

Proceedings of the
Idaho State Bar

VOLUME XL, 1966

Fortieth Annual Meeting

BOISE, IDAHO

July 7-8-9, 1966

Proceedings of the
Idaho State Bar

VOLUME XL, 1966

Fortieth Annual Meeting

BOISE, IDAHO

July 7-8-9, 1966

PAST COMMISSIONERS

Western Division

JOHN C. RICE, Caldwell, 1923-25
FRANK MARTIN, Boise, 1923-25
JESS HAWLEY, Boise, 1927-30
WM. HEALY, Boise, 1930-33
JOHN W. GRAHAM, Twin Falls,
1933-36
J. L. EBERLE, Boise, 1936-39
C. W. THOMAS, Burley, 1939-42
E. B. SMITH, Boise, 1942-48
CLAUDE V. MARCUS, Boise,
1949-51

T. M. ROBERTSON, Twin Falls,
1951-54
WILLIS E. SULLIVAN, Boise,
1954-57
SHERMAN J. BELLWOOD,
Rupert, 1957-60
GLEN A. COUGHLAN, Boise,
1960-63
EDWARD L. BENOIT, Twin Falls,
1963-66

Eastern Division

N. D. JACKSON, St. Anthony,
1923-25
A. L. MERRILL, Pocatello, 1925-28
WALTER H. ANDERSON,
Pocatello, 1928-34
E. A. OWENS, Idaho Falls, Poca-
tello, 1934-40
L. E. GLENNON, Pocatello, 1940-43
PAUL T. PETERSON, Idaho Falls,
1943-46

R. D. MERRILL, Pocatello, 1946-49
RALPH LITTON, St. Anthony,
1949-52
L. F. RACINE, Jr., Pocatello,
1952-55
GILBERT ST. CLAIR, Idaho Falls,
1955-58
J. BLAINE ANDERSON, Blackfoot,
1958-61
WESLEY F. MERRILL, Pocatello,
1961-64

Northern Division

ROBERT D. LEEPER, Lewiston,
1923-26
C. H. POTTS, Coeur d'Alene,
1926-29
WARREN TRUITT, Moscow,
1929-32
JAMES F. AILSHIE, Coeur d'Alene,
1932-35
A. L. MORGAN, Moscow, 1935-38
ABE GOFF, Moscow, 1938-41
PAUL W. HYATT, Lewiston,
1941-44

E. H. KNUDSON, Coeur d'Alene,
1944-47
E. E. HUNT, Sandpoint, 1947-49
ROBERT E. BROWN, Kellogg,
1949-53
RUSSELL S. RANDALL, Lewiston,
1953-56
CLAY V. SPEAR, Coeur d'Alene,
1956-59
MARCUS J. WARE, Lewiston,
1959-62
ALDEN HULL, Wallace, 1962-65

Present Commissioners and Officers

R. V. KIDWELL, Idaho Falls, President
JERRY SMITH, Lewiston, Vice President
N. G. SPEROPULOS, Commissioner
JAMES B. LYNCH, Boise, Secretary

Shoshone County (1st District)—Alden Hull, President, Wallace
Clearwater (2nd and 10th Districts)—John Bengtson, President, Lewiston
Third District Bar—Kenneth Bergquist, President, Boise
Fourth and Eleventh Districts—James J. May, President, Twin Falls
Fifth District—Lamont Jones, President, Pocatello
Sixth District—H. William Furchner, President, Blackfoot
Seventh District—Herbert W. Rettig, President, Caldwell
Eighth District—Scott W. Reed, President, Coeur d'Alene
Ninth District—Herbert H. Ferguson, President, Idaho Falls
Twelfth District—Mary Smith, President, Rexburg
Thirteenth District—E. L. Scott, President, Malad

1966 Idaho State Bar Convention

7 July 1966

MR. BENOIT: I am declaring the fortieth session of the Idaho Bar now in session and I would ask those of you here be seated and we will have our invocation. As I look around this room I am sure that nobody present needs one but for our absent brothers I am going to ask the Reverend Stacy Richards of the Wright Community Congregational Church to give our invocation. The Reverend Richards.

REVEREND RICHARDS: Please stand. Let us pray. Almighty and most gracious God, Lord of all and ultimate judge of our lives, we desire to place ourselves and our profession in thy hands. Send thy blessings upon this annual meeting of the Idaho State Bar. Guide and direct and oversee the deliberation of this meeting, and if thou see that these undertakings will be for the benefit of all our people, grant us good success. Make us conscious of the importance of the law in the ordering of a just society, and keep before us the necessity of making our laws clear and appropriate to this day because our purpose is to help our fellowman and to promote all that is good and just in the life of our community, state and nation. So we pray that thou will strengthen our hands in all our undertakings and that our work may further justice and good will among all men. This we ask in the name of the Father, the Son and the Holy Spirit; Amen.

MR. BENOIT: Thank you very much, Reverend Richards. I would like to note that our reporter is Mr. J. B. Halliburton. Hal is the reporter for Judge Donaldson, and you will note that the proceedings for the 1965 meeting were in your hands early in 1965 rather than in the June immediately prior to the meeting this year. This was due entirely to Hal's efforts in getting the proceedings out in time, and Hal, we do appreciate what you did for us last year and you did an excellent job.

Now, we had two people, I suppose, whose sanity is questioned, who have sought the office of Commissioner from the Western Division to succeed me in the position. I would like now to appoint a canvassing committee and I would like to say that departing from previous methods I am going to exercise my prerogative and change our system. In the past we have had a canvassing committee appointed who then around four o'clock on Thursday afternoon canvassed the votes and made a formal report on Friday morning. I am going to appoint this committee and ask that they and the secretary of the Bar immediately adjourn to the secretary's room and canvass the ballots and when the chairman returns he will ask me for recognition and we will then announce the new commissioner. I see no reason why we should delay this matter and I would ask now that Scott Reed of the Northern Division from Coeur d'Alene act as chairman and Wally Transtrom from the Eastern Division and Ken Bergquist, President of the Third District Bar, serve on our canvassing committee. That is one from each division; so Jim if you will get together with these three gentlemen.

Out of curiosity; we have had so many spoiled ballots in the past by lawyers who can't read instructions; Jim simplified it by buying a rubber

stamp saying, please sign here, and could we again have our usual report about how many lawyers who failed to follow instructions Jim. (Laughter)

MR. LYNCH: Fifteen.

MR. BENOIT: Now, we have some distinguished guests on the program this afternoon and I'll not bother to introduce them but I would like to recognize one of our speakers for tomorrow who is a former president of the Colorado State Bar and very active in the Western Bar Conference; from Colorado, Bill Gaunt. Bill, would you please stand. (Applause) Now, we have several visiting bar presidents from neighboring states and I promised if they weren't present, I wouldn't confess that they were on the golf course, but we do have with us one very diligent president who loves to play golf and decided that he owed a duty to his bar association to attend all our sessions and I would like to ask him to step forward and say a couple of words because his bar association had conducted a very interesting survey about the future of the legal profession, so I would like to ask the president of the Oregon Bar, Mr. Jim Richmond to say a few words. Jim, would you honor us with a couple of words please. (Applause)

MR. RICHMOND: I really didn't intend to say anything when I came over here. I only intended to have a good time. Incidentally, I stopped playing golf about ten years ago, so I am not giving up golf at least. Thank you Ed. (Applause)

MR. BENOIT: Thank you Jim. I would like to say that the Oregon State Bar has consistently been recognized by the American Bar Association over the years with several awards of merit for the outstanding job they have done. They have even bought a building. Of course, they have a large number of wealthy attorneys, I understand, who donated about five million, enough to build a building. I would like to introduce some of our past presidents but I do not see them here right now. Oh, here is one, our past president and the delegate to the House of Delegates of the American Bar Association who was elected by the members of the American Bar Association residing in the State of Idaho. I have been at three conventions and I have noted with pride the many friends that our delegate has made and the respect with which they hold him, and we are asking him to give us a brief report as delegate from Idaho to the American Bar Association Council of Delegates, past president of the Idaho Bar, J. Blaine Anderson — Blaine. (Applause)

MR. ANDERSON: Thank you very much Ed and thank you gentlemen. Sherm Bellwood is unable to attend this meeting, so he wanted me to report for both of us. The mid-year meeting of the House of Delegates was held at the Palmer House in Chicago February 21st and 22nd of this year. Both of your delegates were in attendance, Sherm Bellwood, your State Bar Delegate and Ed Benoit and Vern Kidwell were also there attending a number of the meetings of other lawyer groups. There were over a hundred items of business on the calendar at the mid-year meeting so it would be impossible to give you a report as to all of them and so I have just selected a few at random that I thought might be of some interest to you. A good many of the matters were referred back to sec-

tions of various committees or were tabled for consideration at the next meeting at Montreal August 7th to the 11th.

