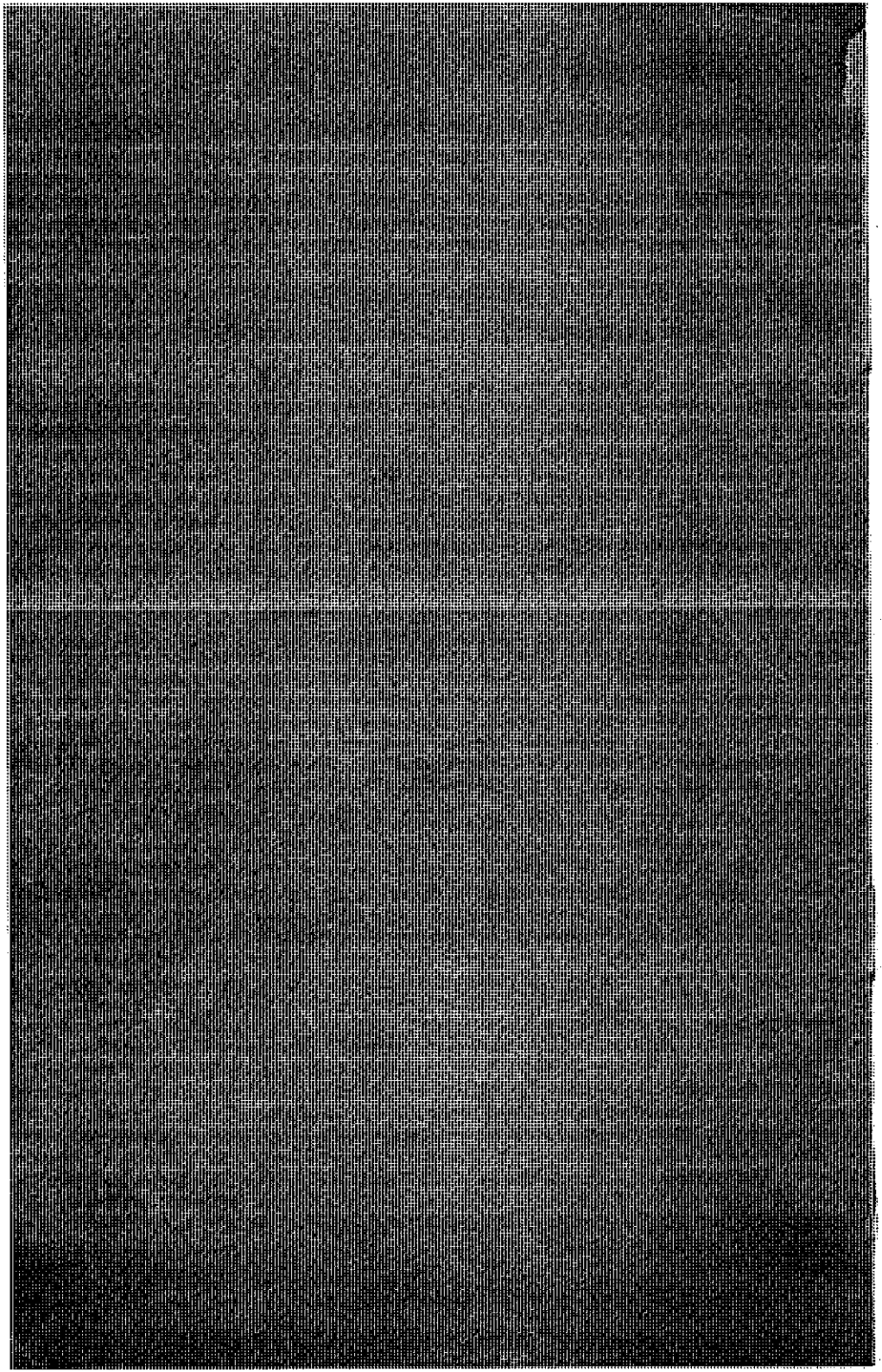

IDAHO STATE BAR COMMISSION

By_____, Secretary

PROCEEDINGS

of the

IDAHO STATE BAR

Volume IV, 1928

Fourth Annual Meeting

Coeur d'Alene, Idaho, July 23, 1928.

The Idaho State Bar is organized in conformity to and functions under, statutes of the State of Idaho, found as Chapter 211, Session Laws of 1923, and Chapters 89 and 90, Session Laws of 1925.

Rules for Admission of Attorneys, Couduct of Attorneys, Disciplinary Proceedings, and General Rules, as adopted by the Board of Commissioners and approved by the Supreme Court of Idaho, are published in pamphlet form and may be had upon application to the Secretary.

COMMISSIONERS OF THE IDAHO STATE BAR

JOHN C. RICE, Caldwell, Western Division.....1923-25
N. D. JACKSON, St. Anthony, Eastern Division.....1923-25
ROBT. D. LEEPER, Lewiston, Northern Division.....1923-26
FRANK MARTIN, Boise, Western Division.....1925-27
A. L. MERRILL, Pocatello, Eastern Division.....1925-28
C. H. POTTS, Coeur d'Alene, Northern Division.....1926-29
JESS HAWLEY, Boise, Western Division.....1927-30
E. A. OWEN, Idaho Falls, Eastern Division.....1928-31

OFFICERS OF THE IDAHO STATE BAR

JOHN C. RICE, Caldwell, President.....1923-25
ROBT. D. LEEPER, Lewiston, President.....1925-26
FRANK MARTIN, Boise, President.....1926-27
A. L. MERRILL, Boise, President.....1927-28
C. H. POTTS, Coeur d'Alene, President.....1927-28
SAM S. GRIFFIN, Boise, Secretary.....1923-

COMMITTEE ON LEGISLATION

1926—B. W. Oppenheim, Boise, *Chairman.*
1927—Jess Hawley, Boise, *Chairman.*
1928—Chas. P. McCarthy, Boise, *Chairman.*

OFFICES OF THE COMMISSION

36 Federal Building, Boise, Idaho.

ANNOUNCEMENTS

Attorney's License Fee—$5.00, payable annually prior to July 1, to the State Treasurer, Boise, Idaho.

Meetings of the Bar—The Western and Northern Divisions will hold Division meetings in 1929 at times and places to be fixed, respectively, by Commissioners Hawley and Potts.

Annual meeting of the Idaho State Bar will be held in the Eastern Division in 1929, at a time to be announced later.

An election of a commissioner for the Northern Division will be held in 1929.

REPORT OF ANNUAL MEETING

IDAHO STATE BAR

COEUR D'ALENE, IDAHO,

JULY 23, 1928.

The Idaho State Bar was called to order at 10:00 a. m., July 23, 1928, in the District Court room, County Court House, Coeur d'Alene, Idaho, by A. L. Merrill, of Pocatello, the President.

An invocation having been said, E. V. Boughton, President of the Kootenai County Bar Association, welcomed the members to Coeur d'Alene, after which the President delivered an address on "The Power of the Organized Bar."

Power of the Organized Bar.

It is a formality of a convention to be required to listen to a short report of the presiding officer. This is the only excuse I can offer for addressing you. It affords me the opportunity, however, to express to the members of the Idaho State Bar the thanks of the commission for the splendid help given us in our attempted administration of this trust during the past year.

The power of any organization can be best tested by a consideration of its accomplishments. If those accomplishments have been worth while then the aims and ideals underlying the organization might be considered with profit.

The organization of a state bar association by legislative enactment is, perhaps, still an experiment. It is worthy of note, however, that since the adoption of the plan by the Legislature of the State of Idaho, other states have been attracted to the idea. California has adopted this theory in its broader outlines. Nevada is seriously considering it, and, I am advised by the President of the Nevada State Bar Association, which is now a voluntary organization, that it is anticipated the matter will come before the next Legislature. Considerable controversy as to the merits of the movement has arisen in other States, particularly in Kansas, and New York. The general success of the movement will, of course, depend largely upon the success of the States who pioneer it. As a basis, therefore, for what I shall say permit me to hastily review the apparent accomplishments of the bar working under this plan.

It was not an easy task to secure the enactment by the Legislature of the act permitting the bar to operate under the present plan. The first time it was introduced in the Idaho Legislature it was defeated.

After the act did become a law its constitionality was seriously challenged in the case of Jackson vs. Gallet, 39 Idaho 382. As a result of this litigation, the Legislature of 1925 amended the law and the Commission thereafter began to function within the intention of this enactment. The plan, therefore, has been pursued since 1925.

Later the constitutionality of the act was again attacked in the case of In re: Edwards, 45 Idaho —. As the result of this decision the essential features of the act were declared constitutional and the status of the organization became firmly established and quite clearly defined.

In considering the work of the Commission, I have divided it into three subdivisions: FIRST, Applications to practice law; SECONDLY, disciplinary proceedings, and THIRDLY, educational development.

In dealing with the first subdivision it is perhaps advisable tc suggest the manner and method the Commission has adopted in performing its duties with reference to the admission of applicants to the bar. Prior to the adoption of this act this work was done entirely by the Supreme Court. The multitude of duties devolving upon this body made it almost impossible for it to give the necessary attention to this very important activity. Proper consideration with respect to the admission of applicants has a tendency to raise to a very much higher standard the entire bar. There has been an incessant demand from the bar and the public alike in the past decade for a higher standard of the profession. This, we believe, can be best accomplished by more rigid requirements of admission. Under the present rules, suggested by the Commission and adopted by the Supreme Court, much, we believe, has been accomplished looking to this end. Three things are now necessary for the admission of applicants. FIRST, good character; SECOND, reasonable academic training and THIRD, adequate legal training. Each one of these requirements is fundamental. Under the present rules an applicant must file with the Secretary of the Commission his application to be permitted to take the examinations. This application must give full information concerning the applicant's past life, his academic training and his legal training. The references must he broad enough to give the Secretary of the Commission an opportunity to make a full and careful investigation into the applicant's past. This duty is performed by the Secretary with painstaking care. After the applicant has met the necessary requirements, namely: appears to be of good moral character, possessed of an equivalent of at least a High School academic training and to have completed a course of study equivalent to three years in an accredited law school, then the applicant is given a certificate by the Board which permits him to take the examination.

The examination questions are prepared by a committee appointed by the Commission for this purpose. These questions are then carefully considered by the Commission in order to assure itself that the questions asked are of the character and type designed to make uniform the examinations from time to time. Ofttimes these questions

are changed by the Commission and new questions added. It is thought that no one examination can be considered easier than another.

The applicant is given a number with the issuance of his certifictae and on the date of the examination presents himself at the appointed place and is there subjected to a two-day test by another committee appointed for this purpose. Usually sixty questions are given, divided into three sections and then the last half day is devoted to legal research work. The committee giving the examination receives the applicant's answer which are, in each instance, signed with the applicant's number. These papers are then graded and submitted to the Commission. There are usually three examinations given in three sections of the State on the same day so that the Commission receives the reports of the committees of each of the three division. These questions, having been graded by different committees, renders it necessary for the Commission to likewise grade the questions, always, of course, using as a basis in arriving at an average grade, the marks given by the committee which first examined the papers. This plan makes uniform throughout the State the grading of all papers and renders it impossible for an applicant to feel he was subjected to more rigorous grading than the other applicant in another part of the State. When the Commission grades the papers and gives the final mark it, too, has only the number of the applicant so the Commission does not know the name of the individual who might make a good grade or the one who might fail.

Examinations given under these conditions have met with varying degrees of success. Failures have ranged from twenty-five to forty per cent.

Since the year 1925, during the period of time the Commission has really been operating, there have been 91 applications filed with the Board for permission to practice law. Of this number, 73 have been applications for admission by taking the examination and eighteen have applied for admission upon their certificates from the Supreme Court of some other State. Of the 73 who applied for admission by examination, two failed to take the examination. Eight were refused permission to take the examination because of moral or mental deficiencies and 55 ultimately passed the examination. Of this number, eleven passed on the second examination. A total of twenty-one failed on first attempt and two failed the second time. Of the 18 who made application to be permitted to practice upon their certificates from other states, 15 have been recommended for admission and three have been rejected. The rejections have been because of moral deficiencies.

In June, 1925, one examination was held at Lewiston. In November, 1925, one examination was held at Pocatello, one at Boise and one at Lewiston. In June, 1926, one examination was held at Pocatello, one at Boise and one at Lewiston. In November, 1926, one examination was held at Pocatello, one at Boise, and one at Lewiston. In June, 1927, one examination was held at Lewiston. In October,

1927, one examination was held at Pocatello, one at Boise and one at Moscow. In June, 1928, one examination was held at Pocatello and one at Lewiston. It will thus be seen that during the years 1925, 1926, 1927 and 1928, there have been five examinations held at Pocatello, four at Boise, one at Moscow and six at Lewiston, or a total of sixteen examinations.

It is not with any spirit of pride that we call attention to the percent of applicants who have failed, but it is rather for the purpose of calling to your attention the fact that it is not an easy task for an applicant to become a member of the Idaho State Bar. He must show himself to be a man of character, intelligence and training. These things, we believe, are the fundamentals of a good lawyer.

That which the Commission does in this respect is not final. Those applicants who have passed the examination are then certified to the Supreme Court with the recommendation of the Commission. If the Supreme Court feels the Commission has done its work well the applicants are admitted. If it does not the Court, of course, may re-examine and act independently of the recommendation of the Commission. The applicants who fail have the right to ask the Supreme Court for a review of their papers. This gives the applicant the same opportunity of having his work passed upon by the Supreme Court as existed prior to the passage of the act.

It is the avowed purpose of the present Commission to increase the requirements for admission, particularly in academic training, and the character of legal training. Education has now become so general that the man or woman who does not have an equivalent of a college training is probably, in almost every instance, of low mentality or of sluggish habits. It is no answer to the Commission's purpose to say that the requirement of an equivalent of two years of college training would have kept Abraham Lincoln from practicing law for the simple reason that if Abraham Lincoln were a young man today he would have such training.

While the giving of the examinations is undoubtedly an arduous and painstaking task and one which requires high fidelity to trust, yet, in the main it is enlightening and pleasing and a task which no member of the Commission or any committee appointed by the Commission ever shirks. There is, however, another task which the Commission must perform which is not only arduous but really distasteful. This is the task of dealing with disciplinary matters. This task requires the highest form of courage and honor and is undoubtedly the place where a true test of the power of the organized bar can be applied.

When the Commission commenced to formally operate in 1925, there was pending in the office of the Secretary of the voluntary bar association fifty complaints against lawyers practicing in Idaho. When we consider the membership of the bar was only about 600, this causes us to wonder whether or not the profession, as a whole, was not fast being discredited. Of course, in a few instances there was more than

one complaint against the same lawyer, thus reducing the number of lawyers of the State who were actually accused. One of the tasks, therefore, to which the Commission set its face was to deal with these charges. The Commission immediately adopted a rule requiring that all complaints against attorneys be verified. This gave the Commission a basis upon which to work. Many of these charges were trivial or were the result of misunderstandings between attorney and client. Some of them were filed as the result of a malignant disregard for the attorney, but others were very serious in their nature.

