PROCEEDINGS

OF THE

IDAHO STATE BAR ASSOCIATION

VOL. II, 1923

TENTH BIENNIAL MEETING
HELD AT FEDERAL COURT ROOMS
BOISE, IDAHO
JANUARY 3, 4, 5, 1923

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Syms-York Company, Inc.
Boise

OFFICERS AND COMMITTEES
1923-1925

PRESIDENT

JOHN C. RICE, Caldwell

SECRETARY-TREASURER

SAM S. GRIFFIN, 610 Overland Building, Boise

VICE-PRESIDENTS FOR EACH JUDICIAL DISTRICT

First—A. H. Featherstone, Wallace
Second—O. P. Cockerill, Moscow
Third—C. F. Reddock, Boise
Fourth—A. F. James, Gooding
Fifth—W. H. Witty, Pocatello
Sixth—A. S. Dickinson, Blackfoot
Seventh—Alfred F. Stone, Caldwell
Eighth—G. H. Martin, Sandpoint
Ninth—C. A. Bandel, Rigby
Tenth—Eugene O'Neill, Lewiston
Eleventh—H. A. Baker, Rupert

EXECUTIVE COMMITTEE

The President and Secretary-Treasurer
C. H. Potts, Coeur d'Alene
G. H. Van de Steeg, Nampa
C. E. Crowley, Idaho Falls

GRIEVANCE COMMITTEES

STATE COMMITTEE

T. L. Martin, Boise, *Chairman*
B. W. Oppenheim, Boise
W. E. Sullivan, Boise

DISTRICT COMMITTEES

The Vice-President for each District is ex-officio Chairman of the Grievance Committee of his District. The following are the other members. Where none are given the Vice-President has failed to make recommendations therefor to the President:

First—
Second—
Third—D. E. Brinck, Boise; W. B. Davidson, Boise;
Fourth—W. A. Brodhead, Hailey; C. O. Stockslager, Shoshone.
Fifth—T. D. Jones, Pocatello; J. R. S. Budge, Pocatello.
Sixth—J. G. Martin, Arco; L. E. Glennon, Salmon
Seventh—John H. Norris, Payette; Finley Monroe, Emmett.
Eighth—
Ninth—James S. Byers, Idaho Falls; C. W. Poole, Rexburg.
Tenth—M. Reese Hattabaugh, Grangeville; P. E. Stookey, Lewiston.
Eleventh—A. B. Barclay, Jerome; H. J. Benoit, Twin Falls.

ANNOUNCEMENTS

The Secretary endeavors to keep a complete card index of *all* attorneys of the State, whether members or not. Please send immediately to him all changes of address, and names of new attorneys and of deceased attorneys.

Complaints and grievances should be sent to the Secretary for reference to the proper Grievance Committee. Complaints should give full facts, be sworn to, and there should be attached all documents and correspondence relating to the grievance.

Refer matters which come within the jurisdiction of any of the Association Committees to the Secretary, or Chairman of the Committee.

If you have anything which the Association should investigate, or in which it can assist you, write the Secretary.

Are you a member of the AMERICAN BAR ASSOCIATION? If not, you should join.

If your name does not appear in the membership list, it is because you are not a member or have neglected to pay dues. If the former, apply for membership on attached application, accompanyed with $2.00 for current dues; if the latter you may be reinstated by payment of delinquent dues.

Every attorney ought to belong to the Association. Induce the attorneys of your city to join and help the work of the Association.

APPLICATION FOR MEMBERSHIP

To the Secretary, Idaho State Bar Association:

I hereby make application for membership in the IDAHO STATE BAR ASSOCIATION, and for that purpose enclose $2.00 for 1923 dues, and give the following information as required by the Constitution:

....
(Name in full) (Residence)

....
(Place of Practice) (Place and date of birth)

.....
(Place and date of naturalization)

.....
(Admitted to Practice, what other States, and dates)

I was admitted to practice before the Supreme Court of Idaho on

.....

and since said date have been, and now am, in good standing before said Court.

Dated this.....day of....., 19.....

Applicant.....

PRESIDENTS

RICHARD Z. JOHNSON, Boise	1899-1901
JAMES E. BABB, Lewiston	*1901-1909
FRANK T. WYMAN, Boise	1909-1911
FRANK MARTIN, Boise	1911-1913
FREMONT WOOD, Boise	1913-1915
KARL PAINE, Boise	1915-1917
JAMES H. HAWLEY, Boise	1917-1919
W. E. SULLIVAN, Boise	1919-1921
JAMES F. AILSHIE, Coeur d'Alene	1921-1923
JOHN C. RICE, Caldwell	1923-1925

SECRETARIES

MILTON G. CAGE, Boise	*1899-1909
B. S. CROW, Boise	1909-1917
O. W. WORTHWINE, Boise	1917-1919
SAM S. GRIFFIN, Boise	1919-1925

TREASURERS

SELDEN B. KINGSBURY, Boise	*1899-1909
O. O. HAGA, Boise	1909-1911
CHARLES F. KOELSCH, Boise	1911-1913
FRANK B. KINYON, Boise	1913-1915
P. E. CAVANEY, Boise	1915-1919
N. EUGENE BRASIE, Boise	1919-1921
Office consolidated with Secretary	1921

*The records of the Association show no meetings or elections from 1901 to 1909.

MEMBERS OF THE IDAHO STATE BAR ASSOCIATION

A

Adair, Ralph W., Blackfoot
Ailshie, James F., Coeur d'Alene
Ailshie, James F. Jr., Coeur d'Alene
Anderson, R. S., American Falls
Asher, A. P., Sandpoint
Auger, B., Grangeville

B

Babb, James E., Lewiston
Babcock, W. A., Twin Falls
Baird, S. L., American Falls
Baker, Hugh A., Rupert
Bandel, C. A., Rigby
Barber, Ira E., Boise
Barber, S. I., Boise
Baum, O. R., American Falls
Becker, J. R., Lewiston
Benoit, H. J., Twin Falls
Benting, C. O., Pocatello
Beyer, H. F., Boise
Bird, Branch, Gooding
Bissell, W. G., Gooding
Blaine, S. E., Boise
Boone, Jas. L., Boise
Brasie, N. E., Boise
Brinck, Dana E., Boise
Brodhead, Wm. A., Hailey
Bryan, Ed. L., Caldwell
Buckner, Thos. E., Caldwell
Budge, Alfred, Boise
Budge, J. R. S., Pocatello
Burtenshaw, L. L., Council
Butler, Fred E., Lewiston

C

Callahan, D. A., Wallace
Cavanah, C. C., Boise
Cavaney, P. E., Boise
Chalfant, F. E., Boise
Chapman, W. O., Twin Falls
Church, M. I., Boise
Clark, Chase A., Mackay
Clark, Solon B., Mackay
Cockerill, O. P., Moscow
Colvin, J. F., Boise
Connor, A. H., Boise
Cook, J. T., Boise
Cox, Eugene A., Lewiston
Crowley, C. E., Idaho Falls

D

Daugherty, T. G., Wilder
Davidson, W. B., Boise
Davis, E. G., Boise
Davison, W. H., Boise
Delana, E. S., Boise
Dickinson, A. S., Blackfoot
Dietrich, F. S., Boise
Dunbar, W. C., Boise
Dunn, R. N., Boise

E

Edgington, Geo. W., Idaho Falls
Elam, L. E., Boise
Eldridge, J. B., Boise
Ensign, H. F., Hailey
Erb, Fred C., Weiser
Erb, George E., Lewiston
Estabrook, Frank, Nampa

F

Featherstone, A. H., Wallace
Flynn, John W., Sandpoint
Fox, O. M., Caldwell
Frawley, E. J., Boise
Freehafer, A. L., Weiser
French, Burton L., Moscow

G

Gibson, Claude W., Boise
Gillis, W. D., Filer
Givens, Raymond L., Boise
Glennon, L. E., Salmon
Good, J. R., Boise
Griffin, Sam S., Boise
Gwinn, J. G., St. Anthony

H

Haga, O. O., Boise
Hagelin, F. A., Nampa
Hanson, W. H., Wallace
Hart, I. W., Boise
Hartson, Clinton H., Boise
Hawley, James H., Boise
Hawley, Jess, Boise
Hays, S. D., Boise
Hedrick, J. G., Hailey
Hicks, A. R., Twin Falls

J

Jackson, H. D., Wendell
James, A. F., Gooding

K

Kahn, Chas. M., Boise
Katerndahl, R. W., Dubois
Koelsch, Chas. F., Boise

L

Lampert, J. M., Boise
Lamson, G. W., Nampa
LaVeine, E. N., St. Maries
Lee, T. Bailey, Burley
Lee, Wm. A., Boise
Lee, Wm. E., Boise
Loofbourrow, W. C., American Falls
Lyon, L. M., Payette

Mc

McCarthy, Chas. P., Boise
McClear, J. L., Coeur d'Alene
McCracken, R. M., Boise
McCue, J. J., Boise
McFadden, Geo. J., Plummer
McFadden, J. J., Hailey
McNaughton, Wm. F., Coeur d'Alene

M

Martin, T. L., Boise
Mills, H. C., Twin Falls
Monroe, Finley, Emmett
Morrison, C. W., Rigby
Morrow, McKeen F., Boise
Myers, John H., Idaho City

N

Needham, Daniel, Lewiston
Nelson, R. S., Coeur d'Alene
Nugent, John F., Boise

O

O'Neil, Eugene, Lewiston
Oppenheim, B. W., Boise

P

Padgham, Geo. W., Gooding
Padgham, Harry A., Gooding
Padgham, John H., Salmon
Paine, Karl, Boise
Perkins, P. K., Hailey
Pizey, Paul, Boise
Potts, C. H., Coenr d'Alene

R

Randall, F. S., Lewiston
Reddock, C. F., Boise
Rhodes, D. L., Nampa
Rice, John C., Caldwell
Richards, J. H., Boise

S

Scales, W. N., Grangeville
Scatterday, Ralph B., Caldwell
Snow, Edwin, Boise
Soule, H. W., St. Anthony
Steele, Edgar C., Moscow
Stephens, E. W., Lewiston
Stockslager, C. O., Shoshone
Stone, Alfred F., Caldwell
Stoutemeyer, B. E., Boise
Sullivan, I. N., Boise
Sullivan, L. L., Boise
Sullivan, W. E., Boise
Sutphen, D. H., Gooding
Sutphen, P. T., Gooding
Sutton, A. O., Payette
Swanson, H. J., Pocatello

T

Taylor, C. J., Rexburg
Taylor, R. C., Boise
Taylor, V. L., Mt. Home
Tennyson, L. W., Boise
Terrell, R. M., Pocatello
Tydeman, F. E., Pocatello

V

Van Winkle, A. R., Hailey
Varian, B. S., Weiser

W

Walters, E. A., Twin Falls
Warren, G. T., Caldwell
Wearne, R. G., Coeur d'Alene
Wilkie, R. S., Driggs
Wilson, A. B., Twin Falls
Wilson, R. E., Cambridge
Witty, W. H., Pocatello
Wyman, Frank T., Boise
Wyman, H. C., Boise

PROCEEDINGS

OF THE

IDAHO STATE BAR ASSOCIATION

JANUARY 3, 4, AND 5, 1923

Pursuant to call of the Executive Committee the Idaho State Bar Association met at the Federal Court Room, Boise, Idaho on January 3, 4 and 5, 1923. President James F. Ailshie of Coeur d'Alene, Idaho, presiding.

WEDNESDAY, JANUARY 3, 1923

TEN O'CLOCK A. M.

Present, 33. President Ailshie presiding. The President addressed the Association and detailed the efforts made to secure persons from out the State, among others, Justice Sutherland of the Supreme Court of the United States, Attorney General Daugherty, Justice Frick of the Supreme Court of Utah, Chief Justice Burnett of Oregon, etc., to address the association and the failure therein.

The Secretary announced that dues for 1923 were due and payable; that the banquet would be held Friday evening.

The President called for reports of Standing Committees.

1. Jurisprudence and Law Reform, Dean Driscoll, Chairman. No report.

2. Judicial Administration and Remedial Procedure. John C. Rice, Chairman. (See Appendix.) Discussion being called for, Wm. M. Morgan advocated that rules of procedure should be fixed by the Courts and not by the Legislature.

It was moved that the report be referred to the Special Committee on Revision of Appellate Procedure. No second.

B. W. Oppenheim remarked that all attorneys agreed with the report and that it should be submitted to the Legislative Committee with the Association's approval thereof. He moved that

> We approve the idea of the report and refer it to the Legislative Committee with instructions to draft an act and submit the same to the Legislature. Seconded.

Judge F. S. Dietrich discussed the report particularly urging that instructions should be excepted to at the time given, so that opportunity be given the trial judge, to avoid error by correction. Wm. M. Morgan suggested that if that were to be the rule it ought to apply also to civil cases.

J. H. Richards suggested that the attorney should make an abstract of the record on appeal in order to cut down the work of the appellate Court. P. E. Cavaney agreed, and suggested that civil appellate procedure should be made to conform to criminal appellate procedure.

The foregoing motion being put, was carried.

The President announced that he would appoint nominating, auditing and legislative Committees at the afternoon session.