A resolution was adopted urging all state and local bar associations to obtain commitments from their Senators that they would cooperate with the American Bar Association Standing Committee on Federal Judiciary in the nomination, investigation and selection of federal judgeship appointees. Under this program the President of the United States, through the Attorney General refers the names of persons under consideration for appointment to the American Bar Association committee for investigation. The resolution also asked that all United States Senators be asked to withhold support from any nominee who was reported as unqualified for the position. For several sessions now the Judicial Conference of the United States has sought the American Bar Association approval of a bill which would restrain the abuse of writs of habeas corpus in Federal Courts by state prisoners. This was referred back to the committee and it is likely that it will be on the agenda at the annual meeting and its content and purpose could engender some very lively debate. In an effort to combat statements made before congressional investigative committees to the effect that certain international lawyers were agreed that the United States position in Viet Nam was and is illegal, a resolution was adopted unanimously as sponsored by the Section of International Law stating that the position of the United States was legal under international law and in accordance with the Charter of the United Nations and the Southeast Asia Treaty. A copy of the resolution was forwarded immediately to the Chairman of the Foreign Relations Committee of the Senate.

The house also adopted a resolution vigorously opposing the efforts of a number of non-lawyer groups in promoting and recommending legislation which would remove all domestic relations matters from the jurisdiction of the courts and to have all such matters determined by a state agency other than in the courts. In other words, it is vigorously opposing efforts by the social scientists to assume full power of disposition with respect to domestic relations.

That the Board of Governors appoint a special committee of the American Bar Association on The Electoral College and to study the present system of electing the President and Vice President. The special committee was authorized to appoint a Commission on the Electoral College. This committee and its Commission have been appointed and consists of outstanding lawyers, educators, political scientists and constitutional scholars. It is reminiscent of the ABA special committee on Presidential and Vice-Presidential disability whose work was widely acclaimed and received and its recommendations are now the subject of a constitutional amendment which will probably be adopted by the required majority of states within the next several years.

On February 22nd, the State Delegates, meeting alone, elected the following officers of the American Bar Association; President, Earl F. Morris of Columbus, Ohio; Chairman of the House of Delegates, James D. Fellers of Oklahoma City, Oklahoma; Secretary, Gibson Gayle, Jr., Hous-

ton, Texas; Treasurer, Joseph H. Gordon, Tacoma, Washington and whose presence we are honored at this annual meeting. So much for the mid-year meeting. The 89th Annual Meeting of the ABA will be held in Montreal, Canada August 8th through the 11th. The meeting will stress international themes and speakers. This is the second time the meeting has been held in Canada. The first was in 1913. There will be hundreds of eminent speakers including Prime Minister Pearson. The House of Delegates will meet in a five day session and matters likely to be considered, among many others, are as follows: one, a recommendation of the Board of Governors that the ABA create a new Section of Individual Rights and Liberties. The proposal would merge or incorporate three Committees of the ABA into the new section and these are, American Citizenship, Bill of Rights and the Special Committee on Civil Rights and Racial Unrest. Two; as heretofore indicated there will probably be heated debate on the legislation recommended by the Judicial Conference of the United States designed to restrain the alleged abuse of Writs of Habeas Corpus in Federal Courts by state prisoners. Three; there will probably be an interesting report by the special committee on the Revision of the Canons of Professional Ethics. If any recommendations are incorporated there is sure to be much debate and discussion. The Section of General Practice will hold its meetings August 8th and 9th with Joint Sessions with the Section on Local Practice, the latter being a standing committee of the Association. The program will include panels on fee determinations, a film on the desirability of law partnerships, a panel of appellate judges will tell us what they want in oral arguments, and there will be a mock condemnation trial and a discussion of the principles involved in local government immunity. If you have never attended an annual meeting I would urge you to do so in your own best interests. They are informative, educational and enjoyable. The next annual meeting in 1967 is in Honolulu, Hawaii in August, 1967. This may present an opportunity for many of you to take that long awaited trip and to also attend your first annual meeting of the American Bar Association. Your President, Vern Kidwell, and I, will be sitting together in the House of Delegates in Montreal. Sherm Bellwood has recently resigned his appointive position as State Bar Delegate and the Commissioners have appointed Vern in that capacity for this meeting. Sherm Bellwood with a lot of personal sacrifice has served this Bar well for over five years as your State Bar Delegate to the House of Delegates. He has served on a number of important committees of the House and has taken an active part in its deliberations. He has become widely known and respected among the members of the House, the Board of Governors and the officers of the ABA. He has served the Idaho State Bar well in this and a number of other capacities, and this Bar, I believe, owes him a unanimous vote of appreciation and gratitude. Thank you very much. (Applause)

MR. BENOIT: Blaine, if you would care to make these comments you have mentioned as to Sherm's services rendered in the form of a motion I am sure it would be welcomed.

MR. ANDERSON: I so move.

MR. KIDWELL: Seconded.

MR. BENOIT: So moved and seconded; all in favor signify by saying aye. (aye) Opposed? (None) Unanimously passed. Thank you very much Blaine. Sherm and Blaine made a real combination for us in the House of Delegates. I now see one of the past presidents and I would like to introduce him; from Boise, Mr. Bill Sullivan. (Applause) I would like to introduce a man who was not here last night to join the festivities, but the cocktail hour was the result of his generosity and that of his employer. I would like to recognize the Trust Officer of the Twin Falls Bank and Trust. John Wolfe, would you stand. (Applause) I am sorry you weren't there; we had a great time. I have a lot of bad habits which my wife can tell you and one of them is telephonitis late at night. As the result of a phone call last night I received a wire which I think you ought to hear. It comes from Wallace, Idaho as follows; "Late Wednesday evening phone calls indicate annual meeting off on its usual high level. Unanimous jubilation due to end of your term and beginning of Vern's. Regret that we cannot be with you today at the convening sessions. Extend my greetings and good wishes to the entire State Bar, sincerely, Alden L. Hull, Wallace." I might say that Alden had planned to be here but under the doctor's orders after a slight mishap he was unable to be here.

I also have another wire from the President of the Idaho Magistrates Association; that is the JP's and the police judges of the State of Idaho. They have been having meetings throughout the state and they have asked the State Bar to help them when they have had these meetings and through the local bar offices we have furnished speakers on small claims and we have also tried to have a commissioner in the area attend these meetings and to extend to them the greetings of the Idaho State Bar and particularly to talk about the present program of the court reorganization and these meetings have been very successful and has engendered good will and so I would like to read the following telegram into the record. "Dear Ed, the Idaho Magistrates Association wishes to take this opportunity to extend to you and the members of the Bar our best wishes for a successful and fruitful convention. It is very gratifying to say that the working relationship between our two associations is the best that I can ever remember. We are looking forward to many more years of the same. Please accept my personal appreciation for the fine support you and your other members have given us. Glenn A. Phillips, President of the Idaho Magistrates Association." I might say that Glenn is a very high class man and very sincere in his devotion to that association and I think our relationship is excellent. Now, I would like to depart one moment. I wasn't going to introduce the speakers today who are going to take part in the panel but we have one here who doesn't appear in the program, Bill Kliendorfer, who is with the American Bar Association out of Chicago and his job actually is liaison man between the American Bar Association and the state bar associations. While he will participate in the panel on the Office of Economic Opportunity, since we started this program on time, which is unusual, we have a few minutes extra and I would like Bill to come forward and tell us a little bit about his activities as liaison officer and the connection between the state bars and the American Bar. Bill, would you mind telling us about your activities? (Applause)

Mr. Kliendorfer's address is deleted in the proceedings but reports can be obtained from the office of the Secretary in Boise upon request.

MR. BENOIT: Thank you Bill. We are very delighted to have you here. Our next speaker is here with his escort, I'll ask Dale Clemons to escort Hamer Budge to the table and introduce him so Hamer can give his presentation this afternoon; Dale. (Applause)

Mr. Clemons' introduction and Mr. Budge's address have been deleted but copies are available in the office of the Secretary upon request.

MR. BENOIT: Hamer, thank you very much. I would like to say that the members of the Idaho Bar are very proud that you have attained such a high position as you have. And I am sure that you can take Hamer at his word. I had a problem and I called him and it wasn't long before I found out that I was headed for trouble. I see a couple more of our distinguished past presidents I would like to introduce; Boise's Glenn Coughlan, Glenn would you stand please. (Applause) Mentioning Boise; there were a lot of problems about changing this convention to Boise. We had no alternatives, and we do appreciate the tremendous support that the Boise attorneys have given in registering for this meeting; we really do. Also, another past president with us from Idaho Falls who is also currently President of the Western Bar Conference, a rather informal organization of the western bars, from Idaho Falls, Gilbert St. Clair (Applause) We have another visitor, President of the Wyoming State Bar, Elmer Scott. (Applause)

MR. BENOIT: Scott Reed, is your committee ready to report?