Complaints against attorneys are handled by the Board in the following manner: Reference of the charge is made to one member of the Board for preliminary investigation. This is a courtesy to which the member of the bar is entitled. If, upon preliminary investigation, it is found the complaint has no foundation, or is of a trivial nature, the matter is dropped or a mere suggestion to the lawyer adjusts the difficulty. If, however, merit is found in the complaint it may be referred by the Commission to a Prosecuting Committee and a Disciplinary Committee and a formal charge is filed against the attorney and he is duly served with citation. Upon hearing witnesses are examined, findings are made and recommendations are given to the Board of Commissioners, who in turn make recommendations to the Supreme Court. The foregoing method is considered both effective and just. It is designed to protect the attorney against unjust attacks as well as to treat serious charges.

Since 1925 there have been 42 formal complaints filed. Of this number, 21 have been dismissed by the Board on preliminary investigation, 17 have been referred to committees for further proceedings. Of the number referred to committees, five have been withdrawn by the Board and one has been dismissed by the Committee upon demurrer to the complaint; in two cases the certificates to practice law have been surrendered without hearing; two of these cases are still pending and upon seven there have been formal hearings held. Of the seven upon which formal hearings have been had, one has been dismissed on final hearing and in six disciplinary measures have been recommended. There are now pending before the Board for preliminary investigation four complaints. Eight disbarment proceedings have been referred to the Supreme Court with recommendations by the Commission for discipline. Of these eight the Supreme Court has disbarred three. It has dismissed one with a written opinion. It has remanded two for further proceedings and there are two now pending before the Court.

The examination into the complaints filed against attorneys is always painstaking and careful. I believe no attorney has ever approached this problem except through the highest sense of duty.

The third subdivision of the work of the bar is educational in character. The bar act provides for the holding of division meetings at least once a year in each division and an annual State meeting with the provision that in the division where the annual State meeting is

held the division meeting for that particular year might be dispensed with. It has been the aim of the Commission to provide the highest type of programs in each of these divisions aud to stimulate a wide range of discussion touching fundamental points and policies of the profession.

Perhaps three years is too short a time to form a conclusion of the success of this plan but the spirit with which the attorneys have accepted it is very interesting. When the act was first adopted there were a few who misunderstood its scope and purpose and who objected to the plan and the payment of the license fee. This spirit of opposition, however, has entirely passed and today there is no lawyer practicing in the State of Idaho who is delinquent in license fees for the year 1927 and preceding years. There is only one member of the Idaho bar who has not conformed in this particular and he is no longer a resident of the State. Proceedings are now pending against him for disbarment by reason of his dereliction in this and other respects. The members of the profession have responded with alacrity to all calls made upon them by the Commission. Attorneys do not refuse to serve on committees or to do other work delegated by the Bar Commission even though in many instances this requires a great sacrifice of time and the duties are perhaps unpleasant. During the last three years there have been 219 members of the profession give service in the furtherance of this work. Of this number 58 have served on committees on discipline and 28 have served on committees for prosecutions; 42 have served on committees in the giving of examinations; 50 have served on legislative committees; 3 have served on judiciary committees; 4 have served on the prosecuting attorneys committee; 9 have served on the canvassing committee; 12 have served on resolution committees and 12 have rendered miscellaneous services. While of course, there are some duplications in this number in that some attorneys have served on more than one committee, yet, this indicates a large percentage of the members of the bar who have seriously undertaken active, constructive work. When we consider the membership of the Idaho bar is approximately 600, we can safely say that at least 30 per cent of the attorneys within the State have, within a period of three years given time and serious consideration to this work. With such acceptance of the principles by the members of the profession it cannot be safely argued that the movement is not a popular one. Indeed, the activity of the members argues strongly for the potency of the idea and the strength of the movement. Even though our experience is limited in years we firmly assert that the activities encouraged under the act proves without doubt the value of an organized bar. We can safely challenge any State in the American Union to produce figures comparable to this. A voluntary association is idealistic. It is alright in theory but it certainly lacks the strength of an organization such as we have. If 30 per cent of the members of the bar of any State within three years time gives earnest, conscientious, painstaking labor to the accomplishment of some particular aim

of the organization there is a strength generated and developed which must of necessity be felt in any community.

I called attention to the fact that all attorneys pay the license fee. It is commonplace to say no organization can operate without finances. Giving examinations are not without expense. Disciplinary proceedings are very expensive. Witnesses are often brought from a distance. Transcript of records have to be made. Printed reports of all proceedings are mailed to each member of the bar. All of this expense is met by the license fee. In voluntary organizations often a third of the time and energy of the officers is spent in financial matters and then their aims and promises are hampered and curtailed. There is none of this with us. The five dollars paid by each member supplies ample funds and no one is injured by its payment.

With such a background and such a beginning what might we expect for the future? The idea has had to win its way with the members of the bar and the Courts. It has had to win its way with the people. It has had to prove itself worthy of the valuable time and labor and money of its members. This we firmly assert it has done. We may then look to the future with assurance that this idea will enable us to uplift the standing of the bar. It has long been the pastime of critics and cynics to speak of the bar in derision. Lawyers have ever been the butt of jokes suggesting dishonesty and insincerity. While such may be true of some lawyers, yet, it is certainly not true of all. There is no profession, there is no vocation, in which men are engaged where there is a higher type of manhood, a stronger and more ardent adherence to the principles of honor and justice, than the legal profession. It is true, we make mistakes; it is true that occasionally members become weak and yield to temptation—but is not such the case in every line of human endeavor? If we could make an average test I am sure the lawyer would rank as high as the client. There is a vast difference between the work of a lawyer and the work of other professional men. Every lawyer's work is open to public scrutiny—his advice to his clients, his action in court, his oral argument and written briefs all throw his mental and moral character open to public gaze, yet with all his mistakes, his influence upon his fellow men has been very great. Every community, whether it be a hamlet, town, village or city, is truly weighed and tested by the standing of its bar. If the leaders of that bar are fearless, courageous, intelligent men such spirit pervades the commercial life of that community. A weak bar breeds distrust and dishonor and lowers the commercial and civic tone of the masses. Our profession is an honorable one. It is one in which opportunity is afforded to live a useful life and make an honorable living. It is a profession, however, which we must guard and cherish. The fact that almost everything we do is open to public scrutiny, that we are always acting for others and that our knowledge, experience and ability places us in a position of trust and confidence, renders it absolutely necessary for every member of the bar to maintain a high standard of integrity and honor. While

some may differ with me, yet, I am firmly of the conviction that a man cannot be fair to his clients and dishonorable with his business associates; that he cannot preserve the integrity and honor of the Courts and deal dishonestly and disgustingly on the outside; that he cannot draw a proper distinction between his conduct with a client and an individual not a client; that any insiduous force which weakens him in his social and commercial life, and permits him to yield to temptation will gnaw at his integrity in his professional life.

Wherein, then, is the strength of the organized bar? It has taken active charge of the qualification of applicants for membership with the determination of raising its standard. It has the manhood and courage to deal fearlessly with its offending members and to protect its members against malicious and unfair attacks of others. There is real power in its solidarity and unhampered ability to work out its plans. It is constantly increasing the confidence of the public in the bar as a whole and developing within its membership a true regard for the profession and its relationship to the commonwealth. Voluntary organizations have the same high aims and ideals, but the very practicability of the organized bar gives these ideals a potency and strength without which the organization would be far less effective.

The President announced the following committees:

RESOLUTIONS: A. H. Oversmith, Moscow, Chairman; Charles M. Kahn, Boise; N. D. Wernette, Couer d'Alene.

CANVASSING: James L. Boone, Boise, Chairman; Abe Goff, Moscow; J. Ward Arney, Coeur d'Alene.

The Secretary, Sam S. Griffin, reported as follows:

Report of Secretary.

The last report was made to the annual meeting of the Idaho State Bar, held at Boise, on August 12, 1927, and is published in Volume III of the Proceedings, pp. 141-145.

At that meeting Jess Hawley, of Boise, was elected Commissioner for the Western Division, succeeding Frank Martin. After his election, the Board convened the first of the six meetings held since the last report. A. L. Merrill was elected President, C. H. Potts, Vice President and Sam S. Griffin, Secretary. Five applications for admission to the bar were considered—four for examination were allowed—the fifth for admission on certificate was held open for further investigation, inasmuch as investigation made up to that time indicated possible unworthiness of the applicant. Eight complaints were considered; six were dismissed upon settlements or because no cause of complaint appeared; action on two was deferred, pending further preliminary investigation. Reports on Division meetings were made; arrangements for audit of the Secretary's books ordered; plans for an examination at Pocatello, Boise and Moscow were consummated and the Secretary directed to furnish each Commissioner a duplicate set of minutes of meetings of the Board so that each member could be always advised of the work done and to be done.

The Board met at Boise, September 28, 1927, and considered four complaints; in one, committees on discipline and for prosecution were appointed, action having been ordered; two were dismissed; in the fourth, In re: S. E. Henry, disharment was recommended to the Supreme Court. Later that Court entered judgment of disbarment, but upon a subsequent showing by Henry claiming non-receipt of notice of the Board's action, the judgment was vacated and Henry permitted to petition for review; argument was had in the Supreme Court on June 13, 1928, and the matter is yet pending.

At this meeting, the Board announced its policy relative to complaints of collection agencies which had been a source of annoyance to the bar and to the Board, inasmuch as in most instances an effort was being made to constitute the Board a collector merely, the complaints not being made in good faith, but apparently for the purpose of "blackjacking" attorneys. The Board announced that no consideration would be given such complaints unless good cause for discipline appeared, and the complainant was willing to co-operate in completing disciplinary proceedings, notwithstanding settlement after action was instituted, and was acting in good faith in filing the complaint.

Five applications were investigated; certificate permitting examination was issued to four applicants; one recommended for admission on certificate; this was subsequently denied by the Court. Examining committees were appointed to conduct the October examinations and questions therefor determined upon. Disciplinary proceedings were directed against attorneys delinquent in payment of annual license fees.

At its meeting October 31, 1927, at Boise, the Board graded examination papers and recommended admission of seven, rejecting two. Two applications on certificate were deferred for further investigation. Revision of rules relating to admissions, conduct and discipline was considered.

The meeting of January 10, 1928, at Boise, considered four disciplinary matters; two were dismissed, one referred to a prosecuting attorney as involving commission of a crime; in one, In re: Dampier, arrangements for briefs and argument on re-hearing in the Supreme Court were made. Three applications were investigated; two, on certificate, were recommended; in one, being a case in which an applicant had not presented himself for admission, the recommendation of the Board was withdrawn. Proceedings were directed against six attorneys delinquent in payment of 1927 license fees.

A Judicial Committee of the Bar was appointed to study and report on organization of a Judicial Section of the Bar, uniform District Court Rules, and the judicial rule making power. That committee's report has been printed, sent to each member of the bar, and is for discussion at this meeting. A Prosecuting Attorneys' Committee was

also appointed, whose report and recommendations have also been printed, circulated and is ready for discussion. So also a Legislative Committee, whose report, printed, is for discussion. The policy of the Board was declared of having one member as an ex-officio member of such committees.

The Board declared a policy of encouraging formation of local lawyers' clubs throughout the State; such clubs are now established at Boise, Pocatello, Idaho Falls and Moscow. Twin Falls County has a local association.

Further consideration was given to changes of rules—discussion was had of the coming annual and division meetings and arrangements made for the June examination.

The Board again met at Boise on April 23, 1928. The audit of the Secretary's books was approved, and the Secretary directed to keep account of the receipts and disbursements from the appropriation. Further arrangements for bar meetings were discussed and notices of such meetings and of the election in the Eastern Division directed. Reports on progress of committee work was made and a meeting held with the Judicial Committee chairman; a meeting was held with Justices of the Supreme Court and discussion of revision of rules of admission, conduct and discipline had. Questions for the June examinations were considered and arrangements for conduct of such examination made. Two cases of questionable advertising were informally considered and the attention of the attorneys involved were directed thereto, and later the Board was advised of discontinuance of the practice. An informal complaint by the widow of an attorney was considered and she was advised of her rights. Two formal complaints received attention—one was deferred for further preliminary investigation; in one, In re: Ben H. Busman, the Board, hearing having been had, recommended suspension for six months. This was subsequently approved and judgment of suspension was entered by the Supreme Court. Further study was made of changes in rules. Nineteen applications for admission were investigated; one applicant on certificate was recommended for admission; five were issued certificates permitting examination; eleven were issued conditional certificates requiring showing of completion of the required period of study; two were rejected for insufficient educational showing.

The last meeting was at Lewiston, June 12, 13 and 14, 1928, at which time sixteen sets of examination papers were graded; twelve applicants were recommended and four rejected. An applicant for admission on certificate was recommended to the Court. The Supreme Court having remanded the Edwards and Downs disciplinary cases, the Board considered the Court's opinions and directed that further proceedings be taken in accordance therewith. The printing and distribution of committee reports was directed. Commissioner Potts was requested to, and did, appear for the Board in the Supreme Court in the S. E. Henry disbarment proceeding. A final draft of revised rules for admission, conduct, discipline and general matters was drawn and

directed to be presented for approval by the Supreme Court. That body is now considering such rules. If and when approved, they will be printed and distributed to members of the bar. Two complaints were studied; one dismissed, the other deferred for further investigation. A tentative program for this meeting was drafted.

Such, in brief, was the work undertaken and accomplished. It is believed that the procedure of admissions and discipline, and the status of the Board and bar is quite well established, and that it is time for the bar to begin the intensive study of other problems. With this in view, the policies of appointing committees to study special matters of interest to the bar and the administration of justice, of distributing printed copies of reports to all members and of strengthening local organizations of attorneys for better understanding between themselves and more effective work in forwarding the interests and work of the bar, are adopted. An increase of interest, and of appreciation of what the organized bar is for and can accomplish, is noticeable among the members of the bar.

Statistically, it may be said:

Since effective organization in 1925, there have served on committees of the bar about 220 members, of whom 58 served on Committees of Discipline, 29 on Prosecuting Committees, 42 on Examination Committees, 50 on Legislation, 3 Judicial, 4 Prosecuting Attorneys, 9 Canvassing, 12 Resolutions and 12 on miscellaneous committees; these aside from service on program and local committees for meetings.

Fifty complaints awaited the Board on organization; they were investigated, settled, dismissed, adjusted or made subject of formal verified complaint. A great number of informal complaints have been received and adjusted, withdrawn or made subject to formal complaint.

Forty-two formal verified complaints have been filed; of these, twenty-one were dismissed after preliminary investigation; four are now pending such investigation; seventeen were referred to committees for action, of which five were subsequently withdrawn and dismissed, one dismissed by committee on demurrer, two are pending, in two the accused surrendered his certificate to practice and asked cancellation; seven went to trial, of which one was dismissed and in six action of disbarment or suspension was recommended to the Board. In eight cases, the Board recommended action by the Supreme Court, and of these, the Supreme Court disbarred three, dismissed with opinion one, remanded for further proceedings two, suspended one, and has under consideration one.

Ninety-four applications for admission to practice have been filed, seventy-five by examination, nineteen by certificate. Of the seventy-five, four have not taken the examination, fifty-five have passed (eleven on the second examination), twenty-one have failed (two failed twice), and eight have been refused permission to take the examinations. Of the nineteen applying by certificate, one is pending, fifteen were recommended and three rejected. Sixteen separate examinations have

been conducted, five at Pocatello, four at Boise, one at Moscow and six at Lewiston.