3. *Needed Legislation:* B. W. Oppenheim, Chairman. (See Appendix.) The report being open for discussion, E. C. Boom doubted the effectiveness of Uniform laws to result in uniform decisions thereon. R. C. Taylor discussed the report.

Upon motion made, seconded and carried, the report was referred to the Legislative Committee without recommendation.

4. *Mining and Irrigation Law:* Edwin Snow, Chairman. Mr. Snow wrote the Association that on account of absence from the City, no report had been prepared.

5. *Commercial Law:* C. E. Crowley, Chairman. No report.

6. *Publications:* E. G. Rosenheim, Chairman, announced that his Committee had nothing to report.

7. *State Grievances:* O. O. Haga, Chairman, requested that the report be put over until later, and the request was granted.

John C. Rice suggested that the Rules of the Supreme Court for admission to practice should be made more comprehensive and suggested that a committee of the Bar and the Court work together thereon.

A communication calling attention to the fact that there was no statute permitting the husband, as guardian of an incompetent wife, to mortgage community property was referred to the Needed Legislation Committee.

R. L. Givens suggested that relief should be given Court reporters by enabling them to use transcript fees in employing assistants and extra reporters. It was moved and seconded that the suggestion be approved and referred to the Legislative Committee for drafting a bill, and to present same to the Legislature.

Wm. M. Morgan doubted the constitutionality of such a measure, unless it provided an appropriation, to which Givens assented, but E. G. Davis dissented. Discussion by G. W. Lamson and R. C. Taylor the latter suggesting that reporters be paid by fees and not by salary in order to obviate constitutional objection.

The motion, being put, was carried.

Recess until 2:00 P. M.

WEDNESDAY

TWO O'CLOCK P. M.

Present, 35.

The President announced the appointment of the Legislative Committee as follows:

Jess Hawley, Chairman; Frank Martin, P. E. Cavaney, Ben Oppenheim, Wm. M. Morgan, W. E. Sullivan, Harry Kessler.

The Special Committee on "Appellate Procedure," Jess Hawley, Chairman, made no report.

The report of the Special Committee on "Settling Issues and Trial Procedure," Frank Martin, Chairman, presented written report which is to be found in the appendix.

Claude Gibson advocated a statute providing that if a demurrer be sustained the attorney drawing the defective pleading be fined $10.00; if overruled, the attorney filing the demurrer be fined a like amount; the purpose being to secure better pleading and fewer dilatory demurrers.

The report of the special committee on "Probate Procedure," Chas. M. Kahn, Chairman, was presented and is to be found in the Appendix. G. W. Lamson moved that it be referred to the Legislative Committee. Seconded. Frank Martin moved as an amendment that the reporting Committee draft a bill or bills based upon the report and submit the same to the Legislative Committee. Seconded.

Discussion by Jess Hawley, Chas. M. Kahn, Sam S. Griffin, Frank Martin, C. H. Potts.

Chas. M. Kahn offered an amendment that the report be submitted to the Association, section by section, which, being put to vote, was carried. Whereupon Chas. M. Kahn read:

First recommendation. Upon motion, seconded and carried, discussion was passed.

Second recommendation. A like motion prevailed.

Third recommendation. Upon motion, seconded and carried the same was endorsed and the time fixed at six months.

Fourth recommendation. Motion presented, seconded and carried that the Committee draft a bill and refer to Legislative Committee.

Fifth, upon motion, seconded and carried, discussion was passed.

Sixth (a). Jess Hawley contended it was not within the scope of Association activities to pass upon substantive principles. C. M. Kahn, John C. Rice and Paris Martin dissent. John C. Rice and B. W. Oppenheim favor report. Upon motion, seconded and carried, discussion was passed.

(b) Frank Martin moved that the provision making the certified copy prima facie evidence be stricken out, and provision made that the order have the same effect as a decree of final distribution; that thereupon said recommendation be referred to the Legislative Committee, and a summary proceeding be adopted. Seconded. Claude Gibson objects to a final decree upon but ten days' notice. Discussion by C. H. Potts, who favors merely repealing the proviso; discussion by E. C. Boom and B. W. Oppenheim. Motion by Frank Martin put and carried.

Seventh, Ninth and Tenth recommendations. Upon motion, seconded and carried, discussion was passed.

Eighth recommendation. Motion for adoption, seconded and carried.

The State Grievance Committee, O. O. Haga, Chairman, presented a written report which is to be found in the appendix.

The President announced the following committees:

Auditing: Charles F. Reddock, Chairman,
C. H. Potts,
Chas. M. Kahn.

Nominations: G. W. Lamson, Chairman,
B. W. Oppenheim,
L. L. Burtenshaw.

The meeting recessed until eight o'clock P. M.

WEDNESDAY

EIGHT O'CLOCK P. M.

Present, 45.

The President of the Association, James F. Ailshie of Couer d'Alene, delivered the President's address "As the People See Courts of Justice",

which is hereinafter printed. Thereafter the same was discussed by Frank Martin, Jess Hawley, O. P. Cockrill, B. W. Oppenheim and others, at the conclusion of which E. G. Davis moved that the President's address be printed in the proceedings, and that the Association endorse the views of the President designed to secure a strong organization for the purpose of attaining the highest ethical standards of the bar. The motion having been seconded and put to a vote by the Secretary was unanimously carried.

The special committee appointed by the President at the request of the Abstracters' Association, to recommend a uniform and acceptable form of abstracters' certificate, Ira E. Barber, Chairman, presented its report, which is to be found in the appendix. Upon motion of P. E. Cavaney, duly seconded and carried, the same was received and placed on file.

The Secretary-Treasurer presented his report, which is printed in the appendix, and was referred to the Auditing Committee.

The Association recessed until Thursday at ten o'clock A. M.

THURSDAY—JUDICIAL DAY

TEN O'CLOCK A. M.

Charles F. Reddock, formerly District Judge, addressed the Association upon "Some Observations from the Bench."

Justice R. N. Dunn of the Supreme Court, Judge F. S. Dietrich of the Federal District Court, and Justice Wm. E. Lee discussed the matters set forth in the address. Claude W. Gibson spoke of the evils of voluminous pleading, particularly answers. Judge Dietrich was of the opinion that the remedy for this was not in rules because more time was lost in enforcing the rules than in letting the matter go; that the best remedy was an inhospitable reception by the bar and the gradual building up of a better, more skillful practice, resulting in concise statement of only the necessary elements of the cause of action or defense and elimination of immaterial allegations.

To which J. F. Ailshie replied that the Courts themselves by sustaining motions or demurrers for uncertainty had built up the present practice of pleading evidentiary matter.

H. C. Wyman observed that if the defendant knew what was in the pleading verified by him, and for which he thereby became responsible, denials of many matters known in fact to be true would cease.

Frank Chalfant, Probate Judge of Ada County, presented the matter of providing clerical assistance to Probate Judges in counties of the first class.

L. L. Burtenshaw opposed the Association's going on record in such matters, and discussed the condition of Probate records. The subject was assigned for discussion at the afternoon session.

Recess until 2:00 P. M.

THURSDAY

TWO O'CLOCK P. M.

Present, 51.

John C. Rice, former Chief Justice of the Supreme Court, addressed the association upon the condition of the Court's docket and the disposal of cases.

Justices Budge, Dunn, McCarthy and Wm. A. Lee discussed the same topic.

Ira E. Barber suggested that time be saved by stipulating the record; E. A. Walters suggested that the Court sit in divisions, in which Paris Martin, C. H. Potts and E. G. Davis concurred. Justice Dunn and J. F. Ailshie joined the discussion.

Recess until 8:00 P. M.

THURSDAY

EIGHT O'CLOCK P. M.

Present, 60.

Hon. F. S. Dietrich, Judge of the United States District Court for Idaho, addressed the Association upon "Ethics of the Bench and Bar" which is hereinafter printed.

Upon motion made, seconded and carried, the address was ordered published in the proceedings.

The State Grievance Committee submitted the following resolutions, moved their adoption, and the motion having been seconded, the resolutions were adopted.

"*Be it Resolved*, That members of the Bar should co-operate with and assist the officers of the Association and the State and District or local grievance Committees in making reports and securing information and data relative to charges preferred against members of the bar, to the end that such investigations may be speedily made and justice done the parties concerned without unnecessary delay."

"*Be it Resolved*, That attorneys admitted to practice in other states who seek admission to practice before the Courts of this State should not be recommended for admission by members of the Bar of this State without a thorough investigation having first been made as to the moral character and professional standing of the attorney in the State where he last resided before coming to the State of Idaho.

Be it Furthur Resolved, That the Association recommend to the Supreme Court, a change in the present rules of said Court relating to admissions to practice so as to provide for a comprehensive and full investigation of the character, qualifications and attainments of all applicants."

The adoption of the following resolution was moved, seconded and carried.

"*Be it Resolved*, That this Association request the Supreme Court of the State of Idaho to adopt the Code of Ethics of the American Bar Association as the standard of ethics by which to be guided in dealing with attorneys concerning any complaints or charges made against them and that the Court require all applicants for admission to pass examinations on that Code of Ethics."

A motion for adoption of a resolution relating to clerical assistance for Probate Courts in Counties of the first class, being seconded and put to vote was declared lost.

A bill for the establishment of a small Claims court was presented for consideration. By motion duly carried, the same was referred

to the Legislative Committee without approval of the form, but favorably recommending the theory and purpose of such a court and bill.

Recess until Friday, 10:00 A. M.

FRIDAY

TEN O'CLOCK A. M.

Present, 28.

The bill for organization of the Bar, which had been discussed and approved at the meeting in 1921 and was printed in full in tbe 1921 proceedings, was again presented, discussed and approved with the exception that the annual fee was fixed at a maximum of five dollars, and to be such less amount as the Board of Commissioners should determine. Upon motion carried it was referred to the Legislative Committee.

(NOTE: This bill, as re-drafted and amended in the Legislature was passed hy the Legislature of the State of Idaho, and approved by the Governor. See Session Laws 1923, page 343.)

O. P. Cockerill, Dean of the College of Law, University of Idaho, addressed the Association upon "Public Service and the Bar", which is hereinafter printed.

Upon motion made, seconded and carried, the thanks and appreciation of the Association were tendered Dean Cockerill, and the address was ordered printed in the proceedings.

Recess until 2:00 P. M.

FRIDAY

TWO O'CLOCK P. M.

Present, 37.

A resolution relating to the relief of congestion of the Supreme Court docket was presented. Chas. C. Moore, Governor of the State of Idaho, appeared before the Association and briefly addressed the session, expressing a hope for legislation for the relief of Courts, a saving of expense and time of appeals, the reduction of the expense of conducting the Courts by eliminating some of the places where terms are now required by law, thus cutting out the expense of buildings, traveling charges, duplications of libraries and incidental charges, and other matters.

Upon motion made, seconded and carried, the President was directed to appoint a Committee of three to give immediate thought to the suggestions of Governor Moore.

The President appointed Frank Martin, Chairman, I. N. Sullivan, and Jess Hawley, and directed a report prior to adjournment.

The resolution relating to relief of the Supreme Court docket as presented is as follows:

"*Resolved by the Idaho State Bar Association*, That the following recommendation be presented to the Legislature as the most practical method of relieving the present congestion of business on the Supreme Court calendar and of meeting the ever increasing demands on the courts and securing the speedy determination of future litigation:

1. The adoption of amendments to the constitution reforming the judicial machinery and removing restrictions on the procedure of the Supreme Court and particularly as follows:

A. By eliminating the provision requiring a majority to concur in a decision and permitting the court to sit in departments.

B. By eliminating all limitations on the calling in of district judges.

C. By transferring from the legislative to the judicial department, the prescribing of rules of procedure.

D. By assigning to the chief justice, the functions of a judicial executive charged with the duty of expediting business in all courts of the state and the power of temporarily assigning district judges to other districts.

E. By autborizing limitations on the right of appeal of minor cases.

2. Pending the adoption of constitutional amendments, the enactment by the legislature of laws:

A. Authorizing district judges as ex-officio court commissioners to assist the Supreme Court.

B. Providing that appeals from inferior courts cannot be carried beyond the district court, except in cases involving constitutional questions.

C. Conforming the procedure on appeal in criminal cases to that in civil cases.

Be it Further Resolved, That the Association recommend that the term of Supreme Justices be increased by constitutional Amendment to 10 years and that their salaries be increased by legislative enactment to become effective for all justices upon the expiration of the term of the latest elected justice to $7,500.00 per annum.

Be it Further Resolved, That the Association recommend to the Supreme Court the adoption of a rule that, except in cases involving constitutional questions and other questions of great public interest, cases shall be heard by only three justices, and

Be it Also Resolved, That the Association recommend to the court a more frequent resort to memorandum decisions in cases not involving important or novel issues."

and its adoption moved and seconded. Whereupon, the same was discussed by Judge Raymond Givens, Frank Martin, Wm. Healy, Jess Hawley, Paris Martin, B. W. Oppenheim, C. H. Potts, R. C. Taylor, J. C. Colvin, E. G. Davis, P. E. Cavaney, I. N. Sullivan, Harry Wyman, Harry Kessler and Gustave Kroeger.

The adoption of a substitute resolution as follows was moved, seconded and carried.