MR. REED: Yes sir, Mr. President, the committee adjourned according to your instructions and counted the ballots. We counted the ballots and I wish to report that we completed the count for the commissioner of the Idaho State Bar from the Western Division and we find that Nicholas G. Speropulus has won the election. Presumably the 1967 Bar convention will be held in Athens. (Laughter) (Applause)

MR. BENOIT: Thank you, Scott, and also thanks to Wally and Ken serving on the committee. Now, we're running a little behind time but I think maybe we ought to hear a couple of words from Nick. Do you want to come forward Nick. (Applause)

MR. SPEROPULUS: Mr. President, Commissioners and distinguished guests and members of the Idaho Bar Association. Needless to say I am very happy, very proud and very much honored at this moment. I specially want to thank the members of the Western Division who have expressed the confidence to put me in this position of trust and honor. I will do everything in my power to adequately represent the Western Division on the Bar Commission and I will always work for the best interests of the Idaho State Bar Association. I very sincerely feel that it will be a number of years before the Western Division produces another commissioner who will equal the tremendous job that has been done by our retiring President, Ed Benoit. Thank you very, very much. (Applause)

MR. BENOIT: Thank you very much Nick; I have two cars with me here in Boise with two trunks full of files which I will be happy to turn over to you Saturday noon. (Laughter) Before we adjourn, I would like to say about our program at three o'clock. As I have said in the Advocate

column, it's not a glamorous program but it's of the utmost importance of the legal profession in the United States, a program of legal assistance to the poor and our panel is composed of people who know the problems and know the problem nationwide and perhaps can help us here in Idaho in deciding what avenue we should take in complying with this vast new program as concerns the legal profession and so I hope that at three o'clock all of you will be back because as I say, it is very vital and of concern to all of us. At this session beginning at three o'clock I am going to ask Vern Kidwell, our Vice-President, to preside. Vern is General Chairman of this convention and has arranged the speakers. So when we come back here at three o'clock, Vern will preside at the meeting.

Reconvened 3:00 p.m.

MR. KIDWELL: The afternoon panel deals with one of the most interesting problems that has faced the legal profession during a number of years. We are all generally acquainted with the Office of Economic Opportunity and its program designed to furnishing legal services for the indigent. In order to familiarize the Idaho Bar with the ramifications of the program, we have brought two gentlemen who are eminently qualified to discuss the facets of the furnishing of legal services to the indigent. I would like first of all to introduce to you a representative of the American Bar Association. He is a former president of the Tacoma Bar; former president of the Western States Bar Conference; previously a member of the board of governors of the Washington State Bar Association; he is a member of the American Bar House of Delegates since 1951; a member of the American Bar Board of Governors since 1962. He is currently Treasurer of the American Bar Association. He is an active member on various bar committees; a fellow of the American Bar Foundation of the American College of Probate Counsel. Mr. Joseph Gordon from Tacoma, Washington, Treasurer of the American Bar Association; Joe, (Applause) And in the back corner and not necessarily in any derogation to him, we have the representative from the Office of Economic Opportunity, Judge Newman, who is municipal court judge in Los Angeles. He is one of a twenty-one member group which serves as the national advisory committee to the legal services program of the Office of Economic Opportunity. He is a graduate of the Los Angeles Polytech High School and Santa Monica City College, University of Southern California and Pacific Coast University with degrees of AB and LLB. He has been in practice since 1942. He was formerly a member of the firm of Newman & Newman since 1945. He is a member of the Community Service Organization; a trustee of the American Welfare Committee; a member of the American Bar Association; a member of the Los Angeles County Bar Association; the Anchor Club; the Mayor's Reception Committee for Foreign Dignitaries; the Inter-American Club. Mrs. Newman is also present and we extend to Judge and Mrs. Newman our sincere appreciation for taking time out in a busy schedule to participate in the program here. Judge Philip Newman. (Applause)

The panel discussion of Mr. Gordon and Judge Newman is deleted but copies may be obtained from the office of the Secretary upon request.

MR. KIDWELL: If there is no further business the meeting will be adjourned until tomorrow.

(Meeting adjourned at 5:00 o'clock p.m.)

(July 8, 1966, 9:00 o'clock a.m.)

MR. BENOIT: We are five minutes late but we will declare the convention in session. There are a few announcements to make. I believe that Jim may want to make another one regarding the prosecuting attorneys' meeting—Jim May?

MR. JIM MAY: It looks like I have the wrong audience; I don't see any prosecutors up this early but for those of you who might know someone, we have a business meeting at the Owyhee Hotel, Gardencourt room at 12:00 o'clock.

MR. BENOIT: Jim, are you going to be here this first morning session?

MR. MAY: Yes.

MR. BENOIT: If you want to, you can repeat that announcement later. Before I introduce the first speaker, I have some guests I would like to introduce this morning who weren't here yesterday. They were here but not in our session. One of them is a good friend of a lot of the lawyers from Idaho. From Provo, Utah and President of the Utah Bar, Cullen Christensen. Cullen, do you want to say anything.

MR. CHRISTENSEN: No. (Applause)

MR. BENOIT: We will introduce our first speaker. This happens to be a coincidence but I am going to ask one of my classmates from the University of Utah Law School and practicing attorney here in Boise and friend of mine who will introduce the next speaker, Joe Imhoff.

The introduction of Joe Imhoff and the address of Mr. Robert Myers are deleted but copies may be obtained from the office of the Secretary upon request.

MR. BENOIT: Bob, thank you very much. We know you are very busy and we appreciate your taking time to talk to us. Now, we are going to go into the subject of court reorganization and I would like to briefly give you a little background of how this started in Idaho. About two and a half years ago when Wes Merrill of Pocatello was President and Alden Hull was Vice-President and I was a Junior Commissioner and following a commissioners meeting we called Justice McQuade and asked for an appointment with the Supreme Court and we met in the Chief Justice's office and we discussed the matter of court reorganization and said that we were willing to commit some of the meager funds of the Idaho State Bar at least to get a start and the court gave us their blessing and encouragement and we thereupon prevailed upon Tom Miller and George Bell to form a two-man committee to present an initial study. They completed that in two months and two years ago at our annual meeting at Sun Valley the report was prepared and accepted by the State Bar and they then sponsored legislation asking for appropriations to the legislative counsel

to enact possible legislation to be presented at this next session. The council did complete that and in the meantime the American Judicature Society found we were interested in the court reorganization and volunteered their services in organizing a citizens council here in Idaho. So your State Bar and the Judicature Society had such a meeting the first part of June. Some of the expenses were borne by the Bar and some by the Society. We had a very excellent turnout throughout the State. We probabaly, I feel, got the finest newspaper coverage from the standpoint of public relations the Idaho State Bar has ever had. And now we are at the point of this convention where the State Bar is going to have to go on record of doing something about court reorganization. The time is now and we have with us a visitor from the neighboring state which has gone through the problems successfully and to introduce him I am going to ask his host from Boise to perform the honors; Karl Jeppesen.

The introduction of Karl Jeppesen and the address of Mr. William Gaunt have been deleted but copies are available in the Secretary's office upon request.

MR. BENOIT: Thank you very much Bill. I hope that you will be here when our panel discussion is going on if questions come up then maybe you can help us a little bit. And please give Mrs. Gaunt the regards of the Idaho State Bar and wish her a real speedy recovery and we are sorry you have to leave. There are a couple of people I would like to introduce that we have with us. We have the new Chief Justice of the Idaho Supreme Court, Justice MacFadden. (Applause) And a former delegate to the American Bar Association and past President of the Idaho State Bar and President of the Idaho Supreme Court, Justice E. B. Smith. (Applause) And also in the back of the room somewhere is Glenn Phillips, President of the Idaho Magistrate's Association. Is Glenn Phillips back there. (Applause) We are very happy you could make it Glenn.

MR. BENOIT: We are behind schedule and we will have a coffee break and we will be back here at ten thirty and we want to get this panel discussion going before the ardent golfers leave for the tournament.

(Recess at 10:10, reconvene at 10:30 a.m.)

MR. BENOIT: I am going to ask the new commissioner to preside at the next session, Jerry Smith.

MR. SMITH: We will have a drawing before we get started with this panel discussion. Your President asked me to take over and the commission has asked me to introduce the panelists on this panel discussion on court reform. This is a rather easy job because all of you know these people anyway and I won't have to comment too much on them. We have got to get this panel discussion going and I know that a number of the people from what went on in the Bar President's Meeting the other day, will have lots of questions of these panelists, so I would like to introduce first of all Hal Ryan who will chairman the panel discussion. He is the State Senator from Washington County. I went to law school with him at the University of Idaho and graduated with him and we took the bar exam together. There is a whole lot to tell but I won't go into that. Hal,

if you will step up and let everybody see who you are. (Applause) Hal is Chairman of this Subcommittee of the Legislative Council and Judicial Reform and I think we will benefit by his participation on this panel. The next gentleman I would like to introduce is Myran Schlechte, who is more or less the Executive Director of the Legislative Council and he is a layman, he is a non-lawyer. He comes from Colorado where he has gone through this judicial reform in Colorado and at this time I would like to introduce Myran Schlechte who has participated in this judicial reform committee here on the legislative council. (Applause) The next gentleman whom I would like to introduce we just heard from at the Alumni Association breakfast this morning. He is a University of Idaho Law School graduate. He just recently has been named Dean of the University of Idaho Law School. He has done yeomanlike service on this judicial reform committee. I have heard from the observers what a spearhead he has been on this thing and he is one of the ones that is primarily responsible for this report that has been sent out to all of the lawyers of the state and which should be in all your hands prior to this meeting. I would like to introduce Dean George Bell of the University of Idaho. (Applause) The next member of the panel is a gentleman who likewise has done yeomanlike service on judicial reform. I can remember Tom Miller giving reports on the judicial reform and reports on the lower courts over a good many years at the conventions. Every annual convention practically that we have had he has given a committee report on this. Tom went back to South Dakota earlier this year to observe the citizens conference that was conducted there and came back and in cooperation with the American Judicature Society and the Idaho State Bar Association set up and helped organize and did real service to the Bar I think in putting over this citizens conference and from all I hear what went on at the citizens conference it was a tremendous success. Tom is former Secretary of the Bar Association, State Bar Association, and practices here in Boise and I will introduce at this time, Tom Miller. (Applause) From the program it wasn't quite clear whether Judge Webb was to have participated on this panel or not. He is going to make some remarks at the close of the panel discussion on the constitutional revision committee. At this time, I will turn the panel discussion over to Hal Ryan who is going to chairman this discussion and let you hear from him.

