisions, have elected as commissioners  
22 of the Idaho State Bar.

23 Coming first, because it is my  
24 bailiwick, from the Northern Division is my good  
25 friend, Tom Mitchell.

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Tom, would you stand.

(Applause.)

PRESIDENT BENGTON: Jody, take a good look at him because you are not going to see too much of him in the next few years. (Laughter.)

And, likewise, a very good friend, a fellow Mexican traveler, Mack Redford, from the new Central Division. Mack.

(Applause.)

PRESIDENT BENGTON: Mack ran unopposed. I told him the other day that we had an official canvas and that Donald Duck got three votes and he was the new commissioner. (Laughter.)

Gloria, I see you and Clarence out there. You weren't here earlier, but I want to extend to you, as I did in your absence, our thanks for a job well done. I know Ron couldn't do it without you, Gloria.

(Applause.)

PRESIDENT-ELECT NELSON: Thank you, John; you just took one of the items off my agenda.

I am informed by Mack that he was one of the real opponents of the five commissioners and when he ran for office, his platform was: "I was against it to start with, and I am going to prove

1 I was right." (Laughter.)

2 We do have one other presentation to  
3 give John. Some state bar president's lady in  
4 the past started a tradition that the informal gifts  
5 of the Board of Commissioners to the president should  
6 be silver. I think it was because she wanted silver.  
7 We smashed that tradition beyond all repair last  
8 night, basically for the reason that John has got  
9 enough silver in his sideburns to last him a long  
10 time. (Laughter.)

11 But there is a further presentation that  
12 is made to the outgoing president on behalf of the  
13 bar itself and not on behalf of the personal wishes,  
14 good wishes, of the Board of Commissioners.

15 So John, on behalf of the State Bar,  
16 I would like to present this to you. It is a  
17 sterling silver platter, engraved "John H. Bengtson,  
18 *President Idaho State Bar, 1973-1974.*"

19 PRESIDENT BENGTON: Thank you, Tom.  
20 Thank you.

21 (Applause.)

22 PRESIDENT BENGTON: The one you gave  
23 John Sharp last year was bigger. (Laughter.)

24 Thank you all very much.

25 PRESIDENT-ELECT NELSON: I would like to, in

1 addition, to the other thanks that we have expressed  
2 here today, express the thanks of the State Bar to  
3 Grace Tucker and her daughter, Dianne, who is standing  
4 out in back, and their husband and father  
5 respectively, for the service that they provided in  
6 taking down and transcribing the activities, the  
7 minutes of this Business Session.

8           They come up at their own expense; there  
9 is no charge to the bar. I think we'd have to beat  
10 them off with a club to keep them from coming.

11           On behalf of the State Bar, Grace, I  
12 certainly appreciate it.

13           (Applause.)

14           PRESIDENT-ELECT NELSON: Is there any  
15 business to come before this Business Session?

16           MR. LARSON: Mr. President.

17           PRESIDENT-ELECT NELSON: Mr. Larson.

18           (Discussion off the record.)

19           PRESIDENT-ELECT NELSON: Is there any further  
20 business to come before this meeting?

21           Mr. Benoit?

22           MR. BENOIT: I would like to place a  
23 resolution in the record.

24

25

1                   BE IT RESOLVED that the Idaho State  
2 Bar express its appreciation to  
3 John Bengtson and the commissioners for  
4 their excellent work and contribution  
5 to the welfare of the bar for the year  
6 1973-'74.  
7

8                   (A chorus of "Seconds.")

9                   PRESIDENT-ELECT NELSON: You have heard the  
10 motion, the proposed resolution. Is there any  
11 debate? (Laughter.)

12                   All in favor signify by saying "Aye."

13                   (A chorus of "Ayes.")

14                   PRESIDENT-ELECT NELSON: Thank you.

15                   If there is no further business to come  
16 before this meeting, I have already paid John the  
17 five dollars, so I don't owe him anything -- he  
18 thought that that was a gift. I really did plan on  
19 taking it back, however.

20                   If there is no further business to come  
21 before the meeting, I think that those of you who  
22 are so inclined should perhaps join John for his  
23 martini as he passes into history. I have already  
24 told John that it is better to be a "has been" than  
25 a "never was." And I certainly feel that the

1 State Bar is lucky to have had the services of John.  
2 He has not missed a grading session since 1963. He  
3 has paid a great price to be invited to the next  
4 grading session, which will make 23 in a row or some  
5 such a matter. I would like to have you give John  
6 a hand as we go out.

7 (Standing ovation.)

8 PRESIDENT-ELECT NELSON: The meeting is  
9 adjourned.

10 (The proceedings were concluded  
11 at 10:15 a.m.)

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