"*Resolved*, That the Idaho State Bar Association is of the opinion that business of the Supreme Court could be expedited by the adoption of a rule that, except in cases involving constitutional questions and other questions of great public interest, cases shall be heard by only three justices, and

A more frequent resort to memorandum decisions in cases not involving important or novel issues."

The Nominating Committee reported as follows:

"Your Committee on Nominations respectfully submit the following nominations for offices of this Association for the ensuing biennial:

PRESIDENT—
Hon. John C. Rice, Caldwell.

SECRETARY-TREASURER—
Sam S. Griffin, Boise.

EXECUTIVE COMMITTEE—
C. H. Potts, Coeur d'Alene; G. H. Van de Steeg, Nampa; C. E. Crowley, Idaho, Falls.

VICE-PRESIDENTS—Districts.

First—A. H. Featherstone, Wallace
Second—O. P. Cockerill, Moscow
Third—C. F. Reddock, Boise
Fourth—A. F. James, Gooding
Fifth—W. H. Witty, Pocatello
Sixth—A. S. Dickinson, Blackfoot
Seventh—Alfred Stone, Caldwell
Eighth—G. H. Martin, Sandpoint
Ninth—C. A. Bandel, Rigby
Tenth—Eugene O'Neill, Lewiston
Eleventh—H. A. Baker, Rupert

Respectfully submitted,
(Signed) G. W. LAMSON,
L. L. BURTENSHAW,
B. W. OPPENHEIM

Upon motion made, seconded and carried the report of the Committee was adopted and the Secretary instructed to cast the unanimous ballot of the Association for said nominees. The Secretary having so cast the ballot, said nominees were declared duly elected to said respective offices. President Rice was escorted to the Chair and being introduced by retiring President Ailshie, assumed office and briefly addressed the session.

After discussion of time and place of meeting, motion was made and carried that the same be referred to the Executive Committee.

Motion was made and carried that the Association express its thanks to the Pocatello Chamber of Commerce for an invitation to hold the next meeting at Pocatello.

It was moved, and carried, that if the Bar Organization Bill became law, the Bar so organized be deemed the successor to the Idaho State Bar Association, and the property of the latter be turned over to it subject to such conditions as the Executive Committee shall fix and determine.

The special committee on Governor Moore's suggestions reported, and moved the adoption of the following resolution:

"*Resolved*, That the Idaho State Bar Association express its thanks and admiration to Honorable C. C. Moore, Governor of the State of Idaho, for the practical common sense address delivered by him to the Association.

"We concur in and endorse his suggestion that the Idaho Supreme Court should discontinue sessions at Pocatello, and one City in Northern Idaho; that the state libraries in those cities should be removed to the University or elsewhere, in the discretion of the Supreme Court.

"These recommendations being made in the interest of economy in the expenditure of taxes and greater efficiency and saving of time for the Supreme Court, we respectfully recommend them to the consideration of the Legislature of the State of Idaho.

FRANK MARTIN, Chairman
I. N. SULLIVAN,
JESS HAWLEY."

The motion having been seconded was put and carried.

Upon motion of Jess Hawley, seconded, put and carried the thanks and appreciation of the Association were tendered to the retiring President and other officers of the Association.

Whereupon, a motion to adjourn having been presented, and being seconded and put to vote, was carried.

FRIDAY EVENING

The sessions closed with a banquet at the Boise Chamber of Commerce. The chairman of the Banquet Committee was Sidman I. Barber, who was assisted by Harry Morey and Chas. Winstead. A. H. Conner, Attorney General for Idaho, presided as toastmaster. C. H. Potts, Coeur d'Alene; D. A. Callahan, Wallace; Justice Charles P. McCarthy, Boise, and John C. Rice, Caldwell, responded with toasts. Clarence T. Ward of the Boise Bar, rendered vocal selections.

REPORT OF SECRETARY-TREASURER

OF

IDAHO STATE BAR ASSOCIATION

FROM JANUARY 1, 1922 TO JANUARY 2, 1923, INCLUSIVE

RECEIPTS:

Dues Jan. 1, 1922 to Jan. 2, 1923, incl (Receipt No. 66)	$410.06	
Interest, Time Deposit Pac. Nat'l. Bank	12.00	
Time Certificates, Pacific Nat'l. Bank	300.00	
Dividends on Time Certificate Overland Nat'l. Bank	90.30	
Deposited First Nat'l. Bank		$480.36
Time Certificates, Pac. Nat'l. Bank		312.00
Cash on hand		28.00
Balance on hand Dec. 31, 1921	$27.09	$19.09
TOTALS	$839.45	$839.45

DISBURSEMENTS:

Treasurer's bond premium		$2.50
Stationery, Stamps, Printing and Supplies		$84.45
Stenographer		41.50
Time Deposits, Pacific Nat'l. Bank.		
No. 14872 dated March 4, 1922	$100.00	
No. 14873 dated March 4, 1922	100.00	
No. 14874 dated March 4, 1922	50.00	
No. 14875 dated March 4, 1922	62.00	$312.00
Secretary-Treasurer's Salary, 1922		$120.00
TOTAL		$560.45
BALANCE	$279.00	

BALANCE:

Cash on hand	$28.00
First Nat'l. Bank	251.00
TOTAL	$279.00

RESOURCES:

Cash	$28.00
First Nat'l. Bank	251.00
Certificate Deposit Pacific National	
No. 14872 at 4%, dated March 4, 1922.	$100.00
No. 14873 at 4%, dated March 4, 1922.	100.00
No. 14874 at 4%, dated March 4, 1922.	50.00
No. 14875 at 4%, dated March 4, 1922.	62.00
Bal. due from Receiver Overland Nat'l. Bank, Receiver's Certificate No. 0485	110.34
	$701.34

MEMBERSHIP 1922: (Including Honorary)

Official receipts issued for 1922 dues		195
Reinstated (included in 1923 receipts)		6
		201
Paid		176
Honorary		25
Receipts issued for 1923 dues Including Honorary		66
New Members, 1922	35	

Recapitulation Jan. 15, 1921 to Jan. 2, 1923, inclusive.

1921 Receipts	$1,104.17
1922 Receipts	812.36
TOTAL	$1,916.53
1921 Disbursements	$1,077.08
1922 Disbursements	560.45
	$1,637.53
BALANCE	$279.00

REPORTS OF COMMITTEES

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE

To the Idaho State Bar Association:

Your Committee on Judicial Administration and Remedial Procedure, begs leave to report:

In the judgment of the Committee, one of the most urgent reforms needed in legal procedure in this state consists in conforming the practice in criminal matters to that which prevails in civil procedure.

In a civil case, under C. S. Sec. 6879, as construed in Steinour vs. Oakley State Bank, 32 Ida. 91, 177 Pac. 843, practically every order of the court from the inception of the suit until final judgment is deemed excepted to, and practically every order may be reviewed on appeal without the necessity of preserving the record in a formal bill of exceptions. In a criminal trial, however, every order made before the actual trial begins must be excepted to, and the record preserved in a formal bill of exceptions in order to be reviewed by the appellate court. Upon the trial, the action of the court in admitting or refusing to admit testimony is not subject to review unless an exception is taken and noted in the record. In the matter of instructions, where the appeal is taken by the defendant, only instructions requested by the state and given or those requested by the defendant and refused are deemed excepted to. An instruction given by the court on its own motion must be excepted to at the time in order to be reviewed. Moreover, upon the overruling of a motion for a new trial in a criminal case, the only record provided for by statute is a bill of exceptions.

These variations in the practice provide numerous pitfalls for counsel defending in a criminal action. The appellate court frequently feels itself hampered and its powers limited by reason of the statutory record required, and frequently has regretted its inability to examine questions which it appeared may have been meritorious.

Your Committee has not gone through the statutes in order to suggest the various amendments necessary for lack of time to devote to the matter. It is understood, however, that the assistance of the Attorney General's office may be had in this matter, if it is found desirable.

Your Committee, however, doubts the wisdom of a statute which makes every instruction given deemed excepted to. It would appear that many times an erroneous instruction might be avoided if the attention of the trial judge is directed thereto before the case is finally submitted to the jury.

Respectfully submitted,

JOHN C. RICE, Chairman.

FRANK S. DIETRICH

NEEDED LEGISLATION

To the President and Members of the Idaho State Bar Association:

Your committee on needed legislation respectfully submits for the consideration of the Association, the following subject, without definite recommendations, however, owing to the fact that the committee has not had an opportunity to consult.

In the field of commercial law, the most scientific attempt at unification and codification of the law has been the work of the Commissioners on uniform state laws. Idaho, though not contributing in a large degree either financially or intellectually to the work of the Commissioners, has availed itself of the Commission's work and has adopted many of the uniform commercial laws. There are three acts, however, not yet adopted which are worthy of consideration, to-wit:

The Uniform Stock Transfer Act.

The Uniform Fiduciaries Act.

The Uniform Conditional Sales Act.

In the field of public law, particularly as applied to the judicial department, there is a great deal of public interest at this time in the State Supreme Court due largely to the congestion on its calendar and the consequent lack of speedy justice. This problem has been widely considered in the United States. Perhaps the most thoughtful consideration given to this subject has been by the National Municipal League whose proposal is seconded by the American Judicature Society. The ideal sought by the League is:

(1) a unified court for the state,

(2) a chief justice whose business it will be to expedite cases,

(3) the court sitting in departments which can be increased or decreased to suit the requirements of the business,

(4) with power in the court to make its own rules.

This ideal could be carried out to its fullest extent only by a constitutional convention which is not likely to be called in this state for many years. Some progress could be made toward such a program by the submission of constitutional amendments to the people, the most practical of which are as follows:

An amendment eliminating the provision of the constitution requiring a majority of five judges to concur in a decision and permitting the court to sit in divisions of three members each, in which divisions a majority of those sitting could render a decision.

A constitutional amendment eliminating the limitations on the calling in of district judges. By such an amendment, combined with the power to sit in divisions, the court could be temporarily extended in emergencies to include all of the judges of the state sitting in divisions of three members each.

A constitutional amendment taking from the legislature and giving to the judiciary complete control of and the full power to prescribe rules of procedure.

Pending the adoption of constitutional amendments, the Supreme Court might by rule provide for sittings in departments composed of three judges, only assigning cases for hearing by the full bench when constitutional questions or other questions of vital public interest are involved or when it is apparent that there is a decided difference of opinion among the members of the court.

Another subject deserving the attention of the Association is the

matter of increasing the salaries of the Supreme Court justices. Such increase, if made, should become effective at the close of the term of the latest elected justice so that the increase will then apply to all of the justices. With this change also it might be advisable by constitutional amendment to increase the term of the Supreme justices from 6 to 10 years. In this same connection, attention is called to the plan adopted by the Illinois constitutional convention of 1922 providing that after a period of five years the voters of Cook County may initiate a referendum vote on the question of having judges in that County appointed by the Governor from a small list to be made up by the Supreme Court. The terms of judges so appointed are to be for the usual period of 6 years and at the end of each term the "electors of the County shall be given an opportunity at an election to express their disapproval of such judge." A judge so disapproved shall be ineligible for appointment for 6 years.

Respectfully submitted,

B. W. OPPENHEIM, Chairman.

CODE CHANGES

To the Idaho State Bar Association:

We, your special committee appointed to consider and report upon the changes in the Codes relating to "Settling the Issues and Trial" beg leave to report,

Upon notification by the Secretary of this Association that this committee had been appointed together with the subject assigned, the chairman communicated with the various members of the committee to obtain their views upon the subject and what legislation was necessary, if any, to improve or coordinate our codes with relation to settling the issues and to trial. The three members of the committee who reside in Boise met on several occasions and discussed the matter.

After this consideration we reached the conclusion that the provisions of our codes in regard to settling the issue and trials are reasonably satisfactory and that they perhaps are satisfactory to as large a number of the Bar as any system which could be devised.

The committee feels that there are but two things to be attained in this matter and one is that the process of making up the issues shall be as simple and direct as possible, and the other is that the proceedings shall be such as to obtain a speedy disposition of the matters at issue.

In regard to the first matter it must be admitted that the provisions of our codes for making up the issues are simple and direct. In civil matters the pleadings on the part of the plaintiff are the complaint and the demurrer to the answer. On the part of the defendant the demurrer to the complaint and the answer.

The complaint must contain the title of the action, the name of the court and the county in which the action is brought and the names of the parties to the action, a statement of the facts constituting the cause of action in ordinary concise language and a demand for the relief which the plaintiff claims. Nothing could be more simple.

The answer to the complaint shall consist of a general or specific denial of the material allegations of the complaint controverted by

the defendant, and a statement of any new material constituting a defense or counter claim. If the complaint be verified the answer must be verified and the denial of each allegation controverted must be specific and must be made positive or according to the information and belief of the defendant. If the defendant has no knowledge, information or belief as to any matter alleged in the complaint he may place his denial upon that ground. Thus the issues are made up and no plan could be more simple.

Some object to making specific denials in the answer and would prefer to have a general denial used. This of course would shorten the pleading, but would lengthen the trial by making the issues upon which evidence has to be taken uncertain, and under this system the plaintiff would have to be prepared at the trial to prove each allegation of his complaint although the greater portion of it might be admitted by the defendant at the trial. This committee does not favor any change in that regard.