The panel discussion has been deleted but copies are available at the Secretary's office upon request.

MR. BENOIT: I want to thank all the panel members for being here; not only for being here but also for the tremendous number of hours they put into this initial study. And I do also re-echo what Hal says. I think many of you should go home and study that and talk to other lawyers and let this committee know what you think. I have one more thing, and that is I want to thank those fellows who were going to throw me into the pool last night for changing your minds. (Laughter)

MR. BENOIT: We will stand adjourned until tomorrow morning. We have quite a few resolutions and we would appreciate it if you would get here in time in the morning.

(Adjourned at 5:00 o'clock p.m.)

9 July 1966

(Saturday morning)

9:00 o'clock

MR. BENOIT: We will begin the business meeting of the Idaho State Bar. We have several committee reports. The chairmen are not here so I will ask Jim Lynch to read the committee reports that he has. The first report is the report from the committee concerned with liaison of the Internal Revenue Service. The chairman of that committee is Myron Anderson. Jim, would you summarize that report?

MR. LYNCH: Mr. Anderson has served for several years as the liaison member of the Idaho State Bar to the Internal Revenue and has served as a one man committee and therefore operates very efficiently. Every year Mr. Anderson has sent us an excellent report which runs about eighteen pages or twenty pages long and contains information of value to those attorneys interested in the tax work and the report will be presented in the proceedings so that you can use it but if nobody has any objections I will not read the report here today.

Edward L. Benoit, Esq., Commissioner,
R. Vern Kidwell, Esq., Commissioner,
Jerry V. Smith, Esq., Commissioner,
James B. Lynch, Esq., Secretary,
Idaho State Bar Association,
Boise, Idaho.

Gentlemen:

As Idaho State Bar representative to the Western Regional Bar Association - Internal Revenue Service Liaison Committee, I have attended the eleventh and twelfth meetings of this Committee. The eleventh meeting was held on January 7, 1966, in the Board Room of the Waikiki Plaza Building, Honolulu, Hawaii; and the twelfth meeting was held on June 17, 1966, at the University Club, Salt Lake City, Utah. The purpose of this letter is to report the happenings at these last two meetings.

Dick Yin Wong, Honolulu, Hawaii, was Chairman of both meetings, and Aaron Resnik was secretary. Frank B. Campbell, Jr., of the Arizona Bar, has invited the Committee to Phoenix, Arizona, for its next meeting early in January, 1967.

The usual procedure is that prior to each meeting of this Committee the Chairman requests and receives suggested subjects to be placed on the agenda for discussion at the meeting, and each representative receives a copy of the agenda several weeks before the meeting so that he can be prepared to add his thoughts on the matters under consideration. Each subject discussed will be stated briefly below:

JANUARY 7, 1966, meeting:

- 1. International Operations - The Extent of Decentralized Procedure - Current Technical Problems.**

Mr. Peel (Regional Analyst, Audit, San Francisco) outlined the organizational set-up as being followed today and some of the future aspects of the international operations program. He gave a brief outline of the problems that have arisen both administratively and technically in the international field. He stated that the Code provisions relating to issues arising in international operations have been in existence for many years - it has only been since the termination of World War II and with the expansion of business and business complexities in the international field that there has been a marked step-up in international revenue activity in this area.

Originally tax returns relating to foreign entities and foreign individuals were filed in Baltimore. In 1954 a specialized unit within the Service was set up as a new division. It was called the International Operations Division. Problems relating to international operations were transferred to that unit, which included operating staff, agents, review, etc. In addition, six foreign post duties were established. From the beginning the operation grew rapidly, and it was found that local districts needed assistance as they uncovered international problems in the course of an audit. International Operations did the examinations, but problems mushroomed as the number of returns filed continued to grow.

In 1961, responsive to the comments in the President's message to the effect that tax havens were being used to circumvent the Federal income tax, the Treasury Department was charged with the responsibility of developing a stronger program in the field of international operations. At that point the Service changed its procedure and method of operation. An office of international operations was established which acted more in a consultant capacity and less in an operational phase. Special agents were detailed to two areas at first — Chicago and New York — and a year later a third field group was established in San Francisco. These special groups rendered assistance to the districts where international problems arose.

In May, 1965, a new concept developed. Independence was granted to each district in the handling of international operations cases. Specialized services, however, are being provided to the districts by a specialized key district in each region. As an example: In the Western Region there are two key districts, one in Los Angeles and one in San Francisco, each staffed with specialists who are agents, reviewers and conferees. Reviews conducted by a key district make the final decision as to what is to be done with a particular case or particular issue within a case if left with the originating district where the case was first unfolded. Each district has full jurisdiction of its own cases. Post review at the regional level is still maintained, but solely for the purpose of uniformity. There is no national office post review; however, timely and full reports are submitted by the region to the National office.

Mr. Klotz (Director, Appellate Division, Wash.) stated that the Appellate Division has also specialists in its various offices who have gone through specialized training, and are prepared to consider even the most detailed issues involved in the international field. He said that fifty conferees and twenty-five reviewers have had this special training. Mr. Sears commented

that a similar system is being followed in regional council offices where certain attorneys have received special instruction and training, and have developed a specialized expertise in these problems.

Mr. Holdsworth (Utah Bar) inquired as to what might be a typical international operations case. It was pointed out that most of the cases consisted of foreign tax credits, various matters that might arise where a domestic parent operates with a foreign subsidiary in a tax haven country.

Mr. Uretz (Deputy Chief Counsel, Washington, D.C.) stated that most issues were arising in the Section 482 area (allocation of income). Mr. Peel then outlined the processing of a case.

When an agent in a non-key district, as part of the examination of a return, finds an international issue he prepares a report identifying the issue, and at that time he requests specialized assistance. This report goes to the regional headquarters and is reviewed and evaluated, and the determination is then made as to whether specialized assistance appears to be necessary. If assistance is necessary, a specialist from one of the key district offices will be assigned to the case, and he will journey to the non-key area and work with the non-key agent in the examination of the matter. Mr. Holdsworth suggested that it would be of material assistance to taxpayers to have such specialists available with whom these problems can be discussed.

2. Divorce and Dependency--Administrative Problems--Suggested Solutions.

Mrs. Scott, a special representative of the Oregon Bar, stated that the Oregon State Bar--Internal Revenue Service Liaison Committee had studied the above matter to some depth. After identifying the scope of the administrative problems, as well as the problems that face taxpayers, and after having considered many possible solutions, that Committee (Oregon) thought certain legislative remedies might be considered.

It was generally agreed by all Liaison Committee members who were present at this meeting that the number of cases arising in the divorce-dependency area was great, and the present method of handling these cases was both expensive and time-consuming, and it also had a tendency to dull the image of the Service, when in fact the Internal Revenue Service was nothing more than a stakeholder.

Mrs. Scott said that the Oregon Committee had considered many remedies but each was rejected in that it failed to squarely meet the situation at hand. Among the remedies considered were:

1. The possibility of specification in the divorce decree as to who could claim the dependency exemption;
2. The dependency exemption should be allowed to the custodian of the child;
3. The dependency exemption credit could be split up if more than one was involved;

4. Where neither party could actually make proof as to who had provided more than half the support, the Internal Revenue Service should then have the automatic right to split the dependency in a manner that seemed fair and equitable.

Mrs. Scott distributed a resolution that sought to encompass the formal suggestions of the Oregon Committee. It reads in part as follows:

“RESOLVED, that the Treasury of the United States recommend to the Congress amendment of the Internal Revenue Code to permit a divorced or separated parent to claim as a dependent a child of the marriage by filing a written declaration by the other parent that he or she will not claim such child as a dependent for such taxable year, or for such taxable year and subsequent taxable years, as the case may be; (and in the absence of such a declaration, to permit the parent not having custody to examine the return of the person having custody.)”