The status of the appropriation follows:

EXPENDITURES		1928 7-30-27—7-16-28	1927 7-10-26—7-29-27
Office Expense:			
Secretary's salary		835.00	830.00
Stenographer		118.22	102.81
Stamps, stationery, forms, etc.		218.57	335.74
Travel Expense		536.49	766.44
Bar Meetings		516.30	311.04
Publications, 1926 & 1927 Proceedings		549.60	.....
Examinations		95.50	70.96
Discipline:		412.45	1353.58
In re: Edwards	$117.95		
Dampier	73.05		
Busman	3.00		
Henry	218.45		
Totals		3272.11	3770.57
Balance on hand in appropriation 8/13/27			6286.68
Balance on hand in appropriation 7/16/28			5144.80

The Secretary opened books as of January 1, 1928, covering transactions in the appropriation. From January 1, 1928, to and including July 16, 1928, the following appears therefrom:

Balance on hand January 1, 1928		5175.05
Receipts of License Fees		1710.00
EXPENDITURES:		
Office	632.41	
Travel	336.49	
Meetings and Publications	566.60	
Examinations	52.25	
Discipline	152.50	
	1740.25	6885.05
Balance		5144.80

MEMBERSHIP—June 30, 1928:

Northern Division	141
Eastern Division	162
Western Division	278
Out of State	32
Total	613

Delinquencies prior to 1927—None.

Delinquencies for 1927:

Northern Division	1
Eastern Division	1
Western Division	1
Out of State	1
Total	4

License payments for 1928 received:

Northern Division	65
Eastern Division	117
Western Division	166
Out of State	9
Total	357

Respectfully submitted,
SAM S. GRIFFIN,
Secretary.

Upon motion duly made, seconded and carried, the report was ordered received and filed.

The report of the Eastern Division meeting at Pocatello, July 2nd, 1928, was read.

Minutes of Meeting of the Eastern Division of the Idaho State Bar, Held July 2nd, 1928, at Pocatello, Idaho.

The Eastern Division of the Idaho State Bar met at the Federal Court room, Pocatello, Idaho, July 2nd, 1928, at 2 o'clock p. m. A. L. Merrill, Commissioner, presided. Present, 32.

A. L. Merrill addressed the meeting on the purpose of the act organizing the Idaho State Bar and outlining the work of the Commission since the decision of Jackson vs. Gallet in 1925. He outlined the manner of giving examinations and grading the applicant's papers and the general details having to do with the admission of applicants for the practice of law. He also outlined the method of the Commission in dealing with charges filed against attorneys. He then reviewed the general accomplishments of the bar since its organization with a brief forecast of the possibilities of the future.

W. H. Witty next addressed the meeting on the bills recently before Congress for the curtailment of the power of the Federal Courts. The speaker commented vigorously upon the radicalism evident in the bills, the unprecedented change the same would create in Federal procedure and also gave some attention to the question of whether or not said bills are constitutional. At the conclusion of this address, L. E. Glennon of Pocatello moved that the meeting recommend that the Idaho State Bar, at its meeting at Coeur d'Alene, July 23rd, 1928, adopt a resolution unqualifiedly opposing these bills. This motion was duly seconded and unanimously carried.

Russell Locke of the Chicago bar spoke on the practice of the law in the City of Chicago, outlining and detailing the various departments of the Courts and the manner of bringing a case to final hearing in a place where the calendar is truly congested.

Hon. Alfred Budge, Justice of the Supreme Court of Idaho, gave an address on "The Rule-Making Power of Courts," which address is as follows:

"So much has been written about the rule-making power of courts that the development of anything new on the general subject seems unlikely. But the presentation of a few observations touching this phase of our judicial system, and particularly as affecting the administration of court business in our own State, may be of interest.

While the course of these remarks will be more or less general, as it is possible within a limited period only to sketch hroadly and touch upon the more fundamental principles of the subject, I should like to convey the thought that what I have in miud is the need for reform in the way of bringing about some change so as to enable the courts more readily to meet the constantly increasing demands upon them. We have reached a time when the delays and uncertainties which were merely annoying in a more leisurely period might well become intolerable in an age of speed and high pressure.

Rules, in a legal seuse, mean law, and wheu adopted have the force and effect of legislative enactment. It has been said that under our system all courts have certain inherent powers to be exercised for the purpose of methodically disposiug of all cases brought before them. They can establish such rules in relation to the details of business, as shall best serve this purpose, having proper regard for the rights of parties litigant as guaranteed and recognized by the Constitution and laws. This, even in the absence of any statutory provision or regulation in reference thereto. Iudeed, since justice can only be administered scientifically, it must be done by fixed, correlated rules, lest principle be sacrificed for expediency and civil liberty and property rights be based upon a whim, and the necessary popular faith fail from lack of confidence and respect.

The iuherent power of courts to make rules governing them in the conduct of their business and in the method of procedure in cases brought before them was early recognized by the Supreme Court of the United States, in Fullerton v. Bank of United States, 7 L. Ed. 280, decided in 1828, and the right probably was first annonnced in this State by the territorial Supreme Court in United States v. Mays, 1 Idaho 280, decided in 1880.

Our State Constitution provides, Article V, Section 13:

> 'The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a co-ordinate department of the goverument; but the legislature shall provide a proper system of appeals and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with this Constitution.'

This constitutional provision, it will be observed, gives the Legislature the power to provide a proper system of appeals; and the State Supreme Court has held in many cases that the right of appeal at law is purely statutory, and that the Legislature may prescribe in what cases, under what circumstances, and from what courts appeals may be taken, and the manner of taking them. But it has also indicated the Legislature is powerless under this provision of the Constitution to prescribe the procedure after the case has reached the Supreme Court on appeal. Thus the Constitution itself limits the power of the Legislature in prescribing methods of procedure in the courts of this State to those below the Supreme Court, leaving to the latter the power exclusively to regulate its business and to promulgate rules for the conduct thereof.

In Talbot v. Collins, 33 Idaho 169, where a statute was found to be in conflict with a rule of court, it was held:

> 'After the Supreme Court has acquired jurisdiction of a cause on appeal, and after the record upon which the appeal is to be heard has been filed, the court has exclusive control of the case. Any other body or department of government cannot prescribe where and when the court shall proceed in the exercise of its jurisdiction without regulating the methods of proceeding in the supreme court. . . .

> 'By providing (in the constitution) that the legislature may regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all courts below the supreme court, power to regulate the methods of proceeding in the supreme court is denied the legislature.'

It follows, therefore, that a rule of the Supreme Court supersedes any legislative enactment in conflict therewith. In the case of conflict of a rule of any court below the Supreme Court and a legislative enactment, the rule would yield to the statute. The power of the Legislature to regulate by law the methods of procedure in district courts is expressly recognized in Spivey v. District Court, 37 Idaho 774.

The rule-making power in Idaho, therefore, relates merely to procedure in the Supreme Court, although, as indicated, all other courts have the inherent power to establish rules for the conduct of their business and procedure in the handling of cases, not in conflict with constitutional or statutory inhibition.

The Supreme Court has from time to time promulgated rules, some of which have met with general approval of the bar, and others with disapproval. The rules adopted have been largely with respect to the method of getting cases filed in the appellate court. It has not, however, exercised its full power, being somewhat hesitant in the matter of formulating and adopting rules of procedure. But the power of the court in this regard was expressly recognized by the Legislature in 1911, with respect to the method of procuring transcripts for appeals to the Supreme Court, the act providing that transcripts shall be transmitted to the Supreme Court 'within such time as is now or shall be designated by rule of the Supreme Court.'

Judicial procedure fixes the conditions, the time and manner as to which one may seek the use of the courts; it prevents surprise, oppression and a subsequent attack on the same issue; it makes the humblest man the equal of the strongest. It thereby becomes the measure of civil liberty and property rights. Obviously a faulty or technical procedure therefore puts into jeopardy the most sacred rights of citizenship. There can be few more wicked governmental faults than the clogging of the sources of justice with an unscientific practice and procedure that ties the hands of the judges and creates uncertainty, delay and expense. Rebellion against an unsatisfactory Legislative juridicial program may, therefore, be evidential of a robust intelligence, instead of a symptom of a lack of reverence. For, if a democracy shall exist under the rule of the people, the courts must be prepared to ascertain and administer justice in a satisfactory manner.

With a well-nigh unanimous opinion that our procedural law needs reform, it is not improper to inquire why it is not reformed. It may be answered that genuine reforms are not easily discovered, and that when discovered their concrete formulation and adoption are not accomplished without much effort. A solution of the problem might lie in getting rid of the regulation of legal procedure by the Legislature, put it in the hands of experts, and then see to it that those experts are held accountable for organizing and maintaining a system adequate for our needs. That means of course a substitution of court rules for legislative codes.

In a number of States, particularly Alabama, Colorado, Michigan, New Jersey, North Dakota, Washington, and possibly others, the courts are given full power to adopt rules governing procedure, but even so, courts have often failed to take advantage of this power, and comparatively little has been accomplished. Whether like results would ob-

tain in this State, should the power of district courts be broadened in this respect, is problematical.

The last edition of the American Bar Association Journal contains a report that by a unanimous vote the Arizona Bar Association at its meeting in February went on record in favor of the exercise of the rule-making power of the courts. This action followed an address by Superior Judge Windes which was adopted as an expression of the views of the association. It was stated that Judge Windes stressed the necessity of technical knowledge of the procedural problems to be dealt with, which knowledge most legislators do not possess. Among other things, he is reported to have said:

> 'To my mind the advisability is plain. Legislative control of procedure stifles enlightened progress and growth. The tendency of the method is to place the courts in a routine rut. Flexibility and elasticity are needed.
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> 'These cannot be had through the legislature. Such changes as are needed should be made without years of delay. A judicial council or rules committee could accomplish in thirty days what the legislature would accomplish in several years.
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> 'Courts to operate in a business-like and competent manner, can not be governed by rules which are the result of legislative theory. They must of necessity be governed by rules that grow out of the exact requirements of actual practice. Such rules must be delicately adapted to the circumstances.
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> 'Only experts, the bench and the bar, with a thorough knowledge of the technique essential to the work of the courts, experts familiar with the intricacies of litigation and with an appreciation of the problems involved, are in a position adequately to handle the problem.'

The latest compilation of the rules of the Supreme Court of Idaho, adopted in 1926, contain 68 separate and distinct rules. Some of these have been in force since the early days of the organization of the territorial Supreme Court, in 1863. Many have been added, others amended, and some abolished. It may be safe to say, however, that the rules of the Supreme Court have never been scientifically prepared, and have constantly been a source of uncertainty in the matter of correct procedure. There seems to have been a tendency in the court to find legislative sanction for the application of certain rules, possibly upon the theory that rules of procedure adopted by the Legislature would have more permanence and stability, and with the unexpressed desire, perhaps, to shift the responsibility to another coordinate branch of government as a buffer to take the shock of the attack of the contending parties. But to justify the power to make rules, full responsibility for their formulation and enforcement should be placed where it belongs.

It might be well to suggest a complete revision of the rules of the Supreme Court, and the adoption of such further rules as may be necessary to enable the Court to control all the procedure therein, free from legislative enactment; then hold the Court accountable for maintaining a system of proceduure adequate for our needs. In Michigan, for example, the state bar association has long acted unofficially as an intermittent rule committee, and its recommendations have been gladly received and usually approved by the Supreme Court.

All the new courts which Congress has established since the Field code of 1848, as well as quasi-judicial boards and commissions, have been given express power and authority to make and amend their own rules of practice. This has been true of the Court of Claims, United States Court for China, Court of Customs Appeals, Commerce Court, and lately the Supreme Court of the District of Columbia; as well as the Interstate Commerce Commission, Board of General Appraisers, Board of Tax Appeals, Federal Trade Commission, and Federal Power Commission.

In this State, the Legislature has conferred like power upon boards and commissions exercising administrative and quasi-judicial powers, such as the Public Utilities Commission and Industrial Accident Board.

In the preparation of rules governing procedure both in appellate and inferior courts, they should be so drafted as to eliminate the possibility of technical objections to prevent the expeditious handling of cases and due administration of justice. Courts should be permitted when cases are before them to go at once to the merits of the controversies, and where no substantial injury would result, hair-splitting technicalities should he brushed aside.

It should be remembered that Article V, Section 13 of our Constitution empowers the Legislature to regulate by law the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, but I believe an amendment whereby these courts may be authorized to have their own rules of practice and procedure is not unworthy of the serious consideration of the bench and bar. If such an amendment were forthcoming, the rules to be adopted in conformity therewith would of course follow the constitutional check contained in Article V, section 26, that the practice and procedure in all the courts of the same class or grade shall be uniform throughout the State.

Whatever might be done along these lines should be with the view and purpose of a better administration of justice, the sacred function of which may be best envisioned through the words of Daniel Webster, who said:

> 'Justice is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever its temple stands, and so long as it is honored, there is a foundation for social security, general happiness and the improvement and progress of our race. And whoever labors upon this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars . . . . or contributes to raise its august dome still higher to the skies, links himself in name, in fame and character with that which is, and must be, as durable as the frame of human society.'"

The Chairman thereupon announced that the meeting should consider the proposed changes in the corporation code. Thereupon Mr. W. H. Witty of Pocatello advanced the theory of more liberal incorporation laws and particularly more liberal laws with respect to State inheritance taxes. Mr. Clency St. Clair of the Idaho Falls bar urged liberality on paid up capital stock, provision for non par value of stock with rather stricter laws touching incorporation and subsequent management of corporations. He urged the advisability of rewriting the corporation code and eliminating some of the unnecessary provisions now found in our statutes. Mr. H. B. Thompson of the Pocatello bar urged a change in the corporation laws touching the forfeiture of the charters of corporations controlling their own real estate in such manner that the forfeiture would be properly docketed or recorded in the office of the County Recorder of the

county where said corporation owned real estate so that such information would always be available to prospective purchasers of such real estate.

Mr. T. D. Jones of the Pocatello bar urged a clarifying of the present statute dealing with preferred capital stock.

The report of the Judicial Committee of the Idaho State Bar was next read and considered by the meeting. Mr. T. D. Jones moved the adoption of the report, which motion was seconded by Mr. H. B. Thompson. The motion was unanimously carried and the report declared adopted by the Commission and referred to the State Bar at its annual meeting.

The report of the Prosecuting Officers Committee was next considered. Various members who spoke upon this report considered the same to be of an entirely technical nature and suggested a detailed study of the report be made before the same was proposed at the annual meeting of the State Bar.

The report of the Legislative Committee was next presented. Suggestion No. 1 of this report, dealing with a unified court was considered inopportune by reason of the apparent necessity of amending the Constitution for the accomplishment of this purpose. It was seriously urged by several members that this matter should be dealt with at a constitutional convention at which time any other features of the Constitution might be amended.

Suggestion No. 2, dealing with judgment liens, was, upon motion duly made and seconded, unanimously adopted. However, the act proposed for the accomplishment of this purpose was variously criticized, particularly in that it was suggested that said act would not conform to already existing federal statutes and that it would not make proper provision for the docketing of said liens in the office of the Clerk of the Court of the county wherein the land was located.