The demurrer raises questions of law and while there are objections to the use of the general demurrer as causing delay it serves a useful purpose and we are persuaded the Bar of this state are not in favor of abolishing it.

A motion may always be made by either party to strike sham and irrelevant answers or irrelevant and redundant material in any pleading.

The committee can propose no changes in the statutes which would materially tend to expedite the making up of the issues and the trial. Under the present statutes the defendant is given twenty days in which to answer after service of summons. This might be limited to ten days as under a former law with power in the court to extend the time where necessary. The statutes in regard to making up the issues and the trial of cases are simple and do not invite delay. The setting of cases for trial, the attendance of witnesses, the selection of a jury and disposition of challenges to jurors are all provided for in simple statutes in regard to which little improvement could be made in the opinion of the committee. The expediting of these matters depends so much upon the presiding judge that very little could be accomplished in any change of statutes. Of course attorneys can assist the judge in expediting trials, but it depends upon the executive ability of the judge himself as to whether trial work shall proceed rapidly or drag.

There are minor differences in regard to the manner of conducting criminal and civil trials with reference to instructions, saving exceptions, and the manner of taking appeals, but in the view of this committee these are of minor importance. A change in the statutes so that the procedure would be exactly the same in civil and criminal matters, might in a way simplify the attorney's work, but such changes would not in any way expedite the business. These changes are of such minor importance that in the view of the committee the present legislature, which doubtless will have important matters to consider, should not be asked to consider them.

Respectfully submitted,

FRANK MARTIN,
WM. M. MORGAN,
A. A. FRASER,
EUGENE COX,
A. C. CHERRY,
Committee.

PROBATE REFORM AND COMMUNITY PROPERTY

To the Idaho State Bar Association:

Your committee on "Probate Reform and Community Property" begs leave to report as follows:

The subject of Probate Reform is one which is deserving of considerable attention. Your Committee believes that at the present time our system of probate proceedings is too complex, lengthy and cumbersome and should be simplified. Your committee desires to point out the instances in which it thinks changes could be made in the law that would simplify and benefit the practice.

1. It believes that the time required for sale of real estate should be shortened.

2. Committee believes that procedure should be adopted and the present laws amended whereby small estates up to $2,500.00 could be more speedily and summarily administered and probated.

3. Your committee believes that it should not be necessary to provide for ten months time in which to file claims against estates and suggests that this time be shortened to from four to six months.

4. We believe that the proceedings set out in Chapter 281 of the Compiled Statutes to determine heirship is vague, uncertain, indefinite and complex and should be revised so as to make the proceedings more simple. The Committee does not believe that Chapter 181 of the Session Laws of 1921 furnishes this relief, but believes that said law of 1921 is a separate and distinct proceeding.

5. Your committee thinks that the present method of posting notices could be simplified by simply requiring the posting of one notice on the bulletin board at the Court House. The posting of the other two notices around town does not amount to anything, for the reason that there are no fixed places where the same have to be placed. If it should be deemed necessary to post three notices, the two which are posted around town should be posted in some fixed and known places which should be designated as official bill boards.

6. While the different members of your committee may have divergent views as to the advisability of all community property going to the surviving spouse on the death of the other as now provided in section 7803, we are all agreed that the frequent changing and amending of this statute is harmful and therefore we recommend that no change be made in that portion of the statute.

(a) We believe that the testamentary disposition of one-half of the community property should not be limited merely to the children and parents of either spouse. Oft times a person making a will desires to remember other relatives, servants, friends or benevolent and philanthropic institutions. This cannot be done under the present limitation of the statute. We therefore, recommend that the statute be amended so as to remove all limitations on testamentary dispositions.

(b) We believe that the last sentence of Section 7803, to-wit:

"Provided however, that no administration of the estate of the wife shall be necessary if she dies intestate" should either be repealed or amended. At the present time this provision is apt to cause trouble, difficulty, defects and clouds on titles. Under the decision of our Supreme Court in Glover vs. Brown, 32 Idaho 426, it is doubtful, whether the probate of a wife's estate can be had where the estate consists entirely of community property. Whether the amending of the statute so as to repeal this provision would give the right of probate of the wife's estate, your committee is not prepared to say.

Your committee believes that the best thing to be done with the statute is to have it amended so as to provide for some procedure whereby a record can be made of the passing of the wife's community property to the husband. It therefore, recommends that Chapter 287 be amended by adding thereto a new section to be known as 7803A which shall provide in substance for the following proceedings:

Upon the death of the wife leaving community property, the husband be required to file a petition in the Probate Court, setting up the marriage, acquiring of the property during coverture, showing it was community property; the death of the wife intestate and the fact that under Statute 7803, the husband became possessed of the estate without probate proceedings and asking for a hearing on said petition.

That notice of said hearing be given for 10 days by posting the same in the manner on the hearing of the final account and petition for distribution; and that any person desiring to do so could file objections. After such hearing, the Probate Court to make a decree showing the jurisdictional facts and vesting the title in the husband. That a certified copy of this decree be filed with the County recorder and that such certified copy be prima facie evidence of the facts therein contained. That the Probate Court be allowed only a nominal fee for this proceeding.

Your committee thinks that this proceeding would clear up the situation and would at least give some record of the fact that the community interest of the wife had passed to the husband.

7. Your committee believes that Section 7569 relating to summary Proceedings in Estates of less than $1,500.00 is indefinite, uncertain and confusing due to the attempt to incorporate provisions relating to two separate classes of such estates and recommends the amending of the section to make its meaning clearer.

8. Your committee believes that no extra charges should be made in Probate proceedings for a Decree confirming sales of real estate or for furnishing certified copies of papers in Estates and therefore recommends the amendment of Section 3705 so as to eliminate these two charges.

The committee believes that the fees paid at the inception of probating an estate should be all that is required. If these are too small they should be raised. To have to pay small amounts whenever certified copies are required is annoying and more or less of a nuisance to the attorney, his client and to the Probate Court. In most instances the copies are prepared by the Attorneys and all that is required by the Probate Court is the certification. We think the initial fee should cover this.

9. The fixing and paying of fees to Attorneys in Estates is ofttimes embarassing to Attorneys as well as to administrators and executors. Your committee feels that this fee should be fixed and standardized by Statutes.

Your Committee recommends that such a bill fixing the fees of Attorneys on a percentage basis such as is now provided for the fees and compensation of administrators and executors, be approved for passage by the present Legislature.

Your Committee leaves the fixing of the percentage to this body for decision. Whether the same basis should be fixed for Attorney's fees as is fixed for executors and administrators at the present time by our statute ought to furnish an interesting and instructive subject for debate by this Association.

In California the fees of Attorneys in Estates are fixed by statute on the same basis as the fees of executors and administrators with a further proviso for extraordinary services such as sales or mortgages of real estate, litigated claims and other litigation. However tbe fees allowed executors and Administrators are considerably less than allowed in Idaho and are as follows:

7% on first $1,000.00
4% on next $9,000.00
3% on next $10,000.00
2% on next $30,000.00
1% on next $50,000.00
½% on all above $100,000.00

In our State the fees allowed are
7% on 1st $1,000.00
5% on next $10,000.00
4% on all above this amount.

10. Another matter that might be discussed with profit at this meeting is the present status, jurisdiction and scope of the Probate Court. Whether or not jurisdiction and power of the Probate Court should be limited strictly to Probate proceedings or whether it should be continued as a Juvenile and Probation Court, as well as a Justice Court, are questions well worth consideration. Your Committee realizes that owing to the difference in population, the diversified interests and lack of adequate transportation facilities between and in the various Counties of our State, any uniform condition that would meet the needs and conveniences of the different Counties would be hard to reach. A condition that might be ideal for the larger and more densely populated Counties might work hardships on the smaller and sparsely settled Counties.

The State of Oregon has made Probate practice part of its Circuit Court corresponding to our District Courts procedure in its larger Counties with a special Department dealing only with Probate procedure.

Your Committee has no recommendations to make on these questions, but simply calls them to your attention for such action as the Association sees fit to take. Any changes advocated must be governed by the Provisions of Secs. 2 and 21 of Art. 5 of the Constitution relating to the judicial Power of the State and the jurisdiction of Probate Courts.

Tbis report is signed by only three members of the Committee residing in Ada County. The other two members reside in the Northern part of the State and no opportunity of conferring with them has presented itself. Neither of them have offered any suggestions to be incorporated in this report.

Respectfully submitted,
CHAS. M. KAHN, Chairman
S. E. BLAINE
WM. C. DUNBAR
Committee on Probate Procedure and Practice.

REPORT OF GRIEVANCE COMMITTEE FOR THE YEAR 1922

To the Idaho State Bar Association:

The Grievance Committee of the Idaho State Bar Association begs to report that more matters have been referred to it during the past year for investigation and consideration than during any corresponding period in the past. This is perhaps due to the general financial depression. Many of the complaints are of the character that cannot be settled or adjusted by the Committee. Controversies over fees are perhaps more numerous than usual, and such matters cannot, of course, be adjusted by the Committee. But the Committee has rendered substantial service in such cases in setting the layman aright on the relation between the client and the attorney, and that contracts with attorneys must be measured and adjusted as contracts between other parties. There are, however, instances where the attorney has either deducted from the collections what would appear on its face to be an unreasonable amount, or has been dilatory and negligent if not entirely forgetful in reporting to the client the result of collections, and in such cases the Committee has rendered substantial service both to the client and the attorney.

It has in many cases speeded up settlements and adjustments that would otherwise have been expensive to the client and at least embarrassing to the attorney if the client had been compelled to take some other course for the vindication of his rights.

A number of matters have been referred to the Committee by the Supreme Court which are of such a nature that the Court did not have the facilities for making the investigations required.

The last matter to be referred by the Supreme Court is that in connection with Henry J. E. Ahrens, who was admitted to practice in this State on a showing that he had been admitted to practice before the Supreme Court of Kansas and had been actively engaged in practice in that State for three years immediately preceding his admission to the Supreme Court of this State. Mr. Ahrens later filed an affidavit with the Supreme Court of this State stating in effect that his purported certificate from the Supreme Court of Kansas was a forgery and that his affidavit filed with his application for admission here was false, and he asked that his certificate be canceled, and the court promptly entered an order annulling the certificate which was surrendered. Thereupon Mr. Ahrens left the State of Idaho. There did not appear to be anything the Committee could do in this matter as Mr. Ahrens was no longer a member of the bar. We did, however, confer with the prosecuting attorney who advised us of the circumstances which led to Mr. Ahrens' application to have his certificate canceled, and the prosecuting attorney was of the opinion that criminal proceedings should not be instituted. This was based largely on a consideration for the family of the offender and was on the ground that the offender had left the State and his present whereabouts were unknown. In this connection your Committee would recommend that the Bar of the State should adopt a more stringent rule with reference to recommending for admission attorneys from other states concerning whom they have no personal knowledge as to their standing in the State from which they come. Wbile we are all disposed to show all proper courtesies to attorneys from other states, such attorneys should be required to furnish proper credentials to the attorneys who are requested to indorse their application for admission here. Failure to do so must impair

the dignity and integrity of the certificate and the Supreme Court will have to supplement the certificate with more formal evidence than the rules now required.

The Committee has had before it during the past year at least two cases that have attracted considerable local interest. One case from north Idaho in which the President of the Association and Mr. C. H. Potts of Coeur d'Alene have rendered valuable assistance in taking the testimony of local witnesses. This case involves a number of questions that are difficult and perplexing. The affidavits, records and evidence submitted are voluminous, but they have now been examined by members of the Committee and a report on this case will be made shortly. The other is a case where the attorney has apparently for some considerable period been in the habit of making collections without remitting to the client. In this case your Committee has called upon the local committee for a more definite and specific statement of the various charges as the basis for the filing of an accusation under the statutes for the disbarment of the attorney. When this information is received with proper assurance that the evidence is available to prove the charges, disbarment proceedings should be filed.

Your committee has constantly had in mind that formal accusations under the statute should not be filed against an attorney until it was satisfied that there was sufficient evidence available to prove the charges, for the mere filing of a complaint for disbarment would result in much embarrassment and damage to the attorney and practically ruin his standing in the community and we have, therefore, pursued a policy of giving both the accuser and the accused a hearing or an opportunity to submit their evidence. Such proceedings are necessarily of an informal character, but in most cases all parties have willingly and cheerfully submitted their evidence so that the Committee might determine whether a formal accusation should be filed. We recommend that the Association by appropriate resolution establish a fixed policy of diligently investigating, through the local and state grievance committees, charges against members of the bar before formal proceedings for disbarment are filed, and to this end the members of the Association should willingly and speedily investigate and report to the proper authorities charges against members of the bar in their respective communities upon which reports may be requested by officers or committees of the Association.

Respectfully,
O. O. HAGA,
Chairman Grievance Committee.

CERTIFICATES TO ABSTRACTS

To the Idaho State Bar Association:

Gentlemen:

Your committee on certificates to abstracts of title begs leave to report that, after investigating a large number of certificates and much correspondence among the members of the committee, working at a considerable disadvantage because widely separated, it recommends the form of certificate hereto attached and marked Exhibit A, as a workable certificate and one which abstracters can afford, without undue sacrifice, to employ.