Mr. Sears (Regional Counsel) pointed out that the matter might not be as simple as that of getting legislation to permit of a type of dependency credit agreement. In those instances where the parties are on sufficiently amicable terms to work out a type of agreement, the probability of litigation is minimal. For settlement purposes the Service many times recognizes a concept that embodies in the terms of the settlement what is similar to a multiple support agreement. The more acute problems arise where the spouses live in different districts, are not on amicable terms, and would not agree to a determination among themselves as to how the exemptions should be split.

Mr. Lohn (Montana) suggested the possibility of treating the child support payments in a manner similar to that of alimony and allowing the deduction to the payor irrespective of the determination of the requirement of more than one-half the support.

Paul Anderson (California) suggested the possibility of meeting the problem insofar as the divorced husband was concerned by denominating the payments just as “support” within the aegis of the Lester case as decided by the Supreme Court. It might then be possible for the husband to receive a deduction for the amounts so paid as support with the recipient wife having to pick up such amounts as income. Mr. Willis (ABA) thought this would be a harsh result insofar as wives were concerned, and might open the door to excessive deduction on the part of the husband unless there was some limitation placed on the maximum amount deductible.

Mr. Greaves (Asst. Reg. Counsel) suggested that the parenthetical remark in the Resolution with respect to the permission to examine the return of the other spouse may cause many problems because of the inroad it would have upon disclosure.

Mr. Langbein (Ass. Com.-Audit) commending that the Joint Committee had been considering this matter, and that basically the proposals then under consideration are as follows:

“A personal exemption for a child of divorced parents would be

given to the parent with custody, with the following exceptions:

"1. Where the decree of divorce separation agreement or other agreement between the parties otherwise provides;

"2. Where the parent without custody contributes more than "X" dollars of support during the year except in cases where the parent with custody clearly establishes that he contributed more than half of the support of the child."

Mr. Forster (Past ABA representative) suggested that the appropriate ABA taxation sub-committee might be interested in considering the total problem.

It was generally agreed among the members present that the matter under discussion was of such importance that it should be carried over for discussion at a later meeting.

3. Current Developments in Information Retrieval Activity of the Internal Revenue Service.

Mr. Uretz stated that the inventory of cases in the office of the Chief Counsel averages about 20,000 at any single time, and that they encompass between 50,000 and 60,000 issues. Accordingly it has become necessary that some automated program be undertaken to cope with the problem of uniformity and information retrieval and dissemination.

The reports and information retrieval activity of the office of the Chief Counsel has as its ultimate goal the solution of many of the legal information problems which exist in the Service, and which are complicated not only by the volume of cases and issues, but by the fact that the office operates with about 100 lawyers, about half of which are spread out over the field organization. He stated that the legal information problems which presently exist can be divided into three categories:

- (a) Pending case load coordination;
- (b) Statistics of all various types;
- (c) Legal Research.

The broad goal which is sought to be reached is consistency and uniformity in the administration of the tax laws. With respect to statistics, this matter breaks down into two categories:

- (a) Work load statistics; and
- (b) Legal statistics.

The work load statistics are of the nature that are used for administrative purposes, and for docket planning purposes, by the Tax Court. These are the basic data necessary for planning.

The Chief Counsel's office is now using automatic research equipment. There are now available meaningful legal statistics that can also be used in the determination and solution of cases that confront the office of Chief

Counsel. The legal statistics gathered will assist in planning litigation and furthermore permit of a better utilization of attorney time. For example, one of the more meaningful areas where legal statistics would be of significance is the determination of the importance and magnitude of a particular issue which many times must be considered before application for certiorari can be considered.

Mr. Forster made inquiry as to whether taxpayer's representatives could be given information as to the scope of an issue in order that they might determine whether they should make application for certiorari. Mr. Uretz responded that to the extent that time and information were available he saw no reason why this should not be done.

The third area of development, that of legal research, is in essence no different than that faced by lawyer's generally. However, for the Service the problem is compounded by the fact that approximately 650 lawyers in the office of the Chief Counsel may simultaneously be doing research under the same statutory compilation.

The Internal Revenue files of the Service have grown in magnitude, and the need for consistency and uniformity is particularly important in the administration of the tax laws.

The legal research problem is commenced with the preparation of an extensive indexing technique of the materials available. A computer is being utilized for the manipulation of this index, and finally there have been installed in the various field offices of the Chief Counsel's organization micro-film reader-printers to display and disseminate the output of the computers, along with the documents backing up the computer-maintained index.

As of this time, the first phase of the project has been completed, and substantial progress has been made on the second phase. With this system developed, and with reader-printers disseminated to the field and also to the attorneys in the Tax Division of the Department of Justice, the entire inventory of pending cases can now be considered by any attorney confronted with an issue in his research of that issue.

As part of the development program, closed cases are now being fed into an historical file. This automatically creates further legal research reference material of those cases which have been closed, and which contain issues of significance and are worthy of recall and retrieval.

The second phase takes a program further down the line and into more intensive research, a greater refinement of issues, and the availability of greater information in the system. One of the major issues taken in phase two has been the revision on an extensive basis of the indexing techniques which had been referred to as the uniform issue list. The list now contains over 6,000 issues, and is much more refined and precise than the prior index.

There has also been created a litigation prime list, which is a selective list of issues on which there will be special computer print-outs resulting from special studies. Mr. Uretz emphasized that merely designating a

case at issue as prime does not mean that that case in and of itself will be forced to litigation and cannot be disposed of short of trial. It does mean, however, that the issue is one of wide significance and will receive special study and special scrutiny by the Service.

As the office of the Chief Counsel strives for the development and refinement of the RIRA program, both the Government and the taxpayer are benefitted, Mr. Uretz observed. One of the more significant meanings is that the Government now has the machinery to assure that a position that is being argued against one taxpayer is the same being argued in similar cases throughout the country. It means that the position taken reflects the current thinking of the Service by providing more comprehensive and timely decision making information.

Mr. Klotz mentioned the operation of the Appellate Division and its role in the settlement procedure within the Internal Revenue Service. He stated that the Appellate Division was the chief settlement body within the Service. He further stated it is the only unit within the Service that can give consideration to "hazards of litigation" in the disposition of cases (i.e., prior to the case being docketed in the Tax Court). He further discussed the working and case load of the Appellate Division. He stated that the Appellate Division was concerned with the development of an automatic system, not only to meet the objectives set forth by Mr. Uretz but equally significant as a management tool.

4. Administrative Appeals Procedure.

(a) By-pass of District Conference Procedure.

1. To what extent have requirements to file protest led to by-pass?
2. What is the extent of by-pass?

Mr. Langbein opened the discussion by stating that there might be some reason to think that of late under the new informal conference procedure there has been an increase in by-pass. He said it has been the concern of the Service to ascertain the extent and scope of the by-pass and the reasons therefor. He suggested that each of the Bar members might desire to comment on this point.

Mr. Willis stated that in his experience the new procedures have not changed his method of operation. He will by-pass if there is a tough legal issue involved. He stated that utilization of the formal conference procedure proves too costly in small cases, and for that reason there is a by-pass. I stated that it was my belief that the situation had worsened under the new procedure. I also complained that there is still an absence of authority with the personnel with whom we meet to settle the case, and that there is no "coming to grips" with the problem.

Mr. Holdsworth commented that his experience was limited, but he noticed that by-pass is undertaken for two reasons: first, because of the attitude of local conferees; and second, because the agent might not have fully developed the case.

Mr. Forster stated that the filing of a protest has not affected his use of administrative review. Paul Anderson stated that by-pass is generally undertaken where there is a possibility of raising affirmative issues. Mr. Brown (California) stated that he likes the new procedure; however, he finds that in small cases generally by-pass is undertaken because there is just not the availability of funds to follow all the administrative steps and there must be minimization of time spent on small cases; and the avoidance of the informal conference is one of the areas where savings can be undertaken.

Mr. Sears commented that he was somewhat startled as the purpose of the informal conference would be the disposition of small cases, and that if a formal conference were used more widely with respect to that type of case it actually in the end might prove more economical than to pursue such cases to a higher level. Apparently one of the problems that cause the by-pass even in small cases is the fact that the informal conferee cannot consider "hazards of litigation" as one of the elements in the disposition of the case.

Messrs. Lohn, Tredup (Oregon) and Campbell stated there was no change in their method.

I called attention to the fact that in the Bulletin on the Section of Taxation, American Bar Association, October, 1965 issue, at page 50, Donald W. Bacon, Assistant Commissioner, had made the following statement:

"I think you know that there is no such thing as settlement authority at the District Conference level, with the sole exception of the procedure for "pattern-type" issues which was established last year when the new conference procedure was instituted. For the first time we are vesting a limited settlement authority in the audit division. In case certain cases involving pattern-type issues of less than \$1,000.00, the Chief of the Conference Staff may follow the Appellate Division guide-lines in disposing of the cases, if the substantially identical issue has previously been settled by the Appellate Division. This is obviously of limited application, because there must have been substantially identical issues disposed of in the past by the Appellate Division."