Suggestion No. 3, dealing with the limitation of civil appeals, was, upon motion duly seconded and carried, rejected.

Suggestion No. 4, recommending the amending of the Idaho Statutes dealing with bonds furnished by abstractors, was carried with the further suggestion that such bonds be required by all abstractors in all cases.

Suggestion No. 5, opposing bills limiting jurisdiction of the Federal courts was unanimously adopted.

Suggestion No. 6, dealing with the enactment of a statute requiring every owner of an automobile to take out liability insurance was submitted to a vote with the result that nine voted in favor of such statute and nine voted against such statute, the remaining members not voting.

Suggestion No. 7, recommending that the statute be amended permitting foreclosure of mortgages and an action to cure defects in title in the same action, was carried unanimously.

Suggestion No. 8, being one urging the next Legislature to provide for compilation of the statutes, was unanimously carried.

The meeting thereupon adjourned until 6:15 p. m.

At 6:15 p. m. the meeting reconvened at a banquet with music and entertainment after which several individuals, including Judge Stanrod, Judge Budge, Jess B. Hawley, Judge F. J. Cowen, Otto E. McCutcheon, P. C. O'Malley, and others responded to the call of the Toastmaster with short and entertaining addresses.

ADALYNE BURRUS,
Secretary of Meeting.

The report of the meeting of the Western Division held at Twin Falls, July 14th, 15th, 1928, was presented.

Annual Meeting of the Western Division of the Idaho State Bar, Twin Falls, Idaho.

First session convened July 11, 1928, at 2 p. m., Hon. Jess B. Hawley, Commissioner of the Western Division, presiding.

E. M. Wolfe, President of the Twin Falls County Bar Association, gave an address of welcome to all visitors. Mr. Wolfe spoke of the careless newspaper editorials criticizing the members of the Bar.

William E. Lee, Chief Justice, was unable to attend, and Justice T. Bailey Lee responded to the address of welcome.

The Chair appointed John Graham, James R. Bothwell and Frank Martin to act as a Committee on Resolutions, to report the recommendations of the Western Division to the annual State Bar meeting.

An address on the History of the Bar of the State was given by Jess B. Hawley. A discussion of Mr. Hawley's address followed, in which Mr. Frank Martin spoke of the poor representation at the meeting, and stated that in his opinion the lawyer stands upon a different plane than do other business men. John Graham also spoke on the subject, as did Turner K. Hackman.

A musical selection was rendered by Wilton Peck.

Address, 'Watchman, what of the night?" was given by H. Z. Johnson, of Boise. After the very scholarly address, Judge Morgan suggested that Mr. Johnson's speech be published and sent to all lawyers in the state. Frank Martin moved, and Mr. Graham seconded the motion that the address appear in the proceedings of the Idaho State Bar. This was unanimously carried.

"Business of the Law," an address by J. L. Eberle, followed.

The meeting was dismissed after the announcement that all members would be taken to Jerome where the Bar of that vicinity had arranged a banquet.

THURSDAY, JULY 12, 1928—10:30 A. M.

Convened with Jess B. Hawley, Division Commissioner, in the chair.

Hon. Dana E. Brinck, District Judge, spoke on the report of the

Judicial Committee in reference to modification of our procedural system, and on the advisability of adopting the judicial rule making power in Idaho, and discussed uniform District Court rules. During Judge Brinck's speech, questions were asked of him by Judge Morgan, Sam S. Griffin, and Jess B. Hawley. Upon these questions discussions followed.

A piano solo was rendered by Charlotte Vogel of Twin Falls.

Address, "Idaho Abstracts and their Examination," by D. L. Rhodes of Nampa.

The 2:00 P. M. session was opened by a vocal solo by Mrs. F. S. Bell, accompanied by Mrs. O. P. Duvall. Attempts were made to have the members of the Supreme Court remain for the banquet to be given at the Park Hotel at 6:30 p. m. Judge Morgan, Senator Sweeley and John Graham, by their eloquence, tried to get these gentlemen to remain. The Judges all answered regretting that the pressing affairs of the Court called them back this afternoon.

The report of the Commitee on Resolutions was read by John Graham, the report being as follows:

"The Committee on Resolutions submit for your consideration the following recommendations:

1. RESOLVED, That the members of the Bar of the State of Idaho urge and work for an amendment of the statutes of this State to provide for an adequate increase in the salaries of the Judges of the Supreme and District Courts of the State.

2. RESOLVED, That the Judges of the Supreme Court and District Courts meet on the day before each Bar Asssociation meeting to consider matters of interest to the Bar and Judiciary of the State, with the hope that such meetings will stimulate interest in the meetings of the Bar Association.

3. We recommend that the statutes in regard to the Federal judgments be amended as suggested by the report of the Legislative Committee to the State Bar.

4. For the purpose of stimulating interest in the State Bar we recommend that an Advisory Committee, consisting of one member of the Bar from each county, be selected to advise and counsel with the Commission upon questions of interest to the Bar.

5. RESOLVED, That the State Bar Commission appoint a Publicity Committee and prescribe the duties of the Committee to the end that the position of the Bar on public questions which affect the Bar may be given proper publicity.

Dated this 12th day of July, 1928.

JOHN W. GRAHAM,
JAMES R. BOTHWELL,
Committee."

Each resolution was taken up separately and discussed by the following gentlemen: Sweeley, Bothwell, Morgan, Hackman, North and Graham. Upon being put to a vote, all five of the resolutions were passed.

Sam S. Griffin next offered a resolution for consideration, relating to the rule making power of the District Courts. A lengthy discussion followed, led by John Graham, with Griffin, Justice Givens and Hawley following. Judge Morgan called the attention of the meeting to the constitutional phase of the resolution. After the discussion, Mr. Griffin amended his resolution to read as folows:

"RESOLVED, That this Division favor a study of the rule making power of the Idaho Courts, and advise that the Bar take steps necessary to hring the subject clearly to the attention of the membership of the Idaho State Bar." As amended this resolution was voted upon and passed.

Judge Brinck opened up the discussion of the second resolution of the Committee on Resolutions in regard to an appropriation therefor and as to whose duty it was to call such meeting. E. M. Wolfe moved, and it was put to a vote and passed that the following portion of the Judicial Committee's report be incorporated into the second resolution:

"And the desirability of making it most effective, we recommend that the Association undertake to present to the Legislature the idea of making an appropriation to defray the actual expenses in attending such conference of all members of the section who reside away from the place of meeting, including the Bar Commission, or a Committee of the State Bar; that such meeting be held only at such time and place as the Chief Justice shall designate."

Sam S. Griffin read "Idaho Corporation Law Defects," written by James Harris. The author was unable to attend to deliver his own address.

Jess B. Hawley gave the reasons for such an address, and requested that all members of the Bar send to the Committee the defects they considered exist in our laws dealing with corporations.

Announcements of the Idaho annual State Bar meeting to be held at Coeur d'Alene, and the National Bar meeting at Seattle, were given by Sam S. Griffn.

Commissioner Hawley stated at the close of the meeting that he was not at all discouraged over the poor attendance when he thought of the conditions prevailing in the legal profession a few years ago. He stated that he had determined to go forward until a unified Bar in the State of Idaho was a reality and not a dream.

A. H. NIELSON,
Acting Secretary.

Address of Henry Z. Johnson of Boise, Idaho, Before the Idaho State Bar Association, Western Division, Twin Falls, Idaho, July 11, 1928.

"WATCHMAN, WHAT OF THE NIGHT?"

In olden times it was a custom to have watchmen guard the walled towns from sunset to sunrise to sound alarm in case of impending danger. Often in the stillness of the night as the watchman was making the round anxious voices would cry out to him in nervous apprehension: "Watchman, what of the night?"

Blackstone tells us that this ancient custom of "watch and ward," as it was called, was written into statute law by our Teutonic ancestors. Their duties as defined by Dogberry were to "comprehend all vagrom men."

Let us invoke that ancient custom and cry out as of old: "Watchman, what of the night?"

The tendency of the government today is towards the deadly blight of paternalism, or what is called "bureaucratic socialism."

We no longer have local autonomous government, but government by a mischievous, Prussianized bureaucracy, State and Federal. This indefinite extension and expansion of paternalism is indicated by the needless, ridiculous multiplicity of regulatory boards, commissions, bureaus and similar governmental agencies supervising, controlling, directing and hampering in vexatious ways all the activities of life.

Mr. Justice Sutherland of the Supreme Court of the United States speaking to the American Bar Association (Sept., 1927), says: "Never before have the business activities of the people been so beset and bedeviled with vexatious statutes, prying commissions and governmental intermeddling. * * * In the old days, it was liberty of person, of speech, and of religious worship which were threatened. Today it is liberty to order one's daily life for one's self that is in peril."

Chief Justice Cullen of the New York Court of Appeals says: "The great misfortune of the day is the mania for regulating all human conduct by statute."

The appetite for minding other people's business grows by what it feeds on and the result is a swarm of agents, inspectors, detectives and nosey Meddling Matties going about the country harrassing, annoying, worrying and bull-dozing the people. Like the locusts of Egypt, they literally darken the land. The taxes are pyramiding at an alarming rate to support this horde of parasites.

Senator Borah recently wrote that bureaucracy is "the most wasteful, extravagant, demoralizing and deadly form of government which God has ever permitted to torture the human family."

Prof. Wilbur C. Albert of Cambridge, Mass., in a late work, "The New Barbarians," says that "officials increase faster than population; and cost increases proportionately, faster than officials"; that taxes

increase in geometrical proportion to the number who pay them; and that the government will be undermined by the very taxes which support it; that an average man works a day and a half a week to pay his taxes.

Last year (1927) Congress appropriated upon the backs of the tax-payers four billion dollars; the States another billion; cities and other municipal subdivisions of government five billion, making ten billion dollars in taxes. The earnings of the people amounted to only ninety billion. So one-tenth of all the money earned by the people of the United States went for taxes.

Prof. Frederic Jesup Stimson, sometime Professor of Comparative Legislation, Harvard University, in "The American Constitution As It Protects Private Rights," declares it to be his deliberate judgment that "the time looks near when every laborer, every American citizen struggling to rear a family, will carry at least one government inspector or commissioner or revenue or inquiry officer on his back." When Prof. Stimson wrote thus in 1923, the "salaries of the Federal, State and local government employees took $34.00 from every man, woman and child in the United States and $91.00 from every person over ten years of age."

The President of the National Association of Manufacturers, at their annual convention in Chattanooga, Tenn., October, 1927, says there are "approximately ten million office holders upon the public pay-rolls" out of an estimated population of one hundred twenty million, and that on the whole practically all government in this country is operated by and chiefly in the interest of this political group, which creates none or little of the nation's wealth or contributes to its income.

Senator Borah in a recent speech against the repeal of the Federal estate tax, said that "at the present time one person in every twelve over sixteen years of age is upon a public pay roll either of the National, State, or the local government."

The "common good" is the justification for the interference of government in the industrial, commercial, political, social, moral and other affairs of the citizen. Like the "general welfare" clause of the Constitution, it is over-worked.

The passion for organizing and standardizing and regulating people to promote what is called mass morality and efficiency in getting results, and the innovation in the language of vulgarisms of speech to express this spirit has become a national obsession. It has developed into an hysteria. Quoting further from Mr. Justice Sutherland: "The liberty of the individual to control his conduct is the most precious possession of a democracy and interference with it gravely threatens the stability and further development of sturdy individualism. * * * It is not enough that we continue free from the despotism of a supreme autocrat. We must keep ourselves free from the despotism of a petty one."

John Stuart Mill wrote: "Human nature is not a machine to be

built after a model and set to do a work exactly prescribed for it."

The famous men of the Constitutional Convention of 1787 did not try to correct the inequalities in human nature because they knew nature made no such effort; they were practical men; they were not afflicted with the hysteria prevailing today of trying to make men good; they were making them free.

The individual's right to enjoy and defend life and liberty, to acquire, possess and protect property, to pnrsue happiness, and secure safety is not derived from government; it antedates all government. Government was instituted among men to protect those rights.

It was never intended that the meat and drink and morals of the people's daily life should be regulated from a central authority at Washington.

Centralization of government is becoming topheavy and can not go on expanding indefinitely.

Secretary Hoover has declared that over-centralization was one of the rocks which would wreck our system of government, for, said he, "it is ill designed for such a burden. * * * We had better suffer from some slackness in State and local government, and even some abuse, than to undermine the foundation of self government." There are more than two hundred governmental bureaus in Washington, which maintain a vast army responsible to nobody. Mr. Hoover says, they are like "floating islands in a dismal swamp."

This government has been declared by Chief Justice Chase to be "an indestructible union composed of indestructible states." Its novelty was in the dual form of government which was created, and in its adjustment and apportionment of the powers of government, which is unequaled in ancient or modern history. But its dual system is fast losing its duality, as it is its indestructibility.

It is true the framers had neither infallibility nor impeccability, nor was the great Charter which they framed the creature of Omniscience. That virtue is granted only to its critics. While these busybodies are pointing out the imperfections of their ancestors, let them see to it that they are not creating abuses to plague their posterity. Neither is the Constitution the most remarkable document "ever struck off, at a given time by the brain and purpose of man," as Mr. Gladstone so thoughtlessly and inaccurately said, but it was the result of a slow, laborious, historical growth—an evolution from precedent—"freedom slowly broadening down from precedent to precedent." It was distilled from the inherited traditions of the Mother Country and the experience of the members of the convention in self government under the Colonial Charters and State Constitutions. They had for years been adapting old laws to changed conditions in the New World. It is the oldest of written Constitutions and has served as a model for many nations in the Old and New World.

They laid down certain fundamental principles of republican government which were susceptible of adaptation to an undefined and expanding future. Judge Cooley's opinion is that "the wisdom of the

founders was shown in this, that in perfecting the government they disturbed as little as possible the existing institutions which were the growth of ages, and which were as much a part of race inheritance as were their own physical and mental peculiarities and tendencies. * * * They adhered closely to experience and trusted little to their own speculations and inspirations."

Mr. Justice Brown of the Supreme Court of the United States said they were not toying with speculations or theories, but practical men, dealing with the facts of political life as they understood them."

Those of the Fathers who believed in a strong centralized government never dreamed of such encroachments on local self government as are made today.

Alexander Hamilton devoted an entire number of the Federalist to combatting the idea that the States were in danger of being invaded by the general government. He said "it will always be far more easy for the State government to encroach upon the national authorities, than for the national government to encroach upon the State authorities." He concluded that it was to be hoped the people "will always take care to preserve the constitutional equilibrium between the general and the State government."

Even Hamilton, the profoundest political thinker of his day, did not have prevision enough to "look into the seeds of time, and say which grain would grow and which would not," for the "constitutional equilibrium" of which he wrote, the people are not preserving. They are destroying it.

Guizot asked James Russell Lowell how long he thought our republic would endure; and Lowell, with profoundest truth and historical exactitude replied: "So long as the ideas of the men who founded it continue dominant," and Guizot agreed.

The great historian, John Fiske, wrote: "If the day should ever arrive when the people allow their local affairs to be administered from Washington, and when self-government shall have been so far lost as the departments of France, or the counties of England,—on that day the progressive political career of the American people will have come to an end."