In the course of our investigation it appeared to us wise to recommend that abstracters be required to abstract the records of the district and probate courts relating in any way to the lands mentioned in the abstract; and this more particularly since the Supreme Court has declared in its wisdom that a sheriff's deed, unaccompanied by a showing of a valid judgment supporting a valid writ of execution, is not admissible in evidence, and that an administrator's deed is not admissible, unless accompanied or supported by the order of the probate court confirming the sale.

We also recommend, that where the land abstracted has been subdivided into lots, or blocks, or is described by metes and bounds, or is a U. S. government lot, that a plat or map showing the location of the land with regard to federal surveys, should accompany and be a part of the abstract.

We further recommend that where tracts of land have been, or are being consolidated under one title and merged in the same individual person or company, that abstracters should be required to consolidate the abstracts to such land under one certificate, upon request. This for the purpose of avoiding useless duplication, and because some instances have come under our observation where abstracters have refused to consolidate abstracts, although the title was merged.

We further recommend that it be made unlawful for an abstract to be changed by alteration, interlineation or marginal amendment, but that errors, if any, be required to be corrected by additions to the abstract, referring to the portions to be amended, altered or changed.

Respectfully submitted,
JAMES E. BABB
J. M. THOMPSON
IRA E. BARBER
Committee by
IRA E. BABBER, Chairman.

EXHIBIT A

STATE OF IDAHO, } ss. CERTIFICATE OF ABSTRACTER.
County of }

It Is Hereby Certified, That the foregoing entries numbered from One to....., inclusive, contain a true and correct abstract of all conveyances or other instruments of writing now on file or of record in the office of the County Recorder in and for said county, which in any way affect the title of the following described real estate, to-wit:

subsequent to

It Is Further Certified, That all taxes levied in county upon the lands above described have been paid, except the following:

It Is Further Certified, That there are no orders, judgments, decrees, or liens of any kind, or suits or proceedings pending, which in any way affect the title of the above described real estate, in the files or records of the probate or district court, or office of the Recorder, Auditor, Clerk of County Commissioners, Treasurer, or Tax Collector of said county, Idaho, or office of municipality, if any, in which said land is situate, or in the office of the U. S. District Court for the Division, of Idaho, except as shown on the foregoing abstract.

This Certificate, Is attached to and made a part of Abstract No. compiled for use and at the request of

In Witness Whereof, Etc.

ADDRESSES AND PAPERS

"THE OPEN RANGE"

EXCERPT FROM AN ADDRESS BY MR. JUSTICE CHARLES P. MCCARTHY, DELIVERED AT THE STATE BAR ASSOCIATION BANQUET JANUARY 5, 1923.

May I in conclusion say a few words about the privileges which lawyers enjoy. They are licensed by their fellow men as ministers of justice, and through the confidence of their clients are entrusted with their most sacred secrets. They have for their subject the most fascinating of all studies. Ingersoll said of Shakespeare "Shakespeare is an intellectual ocean whose waves touch all the shores of thought." Paraphrasing this, we may say the law is an intellectual ocean whose waves touch all the shores of thought. Or, to use an expression more appropriate to our locality, we may say it is like unto the open range in its extent and scope. It lays tribute upon all arts and sciences, upon the wisdom of all ages and all peoples. It deals with that most variable of quantities—human nature—and reflects all the moods and passions to which mankind is subject. Someone has said that every new subject studied is a door to the mind; the more of these doors one has and the wider he keeps them open, the greater his mental development. No one need have more doors to his mind than the lawyer, nor to keep them wider open. The case you are studying today may be one in contracts involving the commercial or mercantile usages of some particular line of business. Your next case may be one of personal injuries requiring the study of anatomy and materia medica, and perhaps also mechanics. Your next case may be one involving rights to real property, requiring a study of the ancient English customs and laws, the very heginnings of our jurisprudence. The next may be a criminal case in which you study the morbid side of human nature, and have revealed to you the heights to which humanity can rise, and the depths to which it may sink. The next one may present questions of constitutional law, involving the fundamental rights of man in his relation to his fellow man, and to society as a whole. One of our poets has sung,

"If power were mine to wield control
Of time within my heart and soul,
Saving from ruin and decay
What I hold dearest, I should pray,
That I may never cease to be,
Wooed daily by expectancy."

There are few pleasures of life keener than those of expectancy, and of them the lawyer has his fill as he cruises this intellectual ocean, or rides this open range. Surely no study and no occupation could be more fascinating, nor present greater advantages for broadening and sharpening the intelligence. In recognition of these privileges, the lawyers of the present should do their best to preserve and protect, the jurisprudence and institutions which they have received, as the inheritance of a glorious past, and, to that end, should help to wisely and skillfully adjust them to meet the needs of a present and future, which they have it in their power to make equally glorious.

AS THE PEOPLE SEE COURTS OF JUSTICE

BIENNIAL ADDRESS OF JAMES F. AILSHIE, PRESIDENT OF THE IDAHO STATE BAR ASSOCIATION

THE subject of my address may seem somewhat theoretical and speculative, and I admit in the outset that it cannot be dealt with by positive data, or anything like reliable statistics. Notwithstanding this difficulty, I think there are certain outstanding facts that may not be reasonably disputed from which we may arrive at the mental, and perhaps moral attitude of a great body of the people toward our courts generally and those officers of the court who participate and assist in the trial and disposal of cases coming before the courts. In thus speaking of courts I mean something more than the judge who presides,—I rather prefer to include in that term the members of the bar who present, prosecute and defend issues presented and submitted in the courts for orders, verdicts and judgments. Certainly they all contribute to the final result and all are alike responsible for the accomplishment or miscarriage of justice in any given case. The presiding judge can, if a strong and courageous man, in a large degree so control and influence the proceeding as to render the accomplishment of substantial justice reasonably certain in most cases, but it is too often that we find trial judges who will do but little more than referee or umpire the proceedings in a jury case.

The creation of courts marks the first distinguishing boundary line between uncivilized and a civilized society. They afford a peaceful and, so far as human agency is capable, a just method of settling and adjusting differences and grievances which the caveman and tribesman settled with a club, and which is today, in some quarters, being discounted by the more euphoneous term of *direct action*. Courts of some kind or other, accomplishing various degrees of success in the settlement and disposal of disputes and controversies, have marked the highway of civilization ever since that highway began in the building. Moses, the great Hebrew Law Giver, undertook its administration himself for all his people, and the credit is due to his successors in the leadership of the Hebrew people for establishing the most complete and efficient system of trial and appellate judicial procedure that had ever been known among men anywhere prior to that time.

Notwithstanding all previous efforts with various degrees of success in establishing courts of justice, it fell to the lot of the framers and expounders of the Constitution of the United States to provide for a Judicial System, as an ahsolutely separate and independent branch of government, for the peaceful and orderly settlement of all disputes and controversies and the due execution of the laws. By this system the courts directly represent civil society and are answerable to the people for their conduct and are not accountable to the executive branch of the government for either their existence or power. Under our system, therefore, the office of attorney is under the jurisdiction and control of the courts and his duties arise as a necessary part of the system in order that issues may be properly presented to the court. Legislatures may properly prescribe his qualifications and duties in order to deal with the citizen in advising him or in handling his business out of court, but legislatures should never attempt and never be allowed to say who shall or who shall not present cases and advocate causes in the courts. That is peculiarly a function of the court and should always be under the control and

supervision of the court. The judge who presides is drawn from time to time from the ranks of the profession. He is usually a fair average representative of the profession,—not much better, seldom any worse than the average members of the bar from which he is selected. The people whom he is to serve already have formed an opinion of him and just as that opinion is so will be their faith and confidence in the administration of justice in the court over which he presides.

Now there are some things so well known and recognized with reference to the attitude of the public toward the courts that we may safely state them as existing facts. Let us state them in this manner:

1. The people at large believe that a lawsuit is a game of wits and that the one whose attorney is most skilled and adept at the game wins.

2. A large percentage of the people shrink from going onto the witness stand to tell facts they actually know about a case for fear of being browbeaten, humiliated and abused by the attorneys and many well meaning law-abiding citizens allow this fear to drive them to the point of actually denying, out of court, any knowledge of facts with which they are perfectly familiar.

3. Business men as a rule resort to various kinds of devices to avoid jury duty claiming that their business is too important and time too valuable to listen to the "wrangling of attorneys" over a lawsuit. They seldom state it this way to the Judge, but that is what they say outside.

4. When a case is decided contrary to prevailing public sentiment it is charged to legal technicalities and the tricks of the game.

Now the reasons for this attitude of the people toward the general administration of justice is not easy of analysis and yet some fairly definite conclusions may be drawn. Of course, we must always make certain allowances in matters of this kind for the universally prevailing human tendency to find fault with *what the other fellow does and the way he does it.* That characteristic inheres in human nature and varies only with education and training. But aside from these objections and searching for remedial causes we are not left without light. The causes for serious criticism to which lawyers and courts are subjected are capable of being corrected. In the first place, the bar is usually without organization, or if organized, it is so loosely done as to be wholly ineffective, and lawyers as a class exercise less discipline over the members of their profession than is exercised by any other profession or even by any of the trades or vocations over their members. Organization and discipline is a crying need in the legal profession and it ought to be made certain and effective. When that is done the lawyer who goes into court with a weak or unjust case and undertakes to win it by browbeating and intimidating witnesses and trying the attorney on the other side for some imaginary or real misconduct instead of trying the issues of the case on trial, will be made an example of and the public will learn that one of their chief dreads of and objections to courts has been removed. And just here let me pause to say that trial courts too often tolerate such conduct without a word of reprimand. Why should the life of a witness and his family be raked and dragged and ridiculed and his character be assaulted *simply because he happens to know some fact bearing upon the case on trial?* Why should questions be so framed and propounded to him as to carry the insinuation to the jury and spectators that he is a perjurer, a deadbeat, a thief or some other type of bad citizen? And yet this very thing is done deliberately and in cold blood in our trial courts somewhere almost every day of the year. The lawyer who is allowed to do these things and "gets away with it" is often hailed as a successful trial lawyer, and this is the identical fellow who is causing both the profession and the courts a large part of the criticism to which they are justly entitled. These are the attorneys who as a rule are not members of a bar association, and are the fellows who would not see any advantages in organization.

In this connection I would not overlook the "motion and affidavit" lawyer,—he is the man who tries his cases on motions which he always abundantly supports by ex parte affidavits. He draws the affidavit and all the witness has to do is merely to sign it. Then there is the fellow who lets it be known that he is on the most intimate terms and has a special pull with the judge; and then comes the man who tampers with witnesses, and the fellow who over-reaches and intimidates ignorant and helpless clients.

I call attention to these concrete instances merely as illustrations of various causes which arise with the profession and contribute to the formation of an erroneous attitude of the public toward our methods of administering justice and these, and other like contributing causes, can and should be removed by the bar and the courts.

I have heretofore made reference to the judges who preside over the courts and I desire to now be more specific. The complaints and delinquencies to which I have referred occur in trial courts and on account of their very nature and the functions of the courts would not occur in an appellate court. It is in the trial court right at home, where jurors, witnesses and litigants all meet, that the standing and reputation of the har and the court are made and it is right in that court room that the respect of the community for law and orderly government is moulded either to the advantage or detriment of the community. Tell me how the people behave and respect the law in a country and I will tell you what kind of a trial court and bar they have been having during the preceding years. Judges and attorneys, by their demeanor in the court room, can compel men to be serious and thoughtful in court during the trial and consideration of cases.

Lawyers and judges must not forget that they assume extraordinary obligations to the community,—both officially and as private citizens, and they cannot fully discharge those duties by drifting with the community, but it is their duty to lead the community in all matters relating to the observance and execution of the laws of the land. A lawyer of fair ability and unscrupulous character who is tolerated, if not actually looked up to by the court and bar as a shining light, will do more toward pulling down the standard of a community in law observance and enforcement than half a dozen clergymen can do every Sunday in repairing the wound to the body politic.

While I would not favor changing our system of term elections for judges, it must be admitted that it suffers from some handicaps. For example, a trial judge is up for renomination and election and a lawyer who poses as a political power goes into his chambers and tells the judge how he is going to pull him through in the approaching election, and he proceeds to delegate himself as the campaign manager and spokesman for the judge, who in turn feels that he can't openly repudiate him. The election passes off and the judge is re-elected after, perhaps a live contest, and a good sized scare. After the election this political buccaneer goes in and cocks his feet up and tells the judge how he did it, and still the judge don't feel like he can tell his late campaign manager to take his feet off his desk. Thus he engenders a fictitious air and show of familiarity and influence

with the judge. This same fellow manages in various and devious ways to make it known that, but for him, the judge would have been defeated and thus endeavors to give out the impression that he has some spcial standing and influence with the judge. Sometimes it happens that a judge is not firm and courageous enough to pursue a course with reference to such an attorney that will discredit this pretentions, and so such a lawyer will make money out of a dishonorable pretense at the expense of the judge's reputation and to the discredit of both the court and har.

The bar and the courts can eliminate many of these causes which lead to public criticism of the courts by maintaining a rigid supervision over the practice and conduct of the members of the bar and prohibiting practices which hinder rather than aid the doing of justice by juries and courts. It must not be overlooked that lawyers are confronted with extraordinary difficulties and great temptations and sometimes in the practice it happens that a man of ability and high character may find himself at the very confines of propriety and needs the unbiased advice of the court or a member of the bar as to his future course. If this be true with an experienced lawyer, how much greater the need with the less experienced.