I again urged that they adopt a policy of giving more settlement authority to the examining officer and conferee in the Director's office.

(b) Study of Decentralization of Closing Agreements.

The Use of Closing Agreements in Lieu of 870 AD.

Mr. Willmarth (Asst. Reg. Com., Appellate) suggested that this item might be deferred to a later agenda, since the study is still continuing on a proposal to decentralize closing agreements to the Appellate level in the field.

5. The Deputy Chief Counsel Reports.

Mr. Uretz commented on the various phases of his office, setting forth

the significant changes in procedure. Most of his comments were of more importance to the Service personnel than to the Bar members.

6. Expediting Trials in Tax Court Cases.

(a) Is the Use of Depositions too Restrictive?

Paul Anderson stated that the present standards for the use of depositions has not been too troublesome, although he had the experience in one of his cases where he sought to take the deposition of a taxpayer who was out of the country.

Mr. Sears stated this topic had been the subject of discussion at the District Director's Liaison Committee meetings, and some criticism had been uttered that the position taken by the Counsel may be too restricted. He further stated that the office of the Regional Counsel is anxious to stipulate facts to the fullest extent possible, and that factor in and of itself should preclude the need in many instances for the depositions of third party witnesses. It should, in all events, eliminate the need for those witnesses who merely serve to identify or authenticate documents. He also stated that the office of Regional Counsel will generally not agree to take a deposition of a taxpayer or material witness whose presence in Court, or whose demeanor on the stand, becomes an important element in the issues of the case. He further stated that in any situation where a deposition was taken it ought not to be used where the party is available and can be present in Court. The deposition should merely be used as a means of preserving the testimony for use if the witness is not available.

(b) Problems in Fact Stipulation.

Mr. Paul Anderson stated he had no particular difficulty in gaining agreement with members of the staff of Regional Counsel on fact stipulation. He generally limits the area of fact stipulation to documents. In that respect the problem had not been acute. He did find it somewhat troublesome where there is quibbling as to how the particular document should be marked as an exhibit; i.e., one by the petitioner, a joint exhibit or an exhibit by respondent; and he failed to understand why so much of a point is made of it. He did say that one way that trials of Tax Court cases could be expedited would be if some fixed position could be taken by the Service on the parol evidence rule. He has found that his attempts to meet the objections to the parol evidence rule have served to lengthen trials and increase the cost in trying cases. In his view, the parol evidence rule should not apply as between the taxpayer and a third party, i.e., the Commissioner, and that the taxpayer should be accorded every opportunity to explain the full substance of the transaction, even if it requires that his explanation goes outside the terms of the written document. He also stated that the expediting of trials in Tax Court cases would be materially facilitated if continuing settlement negotiations could be conducted up to and including the trial of cases.

To this Mr. Sears replied that the attorneys in the office of Regional Counsel would consider settlement offers at any time, even after the case has been tried.

(c) Have Tax Court Rules 28 and 31(b) (5) Answered the Problem?

Tax Court Rule 28 pertains to pre-trial conferences, and Rule 31 (b) (5) refers to results of non-compliance by a party. Paul Anderson stated his experience under Tax Court Rules 28 and 31 (b) (5) has been limited. He has found from his experience in tax cases in the Federal District Courts that pre-trial procedures have not been too effective. Mr. Sears felt that certain intangible benefits follow from the presence of these rules, and that they have assisted in expediting trials in Tax Court cases. It appears that experience under Rule 31(b) (5) has been limited in that some of the Tax Court judges are not anxious to devote the time and effort necessary to hammer out a fact stipulation under the terms of this rule.

7. The Long Committee's Long Look at Investigative Techniques.

The Long Committee is headed by Senator Edward V. Long of Missouri, and that committee has been investigating the practice and procedures of various Government agencies including the Internal Revenue Service. Mr. Lohn observed that the unfortunate and unfavorable publicity that has been received by the Service in connection with the Long Committee's hearings has served to tarnish the image of the Service, Mr. Uretz stated that he is a member of the Commissioner's committee investigating the whole field of wire tapping in the Service, and for present purposes. All he could say was that the matter had been greatly exaggerated; that illegal investigative techniques have occurred in only limited cases and then only in cases arising under the organized crime drive; and that in those few instances where it occurred top National office officials were unaware of these occurrences. Instructions have been issued to stop such activity. The instructions have even gone beyond the point of precluding any questionable activities and some sanctioned methods of investigation have even been prescribed.

Mr. Croasmun (District Commissioner) pointed out how the press had even members of the committee seek to exaggerate the scope of the problem. He recently had occasion to work intimately in Kansas City on the problems that were being investigated. Actually two minor instances of questionable investigative techniques were involved (in neither instance was the Service directly involved), yet the press glamorized the hearings that were conducted and commented upon instances that had no local relationship whatsoever.

Mr. Croasmun suggested that the statements of Attorney General Katzenbach and Commissioner Cohen made to the Long Committee would be excellent reading for the members of this group in order to get the full flavor of the scope and extent of the problem as it affects the Service. He pointed out that over 65% to 70% of the organized crime members who are brought to justice are brought there through the tax laws; and accordingly the Service's position in the organized crime drive is a great one.

I personally feel that the Internal Revenue Service knows more than it admits about the investigative techniques (wire tapping, etc) used by the Internal Revenue Service. The Long Committee has now completed

four volumes of testimony of witnesses. The facts revealed by that Committee show that the activities of various agents of the Government is greater than admitted.

8. Rev. Rul. 64-225 — Is the Service Seeking to Extend The Doctrine of Anticipatory Assignment of Income?

Mr. Brown set forth in general terms the substance of the Revenue Ruling under consideration. The headnote to the ruling reads as follows:

“The statutory commissions waived by a trustee of a testamentary trust, subsequent to the years to which such commissions relate, are includible in his gross income for the year when so waived, and such waiver also constitutes a transfer of property subject to the Federal gift tax, where the antecedent actions of the trustee have involved the long-continued retention of fiduciary powers to release said commissions for unrestricted personal dominion and control.”

Revenue Ruling 56-472, C.B. 1956-2, 21, distinguished.

The distinguished revenue ruling referred to above holds that a clear, timely and irrevocable waiver by the executor of an estate of his right to receive statutory commissions constitutes evidence of his intention to render a gratuitous service. It further holds that where the executor executes a timely advance waiver of the commission granted under law, such action will not result in his realization of income nor create a gift for Federal gift tax purposes.

Mr. Brown was not so much concerned with Ruling 64-225, although he thought it was wrong, and he hoped that it would be challenged early in the courts. His primary concern was as to the extent of the problem that the Service was considering, and how far the policy announced in the ruling might be carried. He felt that the issue might be stated as assignment vs. waiver, and that it was a critical matter for consideration.

What has really alarmed tax attorneys in the field is that the Horst case is relied upon as the basis for the latest ruling, and that some attempt is made to indicate that the time of waiver has some significance, whereas in actual effect it should have none. In his judgment, this was laid to rest by the Supreme Court in the Eubank case.

Mr. Uretz replied that he knew of no action in the Service to extend the scope of the ruling, but that he thought a court decision challenging the ruling in question might serve to clarify the area. In actuality, the ruling might be a narrow one, dictated in part by the New York statutes involved and the state court's interpretation of these statutes.

9. A Single Court of Tax Appeals — Is It the Answer?

Mr. Uretz apprised the group of a study being made under the auspices of the American Bar Association, conducted by Professor Hart Wright and others, in which one phase of the study will consider the very question that served as the subject of this agenda item. He anticipates that a preliminary report may shortly be issued which can be considered. This

item might well be the subject of discussion at future meetings of this Committee.

Mr. Tredup explained that, under the present set-up with our various Courts of Appeal, the decisions rendered by them are only binding in their district, and that oftentimes the Service chooses not to follow the decision of one circuit in another circuit. Mr. Tredup agreed that we should take this matter up a later meeting.

MEETING HELD JUNE 17, 1966 — Salt Lake City Utah (University Club.)

Mr. Jay Holdsworth of the Utah Bar was elected Chairman for the ensuing year. Aaron Resnik was elected Secretary. Under the policy of rotating the meetings, Frank B. Campbell, Jr., of the Arizona Bar, invited the Committee to meet in Phoenix in January, 1967. In giving the invitation he stated he wanted to time the meeting to coincide with that of the Arizona State Bar, so that this Committee could participate in their program.

Mr. K. Jay Holdsworth was host of the Utah meeting, and he scheduled same so that it fit in with the annual meeting of the Utah State Bar. Various members of the Committee took part in the program of the Arizona State Bar.

You have requested by committee report for the annual meeting of the Idaho State Bar. The Secretary of this Committee furnishes each member with minutes of the previous meeting; however, he has not yet had an opportunity to furnish me with a copy of the June 17, 1966, minutes. Because of the fact that the minutes I receive are complete, I did not take the necessary notes to be able to present the happenings in detail. I will make only a brief report at this time, and will supplement it with a report in detail at a later date.