Bureaucratic government has brought about "specialization" and "organization"; "mass production" and "mass distribution"; "mass thinking" and "mass morality" of everything affecting the people, material, moral and spiritual and the "standardization" of human life, the inevitable result of which is a dead level of mediocrity, incompetency and indolence.

This is fatal to individualism which is the rock upon which this government was founded. The United States would never have become the admiration of the world for its marvelous achievements had its development been dependent on the government. It has been built up on individual initiative, enterprise and energy. Show me

any inventive genius born of bureaucracy's brood of officials and office holders?

Mr. James M. Beck in his recent work on the Constitution, says the Framers believed in individualism. They felt "the individual could best work out his own salvation, and that his constant prayer to government was that of Diogenes to Alexander, 'Keep out of my sunlight.' The worth and dignity of the human soul, the free competition of man and man, the nobility of labor, the right to work free from the tyranny of state or class, this was their gospel. Socialism was to them abhorrent."

"The whole history of the world's political development," says Prof. G. W. Burgess, Professor Emeritus Constitutional Law, Columbia University, "shows beyond cavil that a republic which makes its government the arbiter of business, is the most universally corrupt, and which undertakes to do its cultural work through government force, is the most demoralizing. If the state will undertake those tasks which naturally or historically belong with the sphere of individual liberty, then it must have a government lifted so far above all class and party interests that it can not be controlled or influenced by them. It is retrogression of the most positive kind known to history. It is time to call a halt in increasing the sphere of government and decreasing that of liberty, and inquire whether what is happening is not the passing of the republic, and the return to Caesarism."

Prof. Burgess is not alone in deploring the increasing tendency to restrict individualism. President Nicholas Murray Butler speaks similarly: "In the generation since the Civil War a new American Revolution has been taking place. It manifests itself in a careless, cynical contempt for liberty; in an impatient willingness to permit government to absorb a steadily increasing control over private life and occupation, and to build up at the national capital, with smaller replicas at the several state capitals, a huge, cumbrous, incompetent bureaucracy."

Professor Burgess and President Butler each speaks like the scholar and the historian. With the concentration of enormous power in Washington over the lives of the people, the country suffers from petty despotism and irresponsible, lawless law enforcement. The surrender of local self government to Washington is degrading our political system.

Practically every legislative measure enacted by Congress has hidden within it new bureaucratic authority and, of course, new taxes. The statutes creating these bureaus are similar. They provide that the law shall be administered under rules and regulations, with penalties, adopted by the bureau or commission, which means that it is to be interpreted and executed by officials responsible to nobody.

For example, Congress has delegated to the Internal Revenue Department a vicious blanket grant of power to make rules and regulations that have the binding force of law. In pursuance thereof that

department has promulgated over twenty thousand rules and regulations affecting the collection and refunding of taxes amounting to billions of dollars; only three thousand rules have been published; the remaining seventeen thousand are not to be published.

"These boards are law-maker, judge and jury; and although there he an appeal to the courts, it is impossible for the ordinary man who has a grievance to get beyond the bureau or commission if it decide against him. * * * It was against the principle our ancestors fought with Norman kings. * * * The state makes inquisition into all a man's affairs, busies itself with his business, steps into his home, and the only thing it fails to do, is the thing for which it was primarily created—to maintain order and prevent and punish crime!"

Whether this abnegation and delegation of authority by Congress be legislative or administrative is immaterial. The unrestrained and uncontrolled power and authority thereby vested in these inferior hodies with no accountability and no responsibility, and with no orderly procedure, is inquisition; it invites corruption. It is oppression. Only this month, (February, 1928), has a hearing been given to the onion growers on a petition filed over two years ago with the Tariff Commission for a revision of the rates on onions.

This is a denial of justice. It was disclosed in the Senate this winter that this Commission, with two hundred employees and unlimited means, had taken six years to pass upon twenty-five cases. Congress, itself, could not have been less efficient.

I think it appropriate here to call your attention to the Congressional delegation of power on the President authorizing him to fix or suspend tariff duties upon certain imports. It is interesting, that to date the President has reduced the duties on only three articles, paint brush handles, bob-white quail, and phenol. Senator Borah is right when he says that this is a vicious step, unconstitutional in principle and undesirable in practice. If the President may change tariff schedules, by parity of reasoning, he may change the rates of taxation. The authority thus invested in him is as indefensible as the authority usurped by Congress to engage in private business in time of peace in competition with its own citizens whom it taxes to carry on the business. This is reprehensible and unjust. It is not one of the enumerated powers in the Constitution.

The legislative power is inoculated with the bacillus of irrepressible activity—the passion for making laws—it thinks that statutes and ordinances, like the crops, enrich the country in proportion to their volume and variety. It doesn't know that the over-production of crops is ruining the farmer.

It is estimated that there are over 600,000 statutes, which "serve but for instruments of some new tyranny, that every day enslave us deeper." Senator Reed of Missouri says so many things have been forbidden "that it is probable not a single human being in the United States over ten years old but has violated some statute." There are

"laws for all faults," but "the faults so countenanced," that the laws stand in "monumental mockery."

Prof. Wm. Bennett Munro in his lecture on the "Invisible Government" before Cornell University, 1926, says, "Our federal and state laws are increasing at the rate of about ten thousand a year. * * * It takes no fewer than one hundred twenty-five printed volumes to hold one biennial output of statutes, not to speak of almost as many more to contain the decisions of the courts interpreting them." How truly the great Roman historian, Tacitus, wrote: "the worse the state, the more abundant the laws." You all know the story of Jos. H. Choate told of his partner, Chas. F. Southmayd, who employed counsel to watch for statutes which might land him in jail. "Man-traps," he called them.

The legislative power mistakes sound for sense, feeling for fact, good intention for good judgment. It confuses moral obligation with legal obligation. Its softness of heart makes for its softness of head. It doesn't know that it cannot legislate people good. It is an easy prey to the gushing social worker and emotionally weak-minded, in furtherance of their pious and sentimental interests, who intrigues its sympathy at the price of its judgment.

It mistakes militant, noisy minorities for public opinion when public opinion has never expressed itself.

Mr. Roosevelt shortly before his death said: "The greatest danger we face is assaults on our government by organized minorities founded on self interests. * * * The break down of our republican form of government is threatened by the increase in the power and number of organized minorities."

Mr. Richard Washburn Child, former Ambassador to Italy, asserts that there are two kinds of minorities. "The first maintain their lobbies to get something; the second to force through government agency some form of moral or sentimental tyranny over our free will, and to wipe out our right of self-direction and self-development. The first want the tax-payer's dollars; the second want his conscience and his soul. Both are raiding the government for special privilege more than big business ever did."

The reform movements fall within Mr. Child's second classification. They are the most flourishing industry in the country and are financed by "drives," captained by high-powered, high-salared "drive bandits," who coerce the silent working, silent thinking man into paying what the drive has blackmailed him. It is this man whom Prof. William Graham Sumner of Yale University immortalized in his famous lecture, "The Forgotten Man."

Mr. Glenn Frank, sometime editor of the Century Magazine, now President of the University of Wisconsin, in one of his Delaware University lectures says this country has become the "endemic home of the up-lift movement mania" of the world.

We have become an experiment station for trying out all the

fads and fancies of thimble-brained theorists and enthusiasts. We are prescribed and proscribed to death.

Bishop Fiske, Episcopal Bishop of Central New York, gives his opinion that the paid uplifters and commercialized reform organizations are a menace and a nuisance. They have organized, said he, blocs, forced through reform laws which cannot be enforced, and have hung like hornets about legislators until the better type has retired to private life and the baser sort has been pushed into making laws in which they have no faith and which they do not obey.

The movements seeking to be legalized are as silly as the "week" movements in vogue to stimulate activity in some declining industry —as National Suspender Week, Brighten Up Week, Be Healthy Week, Look Well Week. The statistics for last year (1927) show there were one hundred and thirty-five "weeks" colliding with fifty-two calendar weeks for place and pelf.

When the "drive" has exhausted "the forgotten man," it is then transferred to Congress or the State Legislature, and the legislative body thus assailed, with its "talent for crying with the pack," supinely and spinelessly succumbs to the clamor and influence of the minority, and another commission is created, though the preponderance of membership in the body voting for the measure may think it foolish or mischievous or wasteful or irrational or impractical.

"These are dangerous days," says Prof. Stimson. The representative system is fast disappearing. "Timorous congressmen vote, not according to their convictions, or their intelligence, but under the whip of a lobby. * * * * Any minority, if determined, with a good publicity outfit, and a sentimental cry can get what it likes however prejudicial to the public interest."

"The right to live our own lives and earn our living is under real menace today."

"The government is no longer the protector of individual rights; it is becoming the dictator of them," said Governor Ritchie of Maryland before the Indiana Bar Association.

The late James C. Carter of New York, than whom there was no more accomplished lawyer, in a course of lectures before Harvard Law School, said: "Nothing is more attractive to the vanity of man, than to forbid by law conduct which he thinks is wrong, and to enjoin good conduct by the same means; as if men could not know how to live until a book were placed in their hands, in which the things to be done and not to be done were clearly set down. * * * The attempt to convert into crime acts regarded as innocent is tyranny. When force compels men to act in accordance with the opinions of others rather than their own, the worst mischief ensues. * * * * The sole function of legislation," said he, should be "to secure to each individual the utmost liberty consistent with a like liberty to others. * * * * Let each man work out his own happiness or misery and stand or fall by the consequences of his own conduct."

No one has stated the question more concisely, more comprehen-

sively and more correctly than President Coolidge, speaking before the American Bar Association at San Francisco in August, 1922, when he was Vice-President. He said, speaking of the limitations of law: "The attempt to regulate, control and prescribe all manner of conduct and social relations is very old. It was always the practice of primitive peoples. Such governments assumed jurisdiction over the action, property, life, and even religious convictions of their citizens down to the minutest detail. A large part of the history of free institutions is the history of the people struggling to emancipate themselves from all of this bondage. Real reform does not begin with a law; it ends with a law."

The Constitution is not a "scrap of paper," but a Gibraltar of national defense, which experience has proven to be adequate to insure the domestic tranquility, promote the general welfare, and provide for the common defense alike in peace and war.

It is before the people "by day a pillar of cloud to lead the way; and by night a pillar of fire to give light."

Great Britain has her Gibraltar and for two hundred years sentinels have paced her battlements and great guns have frowned upon every approach from the sea, but air routes have reduced her to an impotent rock, lashed by the tides.

Germany had her Helgoland, another rock, fortified for national defense. Equally watchful and formidable were the defenders of Helgoland, but that island rock is now dismantled and in ruins.

We have no material fortress similar to these, supported by armed might. But we have one vastly more formidable, watered by the blood of heroes and consecrated by tradition—the Constitution of the United States.

"Watchman, what of the night?" Have we been as watchful of our citadel of liberty—the Constitution—as the defenders of those rock-ribbed fortresses, who never relaxed their vigilance and were never lulled into a false security?

The Anglo Saxon people, in a thousand years' experience, found their liberties were never so in danger as when they knew it the least, never so lost as under popular kings.

Hamilton observed that "it is a truth, which the experience of ages has attested, that the people are always most in danger when the means of injuring their rights are in the possession of those of whom they entertain the least suspicion."

The President of the American Bar Association recently appealed for a re-birth of the Constitution. He says we have wandered far afield and have allowed demagogues and dreamers to lead us to the shrine of false and mischievous gods who are destroying the very institutions whose preservation is essential to the republic; that we live in an age of political quacks and quackery and that organized clamor rules the day.

GENTLEMEN OF THE BAR:

You are in a peculiar sense the trustee for coming generations,

holding in trust the heritage of a republican form of government which came to you through the fiery ordeal of blood and tears and treasure. Upon you rests the sacred duty of mobilizing the people to the defense of this precious heritage from the hordes of paid, subsidized, high voltage propagandists who are undermining it and undertaking to substitute therefor bureaucratic, socialistic, Prussianized government.

Gentlemen, I have given you the views of statesmen, jurists and publicists: it is noticeable and notable that they speak with singular unanimity on the condition that confronts us. The time is ripe for provocative speaking, if we wish to preserve "the ancient landmark which our Fathers have set." It is better, said Edmund Burke, "to have our slumbers broken by the fire-bell than to perish amidst the flames."

Let us take upon ourselves the solemn vow to "preserve, protect and defend" the Constitution against those "architects of ruin" who would despoil it and destroy it, be they open foes of the country from without or disloyal foes from within. In closing language of the Apostle Paul in exhorting the Philippians, I call upon you to "think on these things."

Strange, indeed, that this question is not made an issue in this State or in the nation! All parties are responsible for it; no party denounces it and no party defends it. It is like unto Mark Twain's comment on the Connecticut weather: "Everybody complained about it, but nobody did anything about it."

Contrast the attitude of the people of the United States towards the Constitution one hundred and thirty-nine years after its adoption, with that of the people of England towards Magna Charta one hundred and thirty-nine years after its adoption. I read from the Statutes of the Realm of England: "On the third day of May in the great hall of the King at Westminster, in the presence of the King and his brother and the Marshal of England, and the other estates of the Realm, We, Boniface, Archbishop of Canterbury, and the Bishops of London, and Ely, and Rochester, and Worcester, and Lincoln, and Norwich, and Carlyle, and St. David's, all appareled in pontificals, with tapers burning, against the breakers of the liberties or customs of the Realm of England, and namely those which are contained in the Charter of the Common Liberties of England, excommunicate, accurse, and from the benefits of our Holy Mother the Church, sequester all those who, by any craft or wiliness, do violate, break, diminish or change the statutes and free customs of the Realm of England, to the perpetual memory of which excommunication we, the aforesaid prelates, have put our seals."

So they felt toward Magna Charta in 1353; so ought we to feel towards the Constitution in 1928.

The Judicial Committee reported as follows:

Report of Judicial Committee.

To the Honorable Board of
Commissioners of the
Idaho State Bar Association.
Gentlemen:

Your committee appointed to consider the organization of a judicial section of the bar, and for the purpose of suggesting uniform district court rules and reporting on the legality and advisability of adopting the judicial rule making power in Idaho, begs to report as follows:

Inquiry establishes the fact that the judges throughout the State are in entire sympathy with the idea of forming a judicial section of the State bar. Section 25, Articles V of the Constitution provides that district judges shall annually report to the justices of the Supreme Court such defects or omissions in the laws as their knowledge and experience may suggest, and that the justices of the Supreme Court shall annually report to the Governor such defects and omissions in the Constitution and laws as they may find to exist, the last mentioned report to be transmitted by the Governor to the Legislature with his message. These provisions of the Constitution could be given tremendous vitality if the district judges could meet in an annual conference with the justices of the Supreme Court for the purpose of discussing and organizing a thoroughly considered program of investigating, drafting and submitting recommendations for the betterment of our procedural system. There is a constantly growing need, as well as well founded public demand for procedural reforms in certain directions; and these should be inaugurated and given form by lawyers rather than by laymen. A judicial section of the bar, with your board, or a bar association committee as ex-officio members would, in our opinion, be highly effective, if a full attendance of all such members could be obtained, and if arrangements could be made whereby attendance and participation in the work would be something more than merely voluntary.