Now I submit that it is up to the lawyers themselves and the courts in which they appear, to meet this problem and remove the causes which afford just grounds of criticism and detract from the prestige and influence of the courts. The citizen who goes into court either as witness or juror is entitled to expect and receive at least as fair and courteous treatment as he would be accorded in the office or place of business of the merchant, manufacturer, banker or other business man. The laborer who has to sue a man for a couple hundred dollars wages has a right to go into court as a litigant and have the facts of the transaction disclosed without having to detail his life history and genealogy and bring witnesses to refute insinuations that he is a professional dead beat and swindler and has been frequently arrested on suspicion. As things go too often the administration of justice is rendered most embarrassing and difficult for the man who most needs its protection, and who can least afford to be deprived of its award.

I am submitting herewith a resolution which I shall ask you to approve, requesting the Supreme Court to adopt the Code of Ethics of the American Bar Asocition as a rule by which to be guided in dealing with attorneys and that all applicants for admission be required to pass examination on that Code.

I submit these observations to the profession in great respect, not as a lecture, but as a suggestion of well founded criticism among the people we serve and of unmistakable duties we owe the public.

ETHICS OF THE BENCH AND BAR

FRANK S. DIETRICH, JUDGE OF THE UNITED STATES DISTRICT COURT FOR IDAHO

As finally phrased by the officers of the Association, the subject assigned appears to include the bench as well as the bar. But quite naturally I am indisposed to make public admission of my own sins; and am equally disinclined to intimate that my brethren on the bench have any. Besides it is probably better that we be made to see ourselves as others see us. I shall therefore ask to be excused from discussing the bench, (with the hope, however, that in due time it may be properly shown up by an active practitioner,) and in so far as I shall be able to touch the subject at all, my comments will have reference to the bar.

The term ethics, as commonly applied to our profession, has a wide range of meaning, comprehending, to be sure, conduct of admitted moral quality, but questions, as well, having to do with the mere etiquette of court room procedure, or good form. I have entertained the subject comprehensively, for even in this latter sense it is not unworthy of our consideration

I have no startling revelation to make or novel reform to set on foot. It is rather with a view to the improvement of a practice generally good, that I call attention to certain matters which we have perhaps all observed but of which we need now and then to be reminded. And in acting as your spokesman I am not insensible of the difference between dress parade and actual fighting in the trenches, nor do I forget that it is "easier to teach twenty what were good to be done than to be one of the twenty to follow mine own teaching."

In the first place may I not ask for a more considerate treatment of jurors. It is true that men who are called to this service are not learned in the law, and often come from the lowlier walks of life, but that is not an important consideration. For the time being they are ministers of justice; they are in a very real sense officers of the court, and we dignify ourselves and our calling by according to them the respect due the authority with which they are temporarily invested. We do not gauge the courtesy we show the judge by the eminence he may have had at the bar or the profundity of his learning. This deference we instinctively accord to the humblest member of our profession when occupying the bench, even though for a special and temporary service. It may be that jurors should be selected with greater care, to the end that they may not only be fairly representative of the various sections of our citizenry, but may also be the best qualified representatives. But nothing will so much contribute to that end as treatment by which we give the juror to understand that his service, though onerous, carries with it a measure of honor.

The bench, I am inclined to think, has been more progressive than the bar in the recognition of a juror's proper status. Applications to be excused are given more sympathetic consideration than in former years, and generally speaking courts are concerned in seeing to it that the service is not attended with unusual inconvenience or financial sacrifice. The ancient practice of keeping jurors together while a case is being tried and holding them beyond a reasonable time for deliberation after the submission—often under conditions imperiling health—has been almost universally abandoned. And where it becomes proper peremptorily to require the jury to act in a

certain way, an effort is made to have them understand the reasons for so doing, and to invite their intelligent approval.

Too often, I think, in the trial of cases, as members of the bar we assume a sort of patronizing attitude—unconsciously perhaps, but whether consciously or unconsciously, we are inclined to talk down to them instead of dealing with them upon an equal footing. I am aware that by words we eulogize them and tell them how intelligent they are and exalt the service they perform, but our practice falls short of our profession. Why do we insist upon subjecting the ordinary juror in the ordinary case to the tedium and humiliation of a searching examination touching his qualifications? Closing his eyes while such examination is going on, a spectator might sometimes very easily imagine the third degree was being given to a suspect. In nine cases out of ten we get the answer we expect; nothing is really accomplished. Not only are the questions put for the plaintiff highly repetitious in substance, but in precise form they are again propounded by counsel for the defendant, often in the most minute detail. I have often thought that if, as a juror, I had answered that I knew neither of the parties and had never heard or read of the case, I would be inclined to resent as an implied reflection upon my intelligence or candor, the further question whether I had formed or expressed an opinion. In their repetition, questions often imply a doubt as to the juror's good faith, or they are idle and meaningless. True, there are instances where the environment and the temperament of a juror are such as to justify a careful and exhaustive inquiry, but in the great majority of cases a very few well-directed questions, whether put by one side or the other, ought to be sufficient to disclose the juror's attitude for all legitimate purposes.

A closely related consideration not infrequently attends the exercise of peremptory challenges. In a case recently tried before me counsel for the plaintiff promptly requested to be relieved from interrogating a certain juror, with the explanation that he expected to exercise a peremptory challenge anyway. That would seem to be a very natural course to pursue, and why should it not be the rule instead of the exception. Not only would much time be saved, but it would be more respectful to the juror. Perhaps there is always some slight wounding of the sensibilities of a juror in arbitrarily rejecting him, as by a peremptory challenge; unfortunately that cannot be avoided. But to trifle with him by asking him innumerable questions, all of which he answers candidly and satisfactorily, and then, pursuant to a pre-existing purpose, peremptorily to set him aside, is little less than a gratuitous indignity which he is justified in resenting.

In speaking of arguments to the jury it would not be fair to indulge in a sweeping generalization; they are often of a high order—direct and logical discussions of the evidence—temperate and reasonable appeals by self-respecting advocates to intelligent, self-respecting jurors. Such an argument is a real delight, and is sometimes the only relief to the tedium of a commonplace and otherwise colorless trial, for the judge, and, I am inclined to think, for the jury as well. But unfortunately many arguments, particularly in the less important cases, cannot be so characterized. Let me put it from one juror's standpoint. I had gone through an unusually difficult day—in another district—the attorney on one side of a little case we had tried, being endowed with more nerve and lung power than learning or logic—when I found myself at the dinner table with one of the jurors. The customary civilities were passed, in the course of which I casually remarked that I supposed he was pretty tired after the

long day in court and the jury room. This turned out to be his cue. He was a merchant in a small town, and doubtless had a respectable standing in his community. "Yes," he said, "I am tired, but, what is worse, I am nervous and have a headache. I don't know whether I ought to say it to you or not, but we jurors cannot see why attorneys stand right over us and speak so loud. If a drummer comes into my store to sell me goods, or a committee for a subscription, or a politician to get me to support his candidate, they don't talk to me in that manner." I endeavored to explain to him that the conditions were not entirely parallel. "That may be," he said, "but anyway I don't see why they have to bellow at us." "Another thing," he continued, "while we are upon the subject, what right have the attorneys got to tell us what we are going to do and what we must do or cannot do? I am not used to that sort of thing, and there are other jurors that feel the same way. That fellow this afternoon told us several times that he knew what we were going to do, and that we couldn't do anything else than acquit the defendant. I guess he knows differently now,"—referring to the verdict of conviction.

Possibly the irritation of this gentleman was excessive, but, after all, can we say it was wholly unwarranted? In the practices he complained of, by the attorney referred to, there was necessarily implied an assumption of superiority, a species of unconscious arrogance. In arguments upon the facts before the court there is no such attitude; but if legitimate with jurors why not with the judge as well? Sometimes signifying only carelessness, but often implying the same attitude, is the more or less prevalent habit we have of attempting to impress upon the jurors our professed belief touching the issues involved. We do not do that with the judge. I can recall but one or two instances in my experience on the bench where I have felt constrained to suggest that I was not concerned at all with what counsel believed, but *was* deeply interested in his reasons. The practice is really unethical, not only because, in their zeal, counsel are tempted into the expression of beliefs they do not in fact entertain, but also for the reason that if such expressions are given any weight, jurors do not decide the issues upon the evidence alone, but are influenced in part by the confidence they repose in the attorney. If in a criminal case counsel for the defense, suggesting his superior means of knowing the intimate facts, may declare his unqualified belief in his client's innocence, the prosecuting attorney, retorting, may call attention to his obligation to protect the innocent as well as to pursue the guilty, and assure the jurors that he would not be prosecuting the case if, upon a full investigation, he had not become thoroughly satisfied of the defendant's guilt.

If we want jurors to act upon a high plane, we should put them there, by treating them with due respect and consideration and presenting to them only such arguments as intelligent, self-respecting men may legitimately entertain.

It is of course trite to say that *witnesses* ought not to be abused. Not only is abuse, in whatever form, unethical, but while a temporary advantage may sometimes be gained, generally it is bad policy. Even a persistent and searching cross-examination need not be discourteous in manner or tone. A bull-dozing attitude quickly stirs up sympathy. If a witness is unwilling or over-zealous, jurors are not slow in noting the fact, and something may profitably be left to their imagination. Deliberate attempts by inadmissible questions to insinuate a witness's disgrace or that of his family or associates, are highly reprehensible. "That's a lie" shot from a young man on the witness stand a few days ago, in response to an

improper question involving the social status of his wife, which, in different forms, I had already twice ruled out. There was a momentary shock,—but I withheld censure. In an unconventional way he had simply repelled an unfair attack.

We have a state statute authorizing the impeachment of a witness by showing that he has been convicted of a felony. I think it ought to be so modified as to be limited in its application to felonies involving a substantial measure of moral obliquity, and committed within a reasonable time before the testimony is given; or, better, the whole matter should be left to the sound discretion of the trial judge. Sometimes only with the greatest reluctance do I yield to the compulsion of the rule in admitting such evidence. The offense may have involved little moral wrongdoing, it may have been committed many years before, and been followed by a useful and exemplary life, and the matter to which the witness testifies may be of little importance, and of a formal character only, and yet the witness may be humiliated and degraded in the eyes of his neighbors, by disclosing to them for the first time knowledge that he has been convicted of a crime. Regardless of the technical right, we are bound by ethical considerations to refrain from invoking the rule except in cases where there is substantial reason for so doing. I have in recollection a particular instance where, though mindful that I must receive the evidence if insisted upon, I sought indirectly to discourage counsel from pressing the inquiry—but unsuccessfully. It seemed to me to be almost a wanton humiliation of the witness. It is to be added,—and this is a consideration we might very well keep in mind,—that in the clever and bitter arraingment to which he was subjected in the closing argument by his opponent, I thought counsel who insisted upon so showing up the witness, lost more than he gained. The case, I am sure, made a strong appeal to the sympathy of the jury.

Nor is it thought to be consistent with ethical ideals, or even good policy, in the final argument unnecessarily to hold up a witness to ridicule, or to characterize him or his testimony in unnecessarily offensive terms. A witness believed to be untruthful may very properly be arraigned, but in what manner? May we call him a liar? That is an ugly word, highly provocative to the person charged, and generally shocking to the sensibilities of those who must listen to the attack. It is ostracised from polite society, and is not permissible in legislative or other deliberative assemblies; and why should it have recognition in the court room? Its use is apt to provoke retaliation in kind, and we have billingsgate instead of argument. There comes to mind an important case in another district, a short time ago, where the assistant prosecuting attorney casually, and before I could interpose, closed his discussion of the testimony of a certain witness with the express charge that he had lied. Counsel for defendant, an experienced and passionate advocate, coming to a dramatic climax in his eulogy of the witness thus assailed, retorted by calling the assistant attorney a liar. Humiliating though the incident was thought to be, censure seemed almost impossible at the time because of the danger of prejudice to one side or the other. And, if an attorney may employ such language in respect to witnesses or parties, on what ground can it be forbidden in respect to opposing counsel?

I sometimes marvel at the self-control of witnesses when harshly and unjustly assailed, but the mask of assumed indifference is not always sufficient to cover the grievous wound inflicted by a sarcastic fling or an offensive epithet. It must be borne in mind that in

assailing a witness we attack one who is not in a position to defend himself or strike back. Every consideration of honor and fair-play should make us careful not to use our privilege to inflict needless pain.

Of the general attitude of attorneys towards *occupants of the bench*, it is hardly necessary to say, the latter have no ground for complaint; it is uniformly respectful and usually deferential. If I were to be permitted to make a single suggestion it would be that we seek a little more fully to eliminate from our conception of the service we render all personal considerations. We are still inclined to cling to the idea that the trial of a lawsuit is a game of skill, and that it is the duty of the judge, and his only duty, to see to it that it is played according to the rules, to the end that the most skillful gamester may have his due reward. That view must give place to the higher conception that it is the function of courts, not to render judgment for skill, but to administer justice according to the merits. This being true, it is the right of the presiding judge, and his duty, sometimes of his own motion, so to mold the proceedings that the facts may be fully disclosed. He owes a duty to counsel, it is true, but his higher duty is to the litigants, and his responsibility in that respect he cannot complacently shift or evade.