There were ten items placed on the agenda for this meeting. They were as follows:

1. The Collection Policy:

This subject was presented by Messrs. Croasmun, Moran and Greaves. They gave a complete report on the collection policies within the Internal Revenue Service. One statement that impressed me was that Mr. Moran stated that 97% of those delinquents on the various taxes were paying readily, and that on only 3% were they having difficulty.

2. Decentralization of Closing Agreement Authority:

(a) Use of Closing Agreements as compared with Form 870 AD.

(b) Questions posed by Uinta Livestock case, (D. Wyo. 1964) 232 F. Supp. 1, rev'd. (C.A. 10, 1966) 355 F. 2d 761.

This subject was discussed by Mr. Willmarth (Asst. Reg. Com. — Appellate) and K. Jay Holdsworth (Utah).

3. Centralization of Certain Limited Audit Activities in the Western Region.

- (a) Exempt organizations — Centralization of determinations and review of examination reports for the Western Region in the Los Angeles and San Francisco District offices. Recent developments in the classification of exempt organization returns.
- (b) Estate and gift tax cases and excise tax cases — Centralization of certain audit actions in the Los Angeles and San Francisco offices.

This subject was discussed by Mr. Harless (Asst. Reg. Com. — Audit).

4. The Processing of Pre-90-Day and Docketed Cases Before the Appellate Division.

- (a) Timetable on pre-90-day cases.
- (b) Timetable on docketed cases, — Regional Guidelines to insure compliance with Rev. Proc. 60-18.

This subject was presented by Messrs. Sears (Reg. Counsel), Mr. Willmarth (Asst. Reg. Counsel), and Arthur Willis (ABA representative).

5. Discussion of Organizational Aspects of Appeal of Tax Cases.

- (a) Pro se cases before the Tax Court — a progress report.

This subject was presented by Mr. Sears (Reg. Counsel) and Mr. Brown (California).

- (b) The need for and desirability of a small claims division in the Tax Court.

This subject was discussed by Dick Yin Wong (Hawaii), Chairman, and Mr. Tredup (Oregon).

- (c) A single Tax Court of Appeals.

This matter was discussed by Mr. Tredup (Oregon).

6. Prime Issue Cases — Formulation of Procedures for early Identification of Issues at Audit Level.

This subject was presented by Mr. Sears (Reg. Counsel) and Mr. Harless (Asst. Reg. Com. — Audit).

7. The Effect of Appellate Division Settlement on Later Years Before the District Office.

This subject was presented by Val Brookes (Past Chairman) (California).

8. Frequency and Contents of the Meetings of the Committee — Liaison Committee's Objectives and Purposes Revisited.

This subject was presented and discussed by Mel Sears.

Again I would like to say that this report is about the only opportunity I have to furnish the Idaho Bar information gathered by me through this Committee.

I have the assurance of the Regional Commissioner and Regional Counsel that they will be glad to send a representative in to talk to any of the Bar Associations with regard to specific matters.

If any of the local Bars have any tax matters they wish to discuss, if they will contact me I will attempt to make arrangements to have some qualified Government representative explain the subject.

Respectfully submitted,
Myron E. Anderson, Committeeman,
Representative Idaho State Bar.

MR. BENOIT: We also have a report from the Realtor-Attorney Committee. The chairman of that committee is Bruce Bowler of Boise. He is not here so I will ask Jim Lynch to read that report.

MR. LYNCH: Committee Report of Real Estate Agents-Attorneys Liaison Committee of the Idaho State Bar Year 1965-1966. The Committee, appointed by President Edward L. Benoit, consisted of M. B. Hiller of Idaho Falls, Robert Robson of Kellogg, and Bruce Bowler, Chairman of Boise. The committee's functions particularly concerned study of the statements of principles with respect to the practice of law formulated by representatives of the American Bar Association and business and professional groups. After correspondence about the Realtors Statement of Principles, and a meeting with the Unauthorized Practice Committee of the Idaho State Bar, chaired by Howard Manweiler of Boise, it was decided to report the Statement to the Bar for adoption with modification on two points.

One point of change was to delete omnibus language about realtors using "any other standard legal forms" along with their approved use of earnest money contract forms. And the other point was to delete language stating policy to reduce costs of real estate transactions, believing that lawyer real estate work was already too low. The changed Statement was printed in the May 1966 issue of the Advocate, and will be for consideration of the Bar at this 1966 Annual Meeting.

Significant results of the committee studies were findings about the low compensation of lawyers doing real estate transaction work. Although Idaho State Bar Proceedings 1962 Fee Schedule (Page 112) quotes Real Estate Contracts at \$50.00 or one half of one percent of the purchase price, which ever is greater, it was learned that realtors can expect to get contracts drawn for as little as \$35.00, and there seems to be hardly any attention, if any, paid to the percentage fee.

Another finding was that few realtors do their own contracts in Idaho, but that is no wonder when they can get them done so cheaply by qualified lawyers. There is no motive for unauthorized practice when lawyers

will do the work cheaper than Realtors can themselves. This is the fault of lawyers.

It is apparent that the Real Estate Brokers fairly well control the great majority of real estate transactions, and if a lawyer is involved at all it is as the underpaid hireling of the broker, and both seller and buyer often, through the broker agency, share the nominal legal fee, and conflict of interest factors are disregarded.

DATED: July 1, 1966.

Bruce Bowler, Chairman

MR. BENOIT: The report of the Unauthorized Practice of Law, Committee Chairman of that committee, Howard Manweiler. Major Manweiler has a real excuse for not being here this morning; he is in the National Guard on duty. Jim will you read that report.

MR. LYNCH: This past year your committee was requested to study and comment upon the statements of principles formulated by the ABA, relative to Banks with Trust Functions and Realtors. With minor changes your committee recommended the adoption of both statements at this annual meeting, which adoption has been accomplished. Statements concerning accountants and collection agencies have been previously adopted by this association. It is believed that with these principles, the Bar will have an effective tool with which to work in dealing with alleged UPL matters. It is hoped that a permanent liasion committee comprised of members of the various professions will be established whereby effective use of the statements will result.

In other areas, your committee studied and recommended to the commissioners various courses of action in twelve alleged UPL cases. In two cases your committee has recommended further investigation to the end that possible litigation would be instituted. Both cases are pending at this time.

You are all aware of the establishment of the Bar Liasion Committee comprised of one or more members nominated by each local Bar Association, and appointed by the Commissioners. Since January, 1966, only nine complaints have been received from the Liasion Committee. It is felt that the members of this association have not been diligent as they might be in reporting to their respective liasion committee member possible UPL activities.

The Association of Collection Agencies was contacted regarding the use of simulated process in attempting collection of accounts. That Association promised its full cooperation in ceasing the use of any such process in accordance with the statements of principle previously adopted by both organizations.

MR. BENOIT: The next committee report is the annual report of group insurance committee by Clark Gasser of Pocatello. He is not here so I'll ask Jim Lynch to read it.

MR. LYNCH: The Annual Report of Group Insurance Committee. Your

Chairman respectfully submits to the Board of Commissioners of the Idaho State Bar Association, the following report of its activities for the year from June 30th, 1965 to June 30th, 1966.

At the present time there are 236 members of the Bar insured under the Major-Medical Program; 123 members on the Loss-of-Time Plan; and 117 insured under the life insurance provisions.

During the year 1964, there was a benefit ratio on the health insurance of 88.6%, for the year 1965, from the figures supplied to me by Mutual of Omaha, the ratio appears to be 39%, however, this is incomplete in that all the claims incurred for 1965 have not been completely paid. It indicates however, that the members of the Bar during the period of time from June 30th, 1965 to June 30th, 1966, have been in relatively good health.

Since the inception of the program in 1961, Mutual of Omaha has paid in benefits to members of the Bar, \$48,127.00. From the information supplied last year, benefits paid for the current ending year have approximated \$18,000.00.

During the course of the year, there was very little activity insofar as questions concerning the insurance program were concerned. There was one question concerning the insurability of a member under the income protection plan offered by Mutual of Omaha. The committee submitted a report on the problem to the Commissioners on April 27th, 1966. The Board of Commissioners met to determine the difficulty in June of 1966, but there has been no decision or information supplied to the Chairman from the Commission as to its determination, as of the time of the writing of this report. Respectfully submitted, Clark Gasser, Chairman.

MR. BENOIT: Another report on the Committee on communist tactics and strategy. This is a one man committee and has functioned for years. Do you have that report for Mr. Z. Reed Millar?

MR. LYNCH: A letter from Mr. Millar. In reply to your letter of May 26 regarding the report of the Chairman of Committees for the Annual Meeting, I beg to advise that I know of nothing of specific importance to report so far as the committee on Communist Tactics and Strategy of which I am Chairman is concerned.

It appears that the National Committee heretofore attempted to set up an in-service teacher training program to assist teachers in meeting the Communist threat, but apparently this activity has not completely jelled and so far as I can tell, the Communist infiltration heretofore threatened has somewhat abated, both by reason of exposure and withdrawal of its attempts at penetration in our public life.