It is quite clear to anyone who gives the matter any thought that we cannot reasonably expect a full attendance of all the members of such a section at the annnal summer meeting of the bar association. On the other hand, it is highly desirable that every member attend such a conference and take his place in sub-committees of systematic work during the year.

In view of the constitutional provision above referred to, and the desirability of making it most effective, we recommend that the association undertake to present to the Legislature the idea of making an appropriation to defray the actual expenses in attending such conference, of all members of the section who reside away from the place of meeting, inclnding the bar commission, or a committee of the State bar; that such meeting be held annually, at such time and place as the Chief Justice shall designate. If tbis arrangement were made, we think a corresponding obligation would be imposed upon all members of the section, which would be recognized as requiring something more than mere voluntary co-operation, and that a genuine affirmative program of endeavor could be entered upon.

As to uniform district court rules, we think the suggestions as to concrete matters can best come from the bar. We know of no lack of uniformity in rules which works any hardship on the bar, and such instances, if they exist, are of course known to the lawyers who practice in different districts. A judicial section such as has been suggested, would, of course, be in the best possible position to take care of this sort of thing, and uniform rules can, of course, be best formulated at a conference of the judges with representatives of the bar present.

As to restoring to the courts the rule making power, your committee has read a considerable number of articles and addresses bearing upon this subject. None of them have pointed out concretely any particular reason applicable to this State why such rule making power to a greater extent than it now exists, is urgently needed. Our Supreme Court, of course, has broad powers in this respect, and the district courts can, within certain limits, make such rules as are not in conflict with existing statutes. It is the opinion of your committee that there are many other things much more deserving at this time of the attention and efforts of the association and its sections and committees. We believe that there will be little difficulty experienced in securing the enactment of such amendments to our procedural system as may be recommended by your association, if the bench and bar unite in thoroughly considering and recommending such measures, and so far as the bench is concerned, we believe the suggestions hereinabove made will, if carried into effect, enable them to do their full share in this regard.

Respectfully submitted,

DANA E. BRINCK,
RAYMOND L. GIVENS,
CHARLES P. MCCARTHY,
Committee.

Upon motion duly made, seconded and carried the report was ordered referred back to the committee with instructions to make a detailed study of the judicial conference idea therein outlined, and of the operation, workability, and methods of court procedural rules in lieu of legislative procedural statutes, and to report such study in time for general consideration by the courts and bar prior to the 1929 Division and annual meetings of the bar.

The report of the Prosecuting Officers Committee follows:

Report of Prosecuting Officers' Committee.

Board of Commissioners
of the Idaho State Bar.

Gentlemen:

Your committee appointed for consideration of the advisability of the organization of a Prosecuting Attorneys' section of the Idaho State Bar, and for consideration of matters pertaining to criminal legislation, begs leave to report as follows:

As to the advisability of organization of a Prosecuting Attorneys' section of the Idaho State Bar, it is recommended by the committee that such an organization should be effected. It is the opinion of the committee that, after the present year, the Prosecuting Attorneys of the State should meet at the regular time and place of the Idaho State Bar. This will no doubt result in greater attendance and interest in both the meeting of the Prosecuting Attorneys and of the State bar.

In the matter of giving consideration to criminal legislation, it is recommended that the following matters be presented for the consideration of the Idaho State Bar and further recommend that the Idaho State Bar go on record as favoring the following changes in our code of criminal procedure:

1. That Section 2624, I. C. S., be so amended as to permit the joinder of all offenses under the state prohibition law in one information.

Under Section 2624, the State is now limited in a prosecution under the State prohibition laws to charging only one offense, except in cases relating to the sale of intoxicating liquors. By making the amendment suggested, it would make State practice conform to the Federal practice.

2. That Section 8829, I. C. S., be amended to read the same as Section 954, Kerr's Penal Code, California, which reads as follows:

> "The indictment or information may charge two or more different offenses connected together in their commission, or different statements of the same offense, or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments or informations are filed in such cases the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information, but the defendant may be convicted of any number of the offenses charged, and each offense upon which the defendant is convicted must be stated in the verdict; provided, that the court, in the interest of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment or information be tried separately, or divided into two or more groups and each of said groups tried separately."

By adopting the foregoing section this State would conform to the practice that now generally prevails in other States; under this provision all crimes of a similar nature can be embraced in one information and thus in a large measure do away with the necessity of separate charges and separate trials.

3. That Section 1008, Kerr's Penal Code, California, providing for amendment of information, be adopted. This section reads as follows:

> "An indictment or information may be amended by the district attorney without leave of court, at any time before the defendant pleads. Such amendment may be made at any time thereafter, in the discretion of the court where it can be done without prejudice to the substantial rights of the defendant. An indictment can not be amended so as to charge an offense not shown by the evidence taken at the preliminary examination.
>
> "If a demurrer is sustained and an amendment is not allowed, or if allowed, is not made, within such reasonable time as the court may fix, the court shall give a judgment of dismissal, which shall be a bar to another prosecution for the same offense. The defendant shall thereupon be discharged, unless the court directs the case to be submitted to the same or another grand jury, or directs a new information to be filed; provided, that after such order or re-submission, the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases."

Under our present practice, after an information has been filed in court there is now no statutory method of making any amendment or change. By adopting the foregoing section the prosecuting attorney would have the right to make minor changes and amendments in his information without being put to the necessity of filing a new information.

4. That Section 8738, I. C. S., be amended to read as follows:

> "If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant, except when the offense is committed in the presence of the arresting officer."

Our present statute does not permit an arrest by an officer at night unless upon the direction of a magistrate endorsed upon the warrant. As the law now stands an officer would be powerless to make an arrest at night even though a misdemeanor was being committed in his presence.

5. It is further recommended, inasmuch as it must be conceded that effective and efficient enforcement of criminal law will best be done by officers who are adequately compensated, that special attention be given to legislation having to do with providing increased compensation and increased facilities for law enforcement officers. To this end, it is recommended that special attention be given by the Idaho State Bar to the proposed amendment of Section 18, Article 5, of the Constitution of the State of Idaho, which will come before the voters at the next general election in November. This amendment, if passed, will remove the constitutional limitation as to salaries of Prosecuting Attorneys.

Respectfully submitted,

CARL A. BURKE, *Chairman.*

Abe Goff, Moscow, discussed the report and upon his suggestion, it was moved, seconded and carried that no formal recommendations be made by the bar except as to Suggestion No. 5, and that said report be referred for action to the annual meeting of Prosecuting Attorneys to be held at Boise in August.

Upon motion duly made, seconded and carried, the proposed amendment of Section 18, Article V of the Constitution of Idaho providing that the compensation of Prosecuting Attorneys may be fixed by law was endorsed, the Legislative Committee of the bar is instructed to work for increased compensation of Prosecuting Attorneys. (Suggestion 5 of report).

The report of the Legislative Committee was presented as follows:

Report of Legislative Committee.

Honorable Board of Commissioners
of the Idaho State Bar.
Gentlemen:

Since writing you my letter of June 2, 1928, in which I set forth the different suggestions in regard to legislation which had been made by individual members of the Legislative Committee, I mailed to all members of the committee a questionnaire embodying all the individual suggestions. Twelve of the twenty-four members of the committee answered the questionnaire with the following result as to each of the individual suggestions:

Suggestion 1. That our judicial system be modified as follows: First, a unified court for the whole State with a sufficient number of judges to man both the Supreme and District Courts, with a Chief Justice selected for executive as well as judicial ability, who should assign the judges to the different courts as indicated by the necessities and by their fitness for the particular work; Second, appointment, instead of election, of all judges for a long tenure, perhaps twenty years; Third, a considerable increase in the salary paid all the judges of the unified court, the salary to be uniform, say $8,000.00.

The first and second subheads of this suggestion would require constitutional amendments.

On the three subheads of this suggestion the twelve members of the committee who replied to the questionnaire answered as follows:

Subhead No. 1.—Yes, 6; No, 5; No vote, 1.

Subhead No. 2.—Yes, 6; No, 6.

Subhead No. 3.—Yes, 8; No, 4.

The answers to the first suggestion (Suggestion 1) seem to indicate that a large number of the committee are of the opinion that some change should be made in the manner of selecting judges in this State and that an increase should be made in their compensation. This is true in the case of members who do not favor the unified court, as well as in the case of those who do. The chairman of the Legislative Committee recommends that a special committee be appointed to study and report on this question.

Suggestion 2. That our statutes in regard to judgment liens should be amended so as to bring about conformity in the provisions relating to liens of State and Federal judgments to meet the requirements of the decision of the U. S. Supreme Court in Rhea vs. Smith, 71 Law Ed. 1139.

Yes, 11; No, 1.

Appended to this report is a copy of the proposed amendment to the statutes prepared and submitted by Eugene Cox, Esq., of Moscow, and Hon. H. E. Ray, of Pocatello.

Suggestion 3. That it would be desirable to limit civil appeals to the Supreme Court to cases involving some definite amount, say $500.00. This would require a constitutional amendment.

Yes, 8; No, 4.

Suggestion 4. That Secs. 4858, 4860, and 4861 of the Idaho Compiled Statutes, which permit title, guaranty, and trust companies to furnish abstracts without putting up the $10,000 bond required of other abstracters by Sec. 2262, in case they have a paid up capital stock of not less than $25,000, be amended so as to require them to put up the bond, or at least so that they should be placed under the supervision of the Commissioner of Finance.

Yes, 10; No, 2.

One of those voting in the negative did so on the ground that he thought this not an appropriate matter for suggestion from the bar.

Suggestion 5. That the State Bar express its opposition to House Bills 13200, 13201, 13202 and Senate Bill 3151 now pending in Congress, which would restrict the jurisdiction of the Federal courts. For a discussion of these measures from the standpoint of the bar, see editorial on that subject in the May number of the American Bar Association.

Yes, 9; No, 0; No vote, 3.

Suggestion 6. That a statute be enacted requiring that every owner of an automobile take out liability insurance as a condition precedent to obtaining a license.

Yes, 8; No, 4.

Some of those voting in the negative did so on the ground that this subject was not an appropriate one for suggestions from the bar.

Suggestion 7. That our statute in regard to foreclosure of mortgages be amended so as to permit joining with the foreclosure action on action to cure defects in the title.

Yes, 9; No, 1; No vote, 2.

Suggestion 8. That the next Legislature provide for a compilation of the statutes, to be presented to and acted upon by the following Legislature.

Yes, 12; No, 0.

After the questionnaires had been mailed out, another individual member of the committee suggested that a uniform chattel mortgage act be enacted by the Legislature of this State.

CHARLES P. MCCARTHY, *Chairman.*

AN ACT.

TO AMEND SECTION 6902 OF THE COMPILED STATUTES OF THE STATE OF IDAHO RELATING TO THE DOCKETING AND LIENS OF JUDGMENT; ADDING SECTIONS 6902A AND 6902B RELATING TO THE LIENS OF JUDGMENTS OF THE DISTRICT COURTS OF THE STATE OF IDAHO AND TO LIENS OF JUDGMENTS OF DISTRICT COURTS OF THE UNITED STATES FOR THE STATE OF IDAHO, AND PROVIDING FOR THE FILING OF TRANSCRIPTS OF SUCH JUDGMENTS, AND REPEALING SECTIONS 6905, 6907, AND 6908 OF THE COMPILED STATUTES OF THE STATE OF IDAHO.

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

Sec. 1. That Section 6902 of the Compiled Statntes of the State of Idaho be and the same is hereby amended to read as follows:

SECTION 6902. Immediately after filing the judgment roll, the Clerk must make the proper endorsements of the judgment, under appropriate heads, in the docket kept by him.

Sec. 2. That a new section designated as 6902A of the Compiled Statutes of the State of Idaho be and it is hereby enacted as follows:

SECTION 6902A. Judgments in district courts of this State and judgments in district courts of the United States, if rendered within this State, from the time they are docketed, become liens upon all the real property of the judgment debtor, not exempt from execution, within the county in which the judgment is docketed, owned by such debtor at the time or which he may afterwards acquire, until the lien expires. The lien continues for five years unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed on appeal by the execution of a sufficient undertaking, in which case the lien ceases.

Sec. 3. That a new section designated as 6902B of the Compiled Statutes of the State of Idaho be and it is hereby enacted as follows:

SECTION 6902B. A transcript of the original docket, of any judgment in a district court of this State or in a district court of the United States, if rendered within this State, certified by the clerk, having custody thereof, may be filed with the recorder of any other county, and from the time of the filing the judgment becomes a lien upon all the property of the judgment debtor not exempt from execution in such county owned by him at the time, or which he may afterward, and before the lien expires, acquire. The lien continues five years unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as hereinabove provided. The fees shall be the same for filing the transcripts of judgments of State and Federal courts.

Sec. 6. That Sections 6905, 6907 and 6908 of the Compiled Statntes of the State of Idaho be and they are hereby repealed.

Honorable Board of Commissioners
of the Idaho State Bar,
Re: Report of Legislative Committee.
Gentlemen:

I regret that I shall be unable to attend the Divisional meeting of the Idaho Bar at Twin Falls owing to professional engagements. This letter is supplementary to my report as Chairman of the Legislative Committee. As such I would appreciate it if you would present this letter to the meeting, together with the report.

As I explained in my letter of June 2nd, I found it impossible to hold a meeting of the committee which would be attended by even a majority, due to the fact that there were twenty-four members scattered all over the State. I therefore had to resort to the method of inviting individual suggestions from the members, which were embodied in a questionnaire. The printed report shows the votes of the members of the committee on different suggestions in the questionnaire. The committee did not have the benefit of oral discussion among its members. The report was offered merely as a general statement proposing for discussion certain suggestions and certain proposals which appeared to the members of the committee to be appropriate for discussion and action on the part of the bar. The discussion and debate which would have undoubtedly occurred if a committee meeting could have been held will have to take place at the meeting of the bar.

Since making the report, two more answers to the questionnaire have been received. The only material difference which the new votes make is in regard to the first suggestion, in regard to selection and compensation of judges. Counting these new votes, the committee vote on Suggestion No. 1 stands as follows:

Subhead No. 1.—Yes, 7; No, 6; No vote, 1.
Subhead No. 2.—Yes, 6; No, 8.
Subhead No. 3.—Yes, 10; No, 4.

One of the late answers to the questionnaire suggests that judges be elected for loug terms at special elections with non-political nomination and election. Another late suggestion is that they be appointed by the Governor from a list of names to be submitted by the bar.

I again emphasize the suggestion in the report that a special committee be appointed to study and report on all the matters embraced in Suggestion No. 1.

The late answers to the questionnaire suggest, with reference to Suggestion No. 3, that the proposed limitation on appeals should not apply in cases involving constitutional questions or title to real estate.

The effect of the proposed Federal Acts mentioned in Suggestion No. 5 would be as follows:

House Bill No. 13,200 provides that no action against a non-resident shall be removed unless the amount involved shall exceed $10,000.00;

House Bill No. 13,201 provides that no suit upon an insurance

contract shall be removed by an insurance company which shall have obtained its license to do business within the State by consenting to submit to the jurisdiction of its court;

House Bill No. 13,202 provides that no suit against an insurance company shall be removed unless the amount involved exceeds $25,000;

Senate Bill No. 3151 seeks to deprive the Federal courts of jurisdiction in what are known as diverse citizenship cases.