This reference to the concern of judges to uncover the real facts of the case and to adjudge the issues upon their merits is suggestive of a subject of the highest ethical importance, involving more than mere personal attitude or considerations of good breeding.

Whether it be in the court room or in the consultation room it is a prerequisite absolutely essential to the just application of any principle of law that the material facts first be known. Responsible legal advice always assumes the existence of a given state of facts, and a judgment or decree rests upon facts expressly or impliedly found. A disclosure of the facts in the case is therefore a prime function of all legal procedure, and upon the success of the court in making their discovery primarily depends the administration of justice. Society may effectively protect itself against the continuing authority of a bad precedent in law, through the power of public sentiment, or, more summarily, by the positive mandate of statutory law, but as against a prevalent indisposition of witnesses to speak the truth when under oath, it is without practical remedy. In discussing the civilization of the middle ages, Hallam comments upon the wide prevalence of judicial perjury, and remarks that undoubtedly the irrational "trial by combat was preserved in a considerable degree on account of the difficulty experienced in securing a just cause against the perjury of witnesses."

From the civilization of today to that of the middle ages is a far call, but some of the problems that vexed our ancestors are still unsolved. Naturally no reliable statistical statement can be made of the extent to which perjury prevails in our courts, but that it is frequently committed no one with experience at the bar or upon the bench can for a moment doubt. A few years ago, in an address before the Academy of Social and Political Science, a leading member of the New York bar declared it to be his belief that perjury is committed in the trial of at least three out of every five cases involving an issue of fact. We may or may not be able to give our assent to so high a percentage, and in the absence of statistical information it is perhaps unwise to attempt sweeping generalizations. Any estimate can be properly regarded as little more than a personal impression derived from an observation necessarily limited in place, and not infrequently confined to certain classes of litigation, possibly not fairly representative of the whole; but if we exclude all

cases where there is innocence of motive, and consider only willful perversions of the truth, it cannot be doubted that false representation of the facts in judicial proceedings is distressingly common. Cases are not infrequent where the court may, with propriety, and counsel must, candidly say to the jury that the testimony is hopelessly conflicting, and that the conflict is explainable only upon the theory that some witness or group of witnesses has wilfully testified falsely. And the amazing variance betw en the averments or denials contained in verified pleadings and the facts as disclosed upon the oral examination of the verifying party would be shocking if it were not so common.

While I speak particularly of perjury in our own country, it is not to be inferred that we are necessarily worse than other people. I have already referred to the universally admitted prevalence of perjury in England during the middle ages, but as late as 1879 it was said by no less a person than Lord Justice James that there were "hundreds of actions tried (in England) every year in which the evidence is irreconcilably conflicting, and must be, upon one side or the other, wilfully and corruptly perjured." More recently an eminent trial judge opposed an act abolishing the practice of kissing the book, giving as a unique, if not strictly logical, reason for his opposition, that by requiring witnesses to kiss the book, the microbes would get some of the multitude of perjurers who would otherwise escape punishment entirely.

Recognizing the prevalence of the peril, have we as lawyers any obligations in the premises which we neglect? Generally speaking it is to be admitted attorneys do not procure or instigate a falsification of the facts. Some exceptions there doubtless are as there are in all high callings, but summary disposition may be made of the case of those who wilfully suborn perjury, for their responsibility is admitted, and their duty, if it is not to importune admission to the penitentiary, is at least forthwith to get out of the profession, and the obligation is upon all of us, both bench and bar, so far as within us lies, to see that the duty is performed.

As a rule it is also to be conceded, the responsibility for perjury must be held to rest primarily not with the attorney in the case but with the party or witness who gives false testimony. If court and counsel are in a degree to blame, the dereliction is generally one of a duty owing to society at large, and not to the perjurer. Most witnesses are possessed of sufficient intelligence to know that willful falsification is in violation of the laws of both God and man, and should not in the public mind be permitted to escape responsibility for their conscious obliquity upon the specious plea that no barrier was raised across their wrongful course. And *yet*, considering the prevalence and the gravity of the evil, it is doubted whether we are fully sensible of our responsibility in the premises or fully meet the obligations with which we are charged.

It is often the clear duty of an attorney, that which he owes to his client, or a witness, to guard or warn him against the making of false statements. Reference is had more particularly to making affidavits and the verification of pleadings. While representations of fact thus made are not usually taken as the basis upon which final judgments or decrees are predicated, they often fulfill important functions in the course of litigation. I have long entertained the view that the bar is charged with greater care than is commonly exercised in seeing that such papers are faithful to the truth. Here it is easy to lead or permit the ordinary layman to fall into error and subscribe to and verify statements which when fairly read, convey

impressions grossly inconsistent with the actual facts. In no other respect has the so-called reformed procedure in most of the states proved so great a disappointment as in the matter of verified pleadings. It was reasonably to be expected that by requiring the plaintiff, upon his oath, to set forth in ordinary and concise language the facts constituting his cause of action, and the defendant under oath to deny each controverted statement, the issues would usually be few and well defined. Upon the contrary, in actual practice is it not too generally true that pleadings are not characterized by a simple statement of the actual facts, but through circumlocution and generality of averment resorted to for the apparent purpose of evading an admission of that which is incontrovertibly true, the real issues are concealed from the understanding of the common man and left hopelessly vague even in the understanding of counsel and the court? There is need here for a radical reform, and the responsibility rests largely with the bar. So persistent is the evil that it has been seriously proposed to take the preparation of pleadings entirely out of the hands of attorneys in the case, and require litigants to appear before the clerk of the court or some special officer and there orally state their controversy, and thus present the issues. Under the present practice it is a proper and necessary function of an attorney to draft the pleadings, but it is his duty to take reasonable care first to learn the substantial facts from his client or from other sources, and then not give rein to his ingenuity in concealing them, but to his candor in expressing them. I cannot too strongly emphasize the view that as attorneys we should assume a measure of responsibility for the substantial correctness of representations made in the pleadings. It is well known that many litigants, after stating the facts in their own way, will, without close scrutiny or analysis, verify such pleading as is put before them. They assume, and not entirely without reason, that it is a formal statement of the facts as they have represented them to be or as their attorney has upon inquiry found them to be. The evil of mis-stating or over-stating or half stating the truth in a pleading not infrequently projects itself most harmfully beyond the mere function of the pleading itself. Upon being called to the witness stand, one who has verified a pleading, if conscious of its contents, will be strongly tempted to mould his testimony to conform thereto, even though he knows it to be incorrect, thus wilfully falsifying the truth and perpetuating an error for the purpose of escaping the confusion and humiliation to which he conceives he would be subjected if this oral estimony were inconsistent with his verified pleadings. For perjury thus committed, is it not clear that the attorney who has carelessly permitted his client first to fall into error, must bear a measure of the responsibility.

What has been said of the pleadings is in the main applicable to affidavits. Here the language employed is not infrequently such that where affidivats alone must be relied upon for a disclosure of the facts, the court is left wholly in doubt as to just what such facts would look like if denuded of the mass of verbal drapery by which their form and outline are so effectively concealed.

That in the matter of judicial perjury the lawyer must himself refrain from participation or instigation we all admit, but does mere inaction upon his part fully meet the demands of duty and absolve him of all responsibility for the prevalence of the evil? May not complacency sometimes fall dangerously near to complicity? And granting that the attorney does not engage to become the spiritual guide of his client or his witnesses, and rests under no obligation—*to them*—to restrain them from wilfully falsifying the facts, does it necessarily follow that his public duty extends no farther? If, as

we have assumed, judicial perjury is widely prevalent, and if it pollutes the stream of justice and is a constant menace to the right administration of the law, can we remain inactive and be justified? To he sure, specific rules may not be formulated prescribing when and under what circumstances action shall be taken or what shall be done. Professional duty is often too delicate in its nature to admit of articulation in formal rules. But with a just conception of our general responsibility, we may depend upon the monitions of conscience and our sense of honor for suggestions of appropriate action, as the occasion presents itself. The first great need is tbat the bar as a whole take an attitude and cultivate a spirit, not of resignation to the seeming inevitable, or of good-natured complacency, but agressively hostile to the intrusion in any form of perjured testimony into our courts. Criminal prosecutions for perjury or subornation of perjury are beset with the most serious difficulties, as anyone who has had anything to do with them will readily affirm, and unless reinforced by a powerful public sentiment, make little headway in permanently dislodging a crime that has become strongly intrenched in custom. In a few instances, where the perjury has been committed in open court, as is most frequently the case, the offender has been proceeded against and summarily punished as for contempt, and doubtless a remedy of this character, if frequently invoked, could be made more effective than trials upon indictment before a jury. But assuming all fidelity upon the part of the courts in inflicting criminal punishment, whenever practicable, the relief thus afforded is likely to be highly disappointing. In the absence of a proper public sentiment, criminal prosecution affords but a clumsy weapon and a remedy wholly inadequate against an offense so common, so insidious, and so difficult of the requisite degree of proof as that of perjury. Immeasurably more effective as a deterrent than verdicts of juries or the fulminations of tbe courts, are sanctions of a vigorous and uncompromising public sentiment, and to that source we must ultimately resort for substantial and permanent relief. In the moulding of such a sentiment the bar may not improperly be looked to to take the initiative.

In closing permit me to make the specific suggestion that every self-respecting member of the bar owes it to the profession, by word as well as by act, to resent, and to disabuse the public mind of, that traditional and persistent error that, however high may be a lawyer's standard of morality in his private life, he must, and as a matter of fact does, more or less commonly compromise with evil in the practice of the law, and must and does employ trickery and chicane in protecting and furtbering his client's interests. The most discouraging aspect of the error is that it is frequently based upon the more or less popular assumption that the necessity for employing such ignoble means inheres in the nature of a lawyer's services, and the use thereof is therefore taken as a matter of course and little if any personal blame is attached to him who resorts to such evil practices. It is just such a low and unfounded estimate of the moral standard of the profession that gives to the unworthy members thereof their opportunity and renders most difficult the often delicate task of him whose purposes are clean, of correctly drawing the line between the behests of duty and honor and the full measure of the services which a client may rightfully demand. Indeed, there is no other one influence that so generally and efficiently conduces to such evils as infest the practice of law as the ceaseless dissemination of the idea, sometimes in jest and sometimes in malice, that the average lawyer may be counted upon to do anything thought to be necessary to win his case. The result is that, consciously or unconsciously proceeding

upon this assumption, litigants do not hesitate, directly or indirectly, to seek to enlist the services of an attorney in the accomplishment of unlawful ends, or in the use of unlawful means, whereas if a different sentiment prevailed they would fear to make demand for services involving indirection or positive dishonor. It is all very well in theory to say that attorneys should repel such suggestions, and so they should and so they generally do, but to do this the highest order of courage is often required, and all attorneys are not, any more tban men in otber callings, of the heroic type.

PUBLIC SERVICE AND THE BAR

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On November 9th, your Honorable President wrote me as follows: "I would like to have you attend the meeting and read a paper on the forenoon of January 5th. I think it important that you seriously consider accepting this requirement." In that letter he suggested that I consider the relation of the Bar to the Public Order and Welfare. I have accordingly selected for consideration, the subject, *The Bar and the Public Service.*

William W. Cook, of the New York City Bar in the American Bar Association Journal for November, 1922 makes the following significant statement: "The American Government has been and essentially is, a government by lawyers. Of the 28 Presidents, 23 have been lawyers; of the 46 Secretaries of State, 44 have been lawyers; all of the Attorneys General; all of the Judges of the Federal courts; of the 56 signers of the Declaration of Independence 25 were lawyers; and of tbe 55 framers of the Federal Constitution, 31 were lawyers. In the present Congress, over two-thirds of the Senators are lawyers (69 out of 96) and over half of the representatives (276 out of 435.) In 1920 there were hut 122,519 lawyers, judges, and justices in this country of over one hundred and five millions of people. Never before in the history of the world has so great and intelligent a nation been governed by so small a body of men.

This power of the legal profession in America is hardly realized by the profession itself. And that power is increasing year by year. The reasons for this power are (1) knowledge of government and laws and judicial decisions, past and present; (2) Trained faculties and discipline of mind; (3) Facility of expression and power of debate; (4) Fertility of resource in matters of public policy; (5) a spirit of compromise in a time of deadlock; (6) sympathy with democratic institutions leading to the lawyers being trusted by the public; (7) the real lawyer doesn't abuse his mind by arguing sophistry.

The United States has one lawyer to every 862 people; England one to every 1,100; France one to 4,100; Germany one to 8,700; Russia one to 31,000; China, None. Peter the Great, when in London, was surprised at the great number of lawyers in Westminister Hall and said that he had but two lawyers in all his dominion and that he intended to hang one of them as soon as he got back. Russia today is paying the penalty, an outcast among nations, an economic and political wreck. Peter the Great must have shot the other lawyer. Senator Hoar said: "The lawyer is the chief defense, security and preserver of free institutions and of public liberty." This is true of the English bar as well as the American bar. In England Constitutional history has been a struggle to prevent and curh despotic power of the crown. From Runnymede when the Barons in 1215 forced King John to agree to Magna Charta to 1776 when the American colonies ended the despotic dream of George III, it was a struggle by the plain people of England to secure for themselves through parliament, rights which the crown had ursurped, and to make parliament omnipotent. The English bar during all those centuries was on the whole aiding the people to establish the reign of law so that when Queen Elizabeth granted a monopoly in the making of cards, the court held the grant void.