I am sorry that the report of the committee is not as full and definite as it might have been if a meeting of the committee with oral discussion had been possible. We hope, however, that it will at least furnish food for thought and discussion at the meeting of the bar.

Respectfully yours,

CHARLES P. McCARTHY,
Chairman of Legislative Committee.

L. L. Burtenshaw, Council, and Chas. M. Kahn, Boise, discussed suggestion No. 4.

It was moved that suggestion No. 1 be referred to a special committee for detailed study and report. No second. Moved that suggestion No. 1 be laid on the table. No second.

Moved, seconded and carried that the Bar Commission appoint a special committee to study in detail the matters set forth in suggestion No. 1, and report prior to the 1929 Division and annual meetings.

It was moved, seconded and carried that the Legislative Committee be instructed to draft and urge the passage of an act increasing the compensation of District and Supreme Court judges.

Suggestion No. 2. After discussion by Abe Goff and Sam S. Griffin, upon motion, seconded and carried, the suggestion was referred to the Legislative Committee with instructions to urge the passage of the act.

Whereupon the meeting recessed until 2:00 p. m.

After recess further consideration was given the report of the Legislative Committee.

Suggestion No. 3. Upon motion, seconded and carried, this suggestion as modified by the letter of the committeeman chairman (printed appendix to report above) was approved and the Legislative Committee directed to draft the necessary legislation and urge its passage and approval.

Suggestion No. 4. Upon motion, seconded and carried, this suggestion was approved and the Legislative Committee instructed to draft the necessary legislation and urge its passage and approval.

Suggestion No. 5. Upon motion, seconded and carried, the sense of the meeting was expressed in opposition to House Bills 13200, 13201, 13202, and Senate Bill 3151, now pending in Congress, and the Secretary directed to notify the Idaho Congressional delegation of such opposition.

Suggestion No. 6. Discussion indicated that this was thought to be a matter not within the proper scope of bar activity and upon motion made, seconded and carried, the suggestion was laid on the table.

Suggestion No. 7. After discussion, upon motion made, seconded and carried, the Legislative Committee was directed to draft the necessary act, and to urge its passage and approval.

Suggestion No. 8. Upon motion, made, seconded and carried, the suggestion was approved and the Legislative Committee instructed to draft the necessary act and urge its passage and approval.

The President introduced Hon. Judson F. Falknor of Seattle, Washington, who addressed the meeting as follows:

The Judicial Council and the Rule Making Power in the State of Washington.

Before adverting directly to the experience in our State with the Judicial Council and the Rule Making Power, it will probably be worthwhile to present to you the history of this legislation in the State of Washington. And in this connection something should also be said with respect to the defects which were thought to exist in the laws, rules and methods for the administration of justice at the time of the passage of this legislation, the difficulties which were being encountered in remedying these defects, the arguments which were advanced in support of the Judicial Council idea and in support of the legislation delegating to the Supreme Court the right to make rules.

In our state, and I rather imagine it is true in most of the States, many of the procedural statutes are of long standing; many of ours, for instance, dating back to territorial days, before 1889. I do not mean to contend as a general proposition that the age of a statute or a decision militates against its soundness or value, but it must be recognized that since 1889, during this period of almost forty years, many changes have taken place in the business, social and economic life of the people. Human activity has taken on a much more varied and complex character than heretofore, population has increased, capital has increased and assumed many new and varied forms, means of transportation and communication have made an amazing development, and the tendency of the age is toward more speed and more efficiency, and is less than ever concerned with delay, technicality and mere matter of form.

Consequently, what may have been a model set of machinery for the administration of justice in 1889, or even twenty-five or thirty years ago, will likely be found to break down and be seriously deficient when attempted to be operated under modern conditions. The business man of today is inclined, and perhaps justly so, to be very critical of the law's delays, its technicalities, and its sometimes mysterious way of determining an issue upon principles little known and little recognized by the layman. The growing tendency toward arbitration in business disputes, and the development of arbitration legis-

lation throughout the country, is indicative of this feeling among the commercial and business interests. And the results obtained by the moving picture industry, for instance, in the settlement by arbitration of disputes in that industry, only convince the business man the more that the administration of justice by the courts is not what it should be.

It has been my opinion that judges and lawyers should not turn deaf ears to these criticisms; that it is far more worthwhile and more far seeing for the bar itself to take stock of the whole situation after a careful analysis and investigation, and with fairness and impartiality, endeavor to correct such defects as are found to exist, than it is to sit idly by and do nothing, and ultimately let the laity make the changes for us.

At the time of the passage of this legislation in the State of Washington, I believe I am safe in saying that it was generally conceded among the bar that many of our procedural statutes were archaic and failed to meet present day conditions. The deficiencies and defects were not confined to any one branch of procedural law, nor to any one particular subject, but on the contrary, improvements were needed throughout the entire spread of the procedural structure of the State.

We had, of course, always relied upon the Legislature to supply these omissions and make the necessary improvements. Under our Constitution, the Legislature meets in regular session but sixty days every two years. In recent years, the proportion of lawyers in the Legislature has decreased until in the last House of Representatives in our State there were only seventeen lawyers out of a total membership of ninety-seven. We all know that the members of the Legislature during the short period of time that they are in session, are concerned with a multitude of subjects and hundreds of bills which are considered to be of infinitely more importance than mere changes in the procedural law of the State. Laws relating to education, to highways, to taxation, to reclamation and irrigation—these are the measures with which the members of the western Legislature, at least, are vitally concerned. Add to these a varied assortment of political issues, and it will be readily seen that the members of the Legislature, even the lawyers, have only a negligible amount of time or opportunity to consider court rules and court procedure.

There not only is no time available for a thorough, comprehensive and intelligent study or survey of the subject, but there is no inclination on the part of any substantial number of Legislators to make such a study. Now and then an isolated correction will be made, where there is enough influence brought to bear, or where the defect is glaring enough. But as far as instituting or continuing a consistent correction or revision of laws is concerned, it is entirely out of the question. It is no fault of the Legislature that this situation exists; it is manifestly inevitable under existing conditions.

And then again, the subject we are dealing with is infinitely technical. Matters of substantive law are usually within the knowledge of the layman, but matters of procedure are not. These are matters that should be dealt with by specialists, if intelligent results are to be obtained. For the last three sessions I have been a member of the Washington Legislature, and at the last session acted as chairman of the House Judiciary Committee. Many of you gentlemen are serving, or have served, as members of the Legislature, and I think you will agree with me when I say that it is an absurdity to expect intelligent action on the subject from the laity, that is, from farmers, doctors, business men, plumbers and carpenters. The procedure for instituting a lawsuit, the procedure for taking a deposition, the procedure with respect to new trials and appeals—these are matters for specialists, that is, for lawyers and judges, and it is manifestly unscientific and inefficient to expect to make any comprehensive improvement, development or progress in these matters when we must rely for the improvement, development or progress upon those who are utterly unfamiliar with the subject, do not understand it, are not at the time interested, and whose whole interest is tied up in other subjects and other legislation.

And so we deemed it the scientific and efficient thing to do to entrust these matters of procedure to a board of specialists, and at the same session of our Legislature, which was the Extraordinary Session of 1925, two bills were passed, one creating a Judicial Council and one authorizing the Supreme Court to make rules of practice and procedure for all courts of the State, including Justices of the Peace.

The Judicial Council principle was endorsed by the Washington State Bar Association in 1925, and the special committee of the State Bar Association, appointed to investigate the question, recommended that an Advisory Judicial Council be created, small enough to be workable and large enough to be representative of the lawyers and judges of the State. In the same year, the convention of Superior Court Judges of the State also approved the idea, and appointed a committee to work with the State Bar in urging the passage of such legislation at the ensuing session of the Legislature.

In the discussion which followed the proposal, a good many interesting historical facts were developed. For such of these as I shall refer to, I am indebted to Judge Charles H. Paul, now of Longview, Washington, formerly a member of the King County Superior Court, at Seattle, and who is responsible more than any other one man for the enactment of this legislation. In an able article on the subject, which appeared in the October, 1925, issue of the University of Washington Law Review, Judge Paul points out that the genesis of the Judicial Council idea is the English Rule Committee, originally created by the Judicature Act of 1875, and subsequently modified until in 1909, by the Rule Committee Act, a committee was organized to consist of two barristers, appointed by the General Council of the Bar, two solicitors, one of them appointed by the Incorporated Law Society and the other by the Lord Chancellor, and seven judges in

addition to the Lord Chancellor, three of them designated by the Act, and four appointed by the Lord Chancellor. Professor Edson R. Sunderland, of the University of Michigan, has said of this modification:

> "By the creation of the Rule Committee, responsibility previously scattered was localized through the addition of active members of the practicing bar, a broader outlook was obtained, and better contacts were established with the commercial communities and with the public generally. These measures obviously promote efficiency and have been adopted in other parts of the British Empire."

In 1921, the Massachusetts Judicature Commission recommended to the Massachusetts Legislature, legislation establishing a Judicial Council, and in advocating the passage of the Act, the Commissioners stated:

> "It is not a good business arrangement for the Commonwealth to leave the study of the judicial system and the formulation of suggestions for its development almost entirely to the casual interest and initiation of individuals. The interest of the people for whose benefit the courts exist, calls for some central clearing house for information and ideas, which will focus attention upon the existing system and encourage changes for its improvement. Some central official body is needed for the continuous study of questions relating to the court."

The Legislature of Oregon, in 1919, authorized the appointment of a Commission on Law Reform, including judges, lawyers and a member representing other callings. As the outgrowth of this Commission, the Oregon Legislature in 1923 passed an Act providing for the administration of the courts through a Judicial Council.

In 1922, after years of effort, Congress passed an Act by way of amendment to the Judicial Code, in which a Federal Judicial Council was created, composed of the Chief Justice of the United States and the nine senior Circuit Judges of the nine Circuits. The declared purpose of this Judicial Council is to "advise as to any means in respect to which the administration of justice in the courts of the United States may be improved, and to submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business." This Act was passed largely on account of the active aid it received from Chief Justice Taft, one of the foremost advocates of the Judicial Council idea.

In 1923, a Judicial Council was created in the State of Ohio, which is required to report biennially to the Legislature upon "the work of the various branches of the judicial system, with its recommendations for modification of existing conditions."

In Wisconsin, by act of the Legislature, the Board of Circuit Judges was created, similar in purpose to existing Judicial Councils.

Upon the convening of the Extraordinary Session of the Legislature of the State of Washington on November 9, 1925, the first message of the Governor to the Legislature emphasized the need of

comprehensive reform in the procedural laws of the State, and the Governor then stated:

> "As a start in this direction, I recommend the creation of a non-salaried judicial council, composed of representatives of the Supreme and Superior Courts, the bar, and the public, to take this whole question under careful consideration and study, and to make recommendations to the Governor and Legislature as how best to expedite the work of the courts. In addition to this work, this council should be made to serve as a catch basin for a lot of fool reforms periodically proposed. It may also be found advisable to clothe this council with authority and give it rule-making powers.
>
> "Such a council is in successful operation in several States of the Union, and since 1875 has been in operation in England, where courts are noted for speedy and economical justice."

The Act creating the Judicial Council was passed by the House on November 23, 1925, without a dissenting vote, and passed by the Senate on December 10, 1925, with only five dissenting votes. The Act, which is Chapter 45 of the Laws of the Extraordinary Session of 1925, creates a Judicial Council which shall consist of the Chief Justice and one other Judge of the Supreme Court, two Superior Judges, to be chosen through the Association of Superior Court Judges, the chairman of the Judiciary Committees of the House and Senate of the State Legislature, three members of the bar who are practicing law, and one of whom must be a prosecuting attorney. The members of the bar are chosen by the Supreme Court. The term of office of a member who is a Judge, a chairman of a Judiciary Committee, or a prosecuting attorney, shall be for the rest of his term in the office that qualified him to become a member. The term of the two members of the bar, other than the prosecuting attorney, is two years. The Chief Justice is chairman of the Council, and one of the other members may be appointed as Executive Secretary. The State Law Librarian is Recording Secretary, and he is required to keep in his office the record of the proceedings and acts of the Council. The Council is authorized to employ such clerical assistance, and procure such office supplies as shall be necessary in the performance of its duties. The Council is required to meet at the capitol of the State on the second Monday of September of each year, and provisions are contained in the Act for other regular and special meetings.

The Act provides that it shall be the duty of the Council:

1. To continuously survey and study the operation of the Judicial Department of the State, the volume and condition of business in the courts, whether of record or not, the methods of procedure therein, the work accomplished, and the character of the results.

2. To receive and consider suggestions from judges, public officers, members of the bar, and citizens as to remedies for faults in the administration of justice.

3. To devise ways of simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in the administration of justice.

4. To submit from time to time to the courts or the judges such suggestions as it may deem advisable for changes in rules, procedure, or methods of administration.

5. To report biennially to the Governor and the Legislature on the condition of business in the courts, with the Council's recommendations as to needed changes in the organization of the judicial department or the courts or in judicial procedure.

All other public officers are required to render to the Council such reports as it may request on matters within the scope of its duty to inquire. The Council is empowered to hold public meetings and hearings, and to require the attendance of witnesses and the production of books and documents, and each member of the Council is given power to administer oaths and to issue subpoenas requiring the attendance of witnesses and the production of books and documents before the Council, the Superior Court being given the power to enforce obedience to such subpoenas and to compel the giving of testimony. No member of the Council shall receive compensation for his services, but they are allowed actual necessary expenses when traveling on the business of the Council.

The arguments which were advanced in support of this legislation may be briefly summarized as follows:

1. Through the Judicial Council, there is provided for the continuous, thorough and scientific study of defects in procedure and proposals to remedy these defects, a small, compact but representative body, whose conclusion, by reason of the personnel of the Council and the manner of investigation, will carry weight with lawyers, the Legislature and the people. It differs from a Code Commission in that it is a permanent body, and provides a medium for flexible action which could not be secured through a Code Commission, or any body which would make a special recommendation and then be discharged from further action.

2. A Council composed of a cross-cut of judges and lawyers can obtain a breadth of view which has been lacking in many previous attempts at judicial reform. The Judicial Council of the State of Washington, composed as it is of Supreme Court Judges, Superior Court Judges, a representative Prosecuting Attorney, two practicing attorneys, and two members of the Legislature, furnishes, it seems to me, an excellent organization for the intelligent, impartial and comprehensive treatment which the subject requires.

3. The official character of the Judicial Council should replace inactivity with action and initiative, and, more than that, responsibility. Due also to its official character, leading members of the bar feel appointment on the Judicial Council desirable, and their appointment naturally gives weight to the Council's findings.

4. The Council tends to prevent ill-advised, radical and undigested reforms and piece-meal or spasmodic proposals, which have too often been presented to, and sometimes adopted by, the Legislature. In the place of unscientific action, or no action at all, the Judicial Council undertakes to act upon full information, and to secure action from the Legislature or from the judges on needed reforms of sound character.

Roscoe Pound, Dean of Harvard Law School, and undoubtedly America's leading authority on jurisprudence and administrative law, has summarized very well the argument in behalf of the Judicial Council in a rather recent letter to Judge Paul. He said:

> "There can be no question of the desirability of a Judicial Council. Committees of bar associations can do something. Judiciary Committees of the House of the Legislature can do something. But neither is at hand all the time; both have much else to do, each has to act at relatively crowded sessions, and neither is in touch with the everyday difficulties in all their phases, as the judges are. Most of all, it is important to have a body at hand continually, whose function and duty it is to study the machinery of justice in operation and study how to make it as effective for its purpose as is possible. We need to recognize intelligent effort."

The Legislature of the State of Washington, at the time of creating the Judicial Council, appropriated $3,500.00 for the first biennium of its existence, and this amount was increased to $5,000.00 by the 1927 Legislature.

At the same session of the Legislature which created the Judicial Council, there was also passed an Act, Chapter 118 of the Laws of the Extraordinary Session of 1925, which is very brief, and which provides as follows:

> "The Supreme Court shall have the power to prescribe, from time to time, the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the Supreme Court, Superior Courts and Justices of the Peace of the State of Washington. In prescribing such rules the Supreme Court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits.
>
> "When and as the rules of courts herein authorized shall be promulgated all laws in conflict therewith shall be and become of no further force or effect."

These two measures, the one creating the Judicial Council, a body which in itself has no authority whatever except to study, investigate and make recommendations, and the other, a definite authority to the Supreme Court to make rules of practice and procedure, constitute together the required machinery to deal with the situation, and each is complementary of the other. This is a very remarkable result, in view of the fact that the two measures emanated from entirely different sources. The Judicial Council bill was sponsored, as I have heretofore indicated, by Judge Paul of the King County Superior Court,

after making a very careful study of the problem, and after considerable correspondence with the leaders in the movement throughout the country, including Dean Pound and Chief Justice Taft. The Rule Making bill was placed before the Legislature by the Legislative Committee of the Seattle Bar Association, and the Judiciary Committee of the House soon came to a realization of the logical relation between the two measures, and they were passed practically together.

The theory behind the passage of this legislation was simply this: That the Judicial Council was a well constructed organization for the study, investigation and tentative formulation of rules of practice and procedure, and that upon its recommendations, the Supreme Court, being the head of the judicial system of the State, was the logical tribunal to promulgate such rules.

The Judicial Council began to function efficiently soon after its creation, and did, in fact, formulate many rules of practice and procedure intending to remedy existing defects and supply omissions and deficiencies in the present procedural structure. After formulating these rules, they were informally presented to the Bar Associations of the State for discussion and recommendation, and after such discussion and recommendations, a good many changes were made. They were finally submitted and recommended to the Supreme Court by the Judicial Council, prior to January 1, 1927, and on January 14, 1927, the recommendations of the Judicial Council were adopted by the Supreme Court and the rules were promulgated, to be effective as of July 1, 1927. I, of course, will not undertake to cover these rules of practice in detail, but a reference to a few of them will illustrate the scope that was covered:

1. Under existing law, it had been held that a corporate defendant could only be sued in the county in which it had an office or was doing business, even though a proper co-defendant was properly suable in another county. This led to a very confusing situation, and one of the first rules adopted was to place corporate defendants in the same category as individuals, so that if one defendant was properly suable in a county, other defendants, including outside corporate defendants, could also be sued in the same action in the same county.

2. Very liberal rules were adopted as to the joinder of defendants and as to bringing in new parties at any stage of the proceeding, and it was further provided that if a plaintiff is in doubt from whom he is entitled to redress, he may join two or more defendants to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between the parties.

3. Very liberal rules were adopted as to the amendment of pleadings, and as to the correction of clerical mistakes and errors.

4. Under existing law, pleadings were required to be sent to the jury room. A rule was adopted that pleadings should not go to the jury room.

5. Under existing law, exceptions to instructions could he taken at any time before the hearing upon a motion for new trial. A rule was adopted requiring that exceptions to instructions must be taken in open court in the absence of the jury, but before the reception of the verdict.

6. The time within which an appeal must be taken was shortened from ninety days to thirty days.

7. Another rule was adopted allowing the examination of the adverse party on any issue of the case before trial.

8. Another rule was adopted abrogating an existing statute requiring the trial judge to instruct the jury that no inference of guilt should arise against the accused should he fail or refuse to testify as a witness in his own behalf.

9. Another rule was adopted providing that a motion in arrest of judgment in a criminal action might be granted because of the insufficiency of the evidence, whereas before, technically, the only remedy was the granting of a new trial.

10. And many rules were adopted simplifying and making more expeditious the various steps in our appellate procedure.

On the whole, these rules have proved very workable, and most of them represent, in my opinion, and I believe in the opinion of the majority of the members of the bar, a great improvement over the former procedural statutes.

The most radical departure which was effected by these rules was the provision permitting the examination of the adverse party before trial, something entirely new to our practice, and in respect to which it must be admitted there is still some difference of opinion among the practitioners in the State of Washington. However, the Judicial Council is still of the opinion that the rule is scientifically sound and that there is no valid objection to any rule of practice whose only purpose is to allow a full disclosure of the facts.

It was with reference to this rule that the constitutionality of the Rule Making Act was drawn into question, and the Supreme Court of the State, sitting en banc in the case of The State of Washington, on the Relation of Foster-Wyman Lumber Company vs. The Superior Court for King County, 47 Wash. Decisions, page 543, ... Pac. ....., decided on May 29, 1928, upheld the validity of the Act in a well considered opinion, and among other things, said this:

> "There are very cogent reasons why the legislature is not compelled to legislate in intricate detail upon all subjects, the chief of which may very properly be said to be the inability of a legislative body to perform such minute functions, owing to short biennial sessions with lack of time to study and investigate problems. With court procedure and practice this is especially true, for the proper analyzation of the subject and formation of proper rules requires much experience and study, and should be performed by those who are thoroughly familiar with the needs. The legislature recognized that rules of court to promote justice, should be in the hands of that department of government which, in addition to being always in session and unhindered by the delays and influences besetting legislative enactments, is likewise qualified, through actual experience, to formulate salutary rules, when it titled the legislative enactment:

"'An Act to promote the speedy determination of litigation on the merits and authorizing the supreme court to make rules relating to pleadings, procedure and practice in the courts of this state.'

* * * * * *

"We think it follows that the legislature, although formerly functioning in this state as the source of rules of practice and procedure in the courts, did not, in so doing, perform an act exclusively legislative, and may, if it so desires, transfer that power to the courts without such act being a delegation of legislative power."

Since the promulgation of this first set of rules of practice, there have been no further changes, although it is likely that within the near future, additional modifications of existing procedural statutes will be formulated.

I believe I am fully justified in saying that if the Judicial Council produces no other accomplishment except the rules already promulgated, it has nevertheless justified its existence for many years to come. It would literally have taken years to produce the same results under old legislative methods.

The Judicial Council has embarked upon several other lines of inquiry which should be briefly mentioned. The Legislature in 1927, adopted a resolution requiring the Judicial Council to make an investigation and survey of the volume of business in the several judicial districts of the State and to make such recommendations as it thought advisable with reference to a re-districting of the State. For the first time in the State's history, a careful, accurate and thorough report and analysis is being accomplished, touching the volume and character of the judicial business in each of the counties and districts of State. The results in many instances are very startling, particularly insofar as they touch the inequality and disparity between the business transacted in the various districts, and the net result ultimately will *undoubtedly* be an improvement over existing conditions. This analysis has demonstrated for instance that there are some judges in the State holding court but a relatively few days each year, while in Seattle, for instauce, with thirteen Superior Court Judges, each judge is holding court each day practically the year round. There will undoubtedly grow out of this investigation some workable provisions with reference to the temporary assigning of judges from the smaller counties to the larger and more congested counties, on a great deal more workable basis than is now employed.

Finally, the Judicial Council is concerning itself very seriously with what is undoubtedly the most urgent judicial problem in the State of Washington. Our Supreme Court is handling a tremendous volume of business, and the development in population and business in the State has undoubtedly made some relief necessary. The lawyers in the State of Washington are very sure, and the Supreme Court will readily agree, that appellate litigation is not receiving the attention by the court that its importance deserves. With the court sitting week in and week ont, from the third Monday in September

until nearly the first of August, hearing six cases a day, five days a week, it should be obvious to any one that some change is necessary.

In 1927, the Judicial Council began the drafting of certain constitutional amendments to be submitted to the Legislature, and then to the people, seeking to meet this situation. Without going into these amendments in detail, it is sufficient to say that they had for their purpose the increasing of the jurisdictional amount in controversy, in order that the number of appeals might be reduced. These amendments gained considerable headway and were presented by the Judicial Council to the meeting of the State Bar Association in 1927. However, there was such a decided difference of opinion among the members of the bench and bar throughout the State as to the merit of the proposals, and such strenuous objections raised by the judges and attorneys of the smaller counties, where the amounts in controversy are generally lower than in the larger counties, that some doubt has arisen in the mind of the Council as to the probable success of these amendments. At the present time, the Council is using its resources in a very thorough investigation and comparison of the intermediate appellate court systems of other States, with the hope that out of this investigation, a constitutional amendment may be framed which will be applicable to conditions in our State, creating a system of intermediate appellate courts. The judicial business of the State of Washington has become so voluminous that it is likely some such arrangement as this will have to be adopted, if the Supreme Court is to be enabled to give the attention to the more important litigation, to which the parties thereto are entitled.

On the whole therefore, I believe that this legislation is already justifying itself in the State of Washington. There is an intimate relation between the two movements; the one for the restoration of the Rule Making Power, and the other for the creation of a Judicial Council. "It is enough," as Professor Sunderland says, "to confer upon our courts the general power to regulate procedure by rules and orders, but there must be machinery devised for encouraging and facilitating the exercise of the power." The Judicial Council supplies this machinery, and "it appears plausible, therefore, to expect the Rule Making Power to make its best showing in States in which a Judicial Council exists, and in which the Council conceives its functions to be that of a liaison unit between bench and bar."

While the State of Washington is the first American jurisdiction in which the entire machinery has been created, and our experience with it only covers a period of approximately three years, yet I believe I am safe in predicting that when the bench, bar and public have become accustomed to the change and familiar with the results accomplished, they will marvel that the old methods were ever tolerated.

The President introduced Hon. Frederick F. Faville, Justice of the Supreme Court of Iowa, Des Moines, Iowa, who addressed the meeting upon the plans, methods, and work of the American Law In-

stitute. The address not being in writing, and no reporter present, it is regretted that this very entertaining, enlightening and instructive discourse cannot be presented herein.

After discussion of Judge Faville's address, upon motion made, seconded, and carried, the Bar Commission was requested to appoint a special committee of the Idaho State Bar to co-operate and assist in the work of the American Law Institute.

The President introduced John P. Gray, a member of the State Corporation Commission, who spoke upon the condition, defects, and needs of the Idaho incorporation statutes and the work of the Commission. Attorneys are urged to communicate with the Commission (Jess Hawley, Chairman, Boise, Idaho) relative to discovered defects in the present statutes relating to incorporation. Mr. Gray's remarks were not in writing and cannot, therefore, be printed here.

Upon motion, made, seconded and carried the following were appointed delegates of the Idaho State Bar to the Conference of Bar Association Delegates at Seattle, Washington: O. O. Haga, James L. Boone, and Chas. M. Kahn.

The committee appointed to canvas the vote of the Eastern Division election for Commissioner of that Division to succeed A. L. Merrill, reported as follows:

"We, the undersigned, your committee on canvassing appointed to canvass the results of the election of Commissioners for the Eastern Division of the Idaho State Bar, beg leave to report:

A total of 41 ballots cast.

Of these 41 ballots, nine were rejected, 3 for non-payment of dues, six for failure to personally sign envelopes; 32 were properly cast.

Of these 32 ballots—

E. A. Owen received 22 votes,
T. D. Jones received 1 vote.
A. L. Merrill received 6 votes,
Clency St. Clair received 3 votes.

Respectfully submitted,
JAMES L. BOONE,
J. WARD ARNEY,
ABE GOFF.

Whereupon E. A. Owen was duly declared appointed Commissioner of the Idaho State Bar for the Eastern Division for the term of three (3) years and until his successor be duly appointed and qualified.

The Resolutions Committee presented its report which, upon motion, made, seconded and carried, was approved as follows:

Resolutions of Idaho Bar Association, Adopted At Its Meeting Held in Coeur d'Alene, Idaho, on July 23, 1928.

The Bar Association of the State of Idaho, at its meeting held at Coeur d'Alene, Idaho, on the 23rd day of July, 1928, hereby adopts the following resolutions:

First: That the Idaho bar is extremely fortunate in having as the legal pioneers of Idaho, men of such pre-eminent ability as the late, Honorable James H. Beatty, whose recent demise is regretted by the citizens of the State of Idaho, as well as by the bench and bar.

His long and successful career as a member of the Constitutional Convention, as a member of the bar, and as one of Idaho's leading jurists, is a matter of pride to the Idaho State Bar.. As one of the territorial judges of the Supreme Court of Idaho, and as the first Federal Judge of District of Idaho, he laid down those safe and sound principles of law which have settled and determined many questions which otherwise would still be confronting the people of this State, but through his ability and the confidence of those who followed him on the bench, it can be safely said that the law as decided by Judge Beatty will remain. And of him it can well be said:

Thou in spirit with us wilt ever dwell,
Though our lips may breathe adieux, we cannot say farewell.

Second: We recommend the present law under which the Bar of Idaho is organized and recommend its continuance. We express our appreciation to the present Commissioners of the Idaho State Bar, for the interest which they have taken on behalf of the bar, and the constructive work which has been accomplished under their supervision and direction.

Third: We strongly deprecate the seeming lack of interest and co-operation taken by the bar and bench in their failure to support and co-operate with the work of the Commissioners, by absenting themselves from the annual and district meetings of the Association, and strongly urge on every member of the bar and each judicial officer that they attend such meetings in the future, and also, that a local bar association or club be organized and supported in each county.

Fourth: We recommend the co-operation of our Association in the plans of the American Law Institute as outlined by the Honorable Frederick F. Faville of Des Moines, Iowa, and believe that by leaving the matter in the hands of the present Commissioners it will receive proper attention.

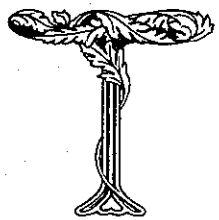
Fifth: We believe the judicial council plan as adopted in the State of Washington, is worthy of serious thought and consideration and recommend that a special committee be appointed by the Commissioners of the Idaho State Bar, to investigate the Washington system, and report at the next annual meeting.

Sixth: The laws governing corporations in the State of Idaho are in need of simplification and the earnest attention of the Legislature of the State of Idaho. As the last Legislature provided for this matter by the authorization of the appointment of a committee to study and report upon this matter, we feel that no action is required by our Association at this time, further than to commend the personnel of said committee.

A. H. OVERSMITH,
W. D. WERNETTE,
CHAS. M. KAHN,
Committee on Resolutions.

The Kootenai County Bar presented an invitation to the members of the Idaho State Bar and their ladies to attend a banquet at Bozanta Tavern, Hayden Lake, at 6:00 p. m.

There being no further business, the meeting was declared adjourned.



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