The American bar and judiciary have been equally the guardians of the liberties of the American people.

Our constitution was adopted in 1789. It has been said, "two principles of constitutional law of transcendent importance appear for the first time in history, one of which the American bar established and the other it rendered workable. Each of them has preserved the American Union. One is the power of the court to declare void a statute of a state or of Congress itself and even acts of the Executive Department. The other is in defining the misty boundary line between the sovereign powers of the federal government and the sovereign powers of the States."

The establishment of the supremacy of the judiciary is the greatest and most original achievement of the American bar. Lord Broughman said of it: "The power of the judiciary to prevent either the State Legislatures or Congress from overstepping the limits of the constitution, is the very greatest refinement to social policy to which any state of circumstance has ever given use, or to which any age has ever given birth. It has been a momentous struggle. Jefferson condemned and never forgave Marshall for declaring President Jefferson's orders void when contrary to the law of Congress, under the Embargo Act of 1804. Union labor today denounces the courts for their labor decisions. Instead of appealing, they try to impeach an officer of the court. The Grange, too, has condemned the court because the court said:—you cannot reduce rates so low as to be confiscatory. The law two decades ago took hold of capital and the Railroad and they were so obstinate that the courts had to almost ruin them before they saw the error of their way. Labor, capital, the Grange must not be allowed to dominate. None are above the law. States must obey the courts' decrees and congress and the executive stop at its bidding. The history of this struggle is told in a most fascinating way in Beveridge's "Life of Marshall" and Warren's, "The Supreme Court in United States History." Other classes and other interests will rise in the future to contest this supremacy with the court. The bar must be ever found ready to fight to maintain this position of the court and uphold the hands of the court in future struggles. The supremacy of the American Judiciary is unique in the annals of Jurisprudence, but it is essential in American political life.

The struggle for the Supremacy of the American Judiciary was rendered more difficult by the fact that it was at the same time establishing a new form of federal constitutional government. At the same time the court was struggling for judicial supremacy over the legislature and executive branches, or while it was establishing their limits under the law it was defining the misty boundary line between the sovereign powers of the federal government and the soverign powers of the state. This form must be made workable. The bench and bar for one hundred and thirty years have been working to limit this twilight zone. The work must continue. The federal powers under the constitution versus the right of the several states was a problem that caused Jefferson to criticize and doubt Marshall's integrity.

In this division of sovereign powers, between the federal government, and the states, the powers given to the federal government are explicitly stated in the constitution, all other soverign powers being left with the states. Judge Cooley points out that in this division of sovereign powers those which belong to the states are greater than those which are given to the federal government.

Not only are the sovereign powers which constituted the old time

state, divided in America between the federal government and the States, but in some instances a single power is divided, as, for instance, the power of taxation and the power over commerce. In taxation neither the federal government, nor the State can tax each other, nor their governmental agencies, nor each other's issues of bonds, nor income therefrom.

"This bewildering maze and labyrinth of constitutional law is something new in the world. It has supplanted the divine right of Kings. It has arisen from the American dual sovereignty and is the guardian of that dual sovereignty. It has piloted the two ships of State, state and federal; otherwise they would have collided and sunk. "Marshall's decision in the Cherokee case caused alarm. Jackson as President, would not enforce the court's decree. The wisdom of Marshall as Chief Justice aided by a wise bar saved the nation in these periods of storm and stress."

"This is at once a vindication of the American Bar to live up to its American principles. It is no occasion for smugness. It is a call to combat. It is an alarm bell that any decadence in the profession imperils the public safety. It is a summons to the American Bar to put itself in order and keep itself in order. It demands character, learning, and business ethics—ethics to temper the industrialism of the age, and the courts will do their part. They are the finished product of the bar, elevated to the bench to personify the law."

It may be conceded that judicial supremacy and the dual sovereignty are established, but it is the task of the bar to maintain them. Here the responsibility of the American Bar is very great. We contend it is a greater responsibility as the population increases; becomes more cosmopolitan; as industry increases in vastness, and competition increases in sharpness. This country is a country of diversified climate and many-sided characteristics of its people. Federal powers are being rapidly extended. Two amendments to the constitution have added to the federal powers; one as to the income tax, and the other as to prohibition. Both touch closely the daily life of the people. In the conflict of interests of different sections, there looms always the danger of the nation falling apart. In the conflict of sections and the clashing of interests the bar will have to be the steady, compromising, conservative power. The burden increases in proportion as the population increases. The task of the bar will be much greater when the population of this country reaches five hundred millions. Not only are the duties of the bar increasing because of new laws and growth in population and territory, but we have entered upon the creation of a body of administrative law quite different in its machinery, its remedies, and its necessary safeguards, from the old methods of regulation by specific statutes enforced by the courts. As any community passes from simple to complex conditions, the only way in which government can deal with the increased burdens thrown upon it is by the delegation of power to be exercised in detail by subordinate agents, subject to the control of general directions prescribed by superior authority. The necessities of our situation have already led to an extensive employment of that method. The Interstate Commerce Commission, the State public service commission; The Federal Trade Commission; the powers of the Federal Reserve Board, the Health Departments of the States, and many other boards and commissions are familiar illustrations. Before these agencies the old doctrine prohibiting the delegation of legislative powers has virtually retired from the field and given up the fight. There will be no withdrawal from these experiments, we shall go on; we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrong doing which under our new social and industrial conditions cannot be practically accomplished by the old and simple procedure of legislatures and courts as in the last generation.

Yet the powers that are committed to these regulating agencies, and which they must have to do their work, carry with them great and dangerous opportunities of oppression and wrong. If we are to continue a government of limited powers, these agencies of regulation must themselves be regulated. The limit of their power over the citizens must be fixed and determined. The rights of the citizen against them must be made plain and positive. A system of administrative law must be developed, as that which we have is still in its infancy, crude and imperfect.

The great men of the age of chivalry are gone, and with them the great castles with their battlements, the bands of knightly retainers, replendent in shining armor and with their streaming banners, and all the romantic feudal trappings that made them so delightful to read about and so dangerous to live with. But in their places, we, in this age of industry, have our great men and our powerful associations who covet power just as ruthlessly, and with just as little regard for the public interest involved as did the steel-clad barons of old. We may also add that, just as truly as in mediaeval England, the powerful men of our day, whether they be giant corporations, employer's associations, or labor unions, believe their contentions are right, and fundamentally necessary to the welfare of society and especially of themselves, and just as truly they are incapable in the bitterness of blinding strife, to be judges in their own causes, to assess the merits of either their own or their antagonist's claims, or to weigh justly the public interests involved. In the place of the great fortified castles and landed estates we have our industrial leaders controlling gigantic plants and immense aggregations of capital, whose annual financial operations would make the total annual revenues of England in Elizabeth's time appear insignificant; and whose employees far out number the largest army Elizabeth ever sent into the field. In place of the glittering array of mediaeval retainers, we have single unions, often under the command of a single bold labor leader, that can muster for an industrial war more men than ever obeyed a British General before the Great War. And, like the great feudal barons, these great men of our day often feel their power and are arrogant in its exercise, and protest vigorously, and, if you please, in good faith, against interference with their unrestrained use of it. These problems may not be solved by a Kansas Industrial court, but however they are solved their solution must in fact be made by the American Bar. To bring these giant corporations, these labor unions, under the law is largely a task of the American Bar. The development of our law under the conditions which I have pointed out will be accompanied by many possibilities of injurious error. There will be danger that progress will be diverted in one direction and another from lines really responsive to the needs of the people; really growing out of their life, and adapted to their character and the genius of their institutions, and will be attempted along the lines of theory devised by futile and ingenious minds for speedy reforms. Ardent spirits, awakened by circumstances to the recognition of abuses, under the influence of praiseworthy feeling, often desire to impose upon the community their own more advanced and perfect views for the conduct of life. The rapidity of change which characterizes our time is provocative of such proposals. The tremendous power of legislation, which is exercised so fully and with little con-

sideration in our legislative bodies, lends itself readily to the accomplishment of such purposes. Sometimes such plans are of the highest value. More frequently they are worthless, and lead to wasted effort and abandonment. The test of their value is not to be found in the perfection of reason. Man is not a logical animal, and that is especially true of the people of the United States and the people of Great Britain, from whom our method of thought and procedure were derived. The natural course for the development of our law and institutions does not follow the line of pure reason or the demands of scientific method. It is determined by the impulses, and immediate needs, the sympathies and passions, the idealism and selfishness of all the vast multitude who are really from day to day building up their own law, no matter what legislatures and Congresses and publicists and judges may do; the people are making their own law today just as truly as in the earlier periods of the growth of the common law. No statute can ever long impose a law upon them which they do not assimilate. Whether repealed or not, it will be rejected and become a dead letter. No decision that is inconsistent with their growth can long resist the pressure to distinguish and overrule. What can be done; what must be done to make true an uninterrupted progress, is that those members of the democracy to whom opportunity has brought instruction in the dynamics of law and self-government, shall so lead and direct the methods of development as to respond to the noblest impulses, the highest purposes, the most practical idealism, of the great law-making multitude, so that the growth of the law shall receive its impulses from the best and not from the worse forces of the community, and be guided by the wisdom and not the folly, the virtues and not the vices, of the people. There will always be danger of seeking lines of law development which appear upon the surface to be progress but which are really an abandonment of progress. Long continued advances in this world in any useful direction is difficult and slow. Progress in self-government requires the self-governing people to apply rules of action to their own conduct; to limit themselves by self-denying ordinances; to restrain their own impulses and cure their own faults.

In addition with us there will always be danger of developing our law along lines which will break down the carefully adjusted distribution of powers between the national and the state government. Upon the preservation of that balance, not necessarily in detail, but in substance, depends, upon the one hand, the maintenance of our national power, and, on the other hand, the preservation of that local self-government which in so vast a country is essential to real liberty.

Another problem is the danger of too great a reaction from the system of free contract upon which our government has long been developing—a reaction which will destroy the basis of individual liberty upon which our institution rests. We are in the midst of a reaction now. It was inevitable. The individualism which was the formula of reform in the early 19th century was democracy's reaction against the law and custom that made the status to which men were born the controlling factor in them. It was an assertion of each freeman's right to order his own life according to his own pleasure and power, unrestrained by those class limitations which had long determined individual status. Individualism in industry and politics followed as a national sequence of the teachings of John Calvin that the individual was responsible to his Maker. The instrument through which democracy was to exercise its newly asserted power was freedom of individual contract; and the method by which the world's work was to be carried on in lieu of class subjection and

class domination was to be the give and take of industrial demand and supply does not apply to the individual. Nor does the right of free contract protect the individual under these conditions of complicated independence which makes so large a part of the community dependent for their food, their clothing, their health, and means of continuing life itself, upon the service of a multitude of people with whom they have no direct relation whatever, contract or otherwise. Accordingly democracy turns again to government to furnish by law the protection which the individual can no longer secure through his freedom of contract and to compel the vast multitude on whose co-operation all of us are dependent to do their necessary part in the life of the community. Some government control is necessary; but we should not forget that every increase of government power to control life is to some extent a surrender of individual freedom and a step backward toward that social condition in which men's lives are determined by status rather than by their own free will. The central principle of our system of government is every man has a right to full and complete individual liberty, limited only by the equal liberty of every other man. From that right all others are deduced; To the right to life, to property, to the pursuit of happiness are corollaries. By this test our laws, our governing should be developed. The test is difficult of application. We ask, what part is the Bar to play in this great work of the coming years? Can we satisfy our patriotism and be content with our service to our country by devoting all our learning and experience and knowledge of the working of the law and of our institutions solely to the benefit of individual clients in particular cases. During all our mature lives, in many courts and upon many occasions we have been asserting rights, protecting property, preserving liberty by appeals to the law, and the great rules of right conduct written into our constitutions; protesting against the abuse of official power, extolling justice' pleading for loyalty to our free institutions. Haven't we meant it? Has it all been mere talk for the purpose of winning cases? Have we never really cared about law and justice except as available instruments to get particular clients out of trouble? Is the Bar doing its duty and playing its part in the development of the law? We contend that the controlling consideration should be the public service, and the right to win the regard of the profession should be conditional upon fitness to render the public service. Is it not this public service which the American Bar Association and special meeting of the Bar in September of this year had in mind when they passed the resolutions as to requirements for admission to the Bar? The supremacy of the judiciary, the difficulties of adjusting the balance of power between dual sovereignties, the vastness of our country in population, industry and political problems make our legal problems more complicated than those of any other country. We are not finding fault with what the bar has done in the past for the public. We believe if the Bar in the future is to equal the record of the Bar of the past the individual equipment of the individual members of the Bar must be bettered. Has the American Bar Association pointed the way? We believe it is a step in the right direction, and urge this Association to ratify the movement and recommend to our own court to announce that it will follow at some near future time the recommendation made by the American Bar Association.

INDEX

IDAHO STATE BAR COMMISSION

By_____, Secretary