Public resentment of the apparent comfort and sympathy which may have been given to Communist influences through the Fulbright and Morse investigations has, I think, further deterred Communist sympathy in this country. Our biggest single danger now apparently comes from certain intellectual areas which provoke student demonstrations against the very blessings they enjoy, no part of which we have had much exposure

to in this state. This, however, poses a constant threat of which all of us should be cognizant, and I urge continuous surveillance of this important situation as time goes on.

Other than this, our Committee has no other additional report.

Thanking you kindly, I am,

Very truly yours,
Z. REED MILLAR

MR. BENOIT: We now have the report of the Idaho State Bar Trustee to Rocky Mountain Mineral Law Foundation, Calvin Dworshak, Chairman.

MR. LYNCH: Report of Idaho State Bar Trustee to the Rocky Mountain Mineral Law Foundation. The Twelfth Annual Meeting of Trustees and Law Institute will be held in Boulder, Colorado, at the University of Colorado July 13-July 16. A most interesting and educational program has been scheduled for those attorneys interested in mining law, with special emphasis upon administrative determination of cases in the Department of the Interior.

The Foundation, in addition to sponsoring the complete work of American Law of Mining, is now publishing the quarterly Mineral Law Review.

The Foundation continues to sponsor scholarships, and during the past year presented a scholarship to Charles Lee Davis at the University of Idaho.

The Foundation will also assist in the University of Idaho's symposium on public land law, an area of vital interest to all mining attorneys.

Respectfully submitted this 15th day of June, 1966.

Calvin Dworshak

MR. BENOIT: We have another liaison report, Life Underwriters Liaison. It's a two man committee now and the chairman of that committee is Marcus Ware. Do you have a report from Marc?

MR. LYNCH: We have a letter indicating that he didn't have anything to report at this time.

MR. BENOIT: I would ask that the representative of the Judicial Conference, Justice E. B. Smith, give his report at this time. Justice E. B. Smith.

JUSTICE E. B. SMITH: Report of the 1966 Idaho Judicial Conference. President Benoit and members of the Idaho State Bar. This year the Idaho Judicial Conference and Idaho State Trial Judges' Association departed from the usual type of program put on by local judiciary personnel concerning legal and judicial problems and accepted the invitation of the National College of State Trial Judges to put on a program. The programs of this College are financed by a national foundation; hence, this program, as far as speakers and their expenses were concerned, was without expense to the conference. The program was arranged by District Judge

Gus Carr Anderson of Pocatello, who had attended sessions of the National College of State Trial Judges. This National College is a section of judicial administration of the American Bar Association with a "Blue Ribbon" board of 9 directors, headed by U. S. Supreme Court Justice Tom C. Clark as chairman. The Dean of this college is Lawrence M. Hyde, Jr., and it headquarters at the University of Nevada at Reno. The college furnishes a large variety of subject matters — topics from which our conference chose three subject matters, to which I shall later refer. The conference was held at the Owyhee Hotel and Motor Inn in Boise July 6th and 7th. In attendance were the five Idaho Supreme Court Justices and 17 of the 22 district judges. All of the program material was presented in seminar form with questions by the moderators with lively discussions. Honorable Arthur L. Alarcon of Pomona, California, a judge of the Superior Court of Los Angeles County, presented the subject of judicial ethics. Discussions were had on proposed systems of selection of judges; removal of judges deemed incompetent for any reason; the matter of partisan politics as related to the judiciary; and the matter of ethics involved in the trial and presentation of cases and various other aspects of judicial ethics. Honorable Eugene A. Burdick of Williston, North Dakota, Judge of the North Dakota 5th Judicial District, presented the subject of judicial court administration. His presentation, together with discussions thereon, covered the matter of delays in the disposition of cases and the reasons therefor, such as increase of claim loads; people being more claim conscious; the growing population; technical developments in establishing claims; increased demand for jury trials, and the low settlement ratio of cases filed. Discussion covered various suggestions to cut down on delay, which included pre-trial conferences, better jury selection, encouragement of the use of depositions, overcoming the so-called delayed decision; continuing judicial education and use of pattern jury instructions. He pointed out that North Dakota has followed the example of several states and has just completed a three year project on pattern jury instructions, and pointed to Illinois as a pioneer in this field in the use of such instructions. Honorable Douglas K. Amdahl of Minneapolis, Judge of Minnesota's 4th Judicial District, presented the subject matter of domestic relations. This presentation covered the fields of divorce, marriage counseling, divorce counseling, the problem of custody of children in divorce actions as to which party should have the custody, and reconciliation. Judge Amdahl showed a vast amount of experience and familiarity with his subject matter and his presentation was spiced with delightful humor. The elected officers of the State Trial Judges' Association of Idaho are: President, Judge James G. Towles, Northern Division, one-year term; Vice-President, Judge Arthur P. Oliver, Eastern Division, two-year term; Secretary, Judge J. Ray Durtschi, Western Division, three-year term. The conference was delighted and impressed by the presentation of this program sponsored by the National College of State Trial Judges and convinced that constructive suggestions and ideas evolved therefrom. The conference appointed a committee to study the feasibility of a similar program for the 1967 Judicial Conference. The members of the conference requested me to express their thanks and gratitude to the bar and commissioners for the cooperation, aid, assistance and hospitality, which aided materially to the success of the conference.

MR. BENOIT: Thank you Justice Smith. I am sure that the commission is very happy that you had such a fine conference and also on behalf of the commissioners I would like to express to you and the other members of the Supreme Court the gratitude and thanks for the magnificent help you have given us. Now, from the prosecuting attorneys section, Howard Adkins of Shoshone.

MR. ADKINS: Thank you President Ed. Since Jim May, President of our prosecuting attorneys section is present I hardly think it is necessary to delegate this duty. But however, I am pleased to report at this meeting that the prosecuting attorneys did meet Thursday and Friday and in sections. Thursday I understand they made a trip to the State Penitentiary where they renewed old acquaintances with some of their old — I was going to say friends. (Laughter) Yesterday noon we held a business session and discussed pertinent legislation which we hope to formally present in due time. We wish to particularly thank President Ed Benoit and Secretary Jim Lynch for the attractive and completely informative program that you made this year, and for the space that you allowed in there for the prosecuting attorneys. We so adopted a resolution and we wish to have that entered in the minutes. Thank you.

MR. BENOIT: Thank you Howard. I think that all these conferences and at the annual meeting do make a better meeting and for a better attendance. Is Bob Huntley ready with his C.L.E. report? I am happy to say that Bob every year says that he is not going to take this job again, but every year he has consented to do it for another year and that he is going to be chairman again and I am sure that he has done a tremendous job for you; Bob Huntley.

MR. HUNTLEY: Thank you Mr. Chairman. The Continuing Legal Education Program of the State Bar, I think, has experienced a very highly successful year in many respects. Mr. Robert Bakes, who has been employed as your Director of Continuing Legal Education has worked long and tirelessly on the programs and he has put the C.L.E. Program on a very sound and vital basis. A workshop on will drafting was conducted in Moscow and in Boise in October, 1965. It was a very outstanding program based upon the California will drafting book to which book an Idaho supplement was prepared and we had an attendance of about 250 lawyers and 55 law students at the institute. A supply of this will drafting book has been procured for further sale to any lawyers who might desire to receive these materials. The committee has worked for developing a rather substantial lead time in the planning of future institutes and programs and we are currently involved in planning institutes up through the year 1968. This fall we will have the institute on farm and ranch law which will be held in Pocatello October 7 and 8, and in Moscow on October 21 and 22, and in Boise October 27 and 28.

Plans are in the final stages for an institute this coming spring on basic personal injury and anatomy where we will have doctors come to speak to us about the medical; not the legal but the medical aspects of personal injury cases. The tentative topic for the institute for the fall of 1967 will be the Uniform Commercial Code. Of course, the presentation of that

topic will depend upon the action of the 1967 session of the legislature. The C.L.E. Committee in conjunction with the Secretary's Office has produced the Idaho Lawyer's Desk Book which will be a source of income to the Continuing Legal Education Program for several years to come. The expenditures this past year have totalled \$8,780.75. Our income was \$8,282.95, leaving us with an operating deficit of \$497.80. We do anticipate because of the sales of the materials which have now accumulated there that as of this coming year the C.L.E. Program will be on a self-sustaining basis.

The success of the C.L.E. Program of course depends upon the support and the participation of the members of the Bar and we very much appreciate this interest the lawyers have shown in the past and we urge your support of the coming institute programs so that they can be successful. And the committee would like to give special thanks to Bob Bakes for his work as Director of the C.L.E. Program this past year. If Bob is here we want him to give a pitch on the program this fall. Is he in the audience? There he is.

MR. BENOIT: Here is Bob Bakes, our Director. The commissioners decided that this voluntary C.L.E. work was just getting too much for lawyers to handle and too much to ask and we embarked upon the program of retaining a part-time continuing legal education director. We didn't know how it would work. We are happy to report that it has worked successfully. As of May 1, rather than paying out of our appropriated budget we now are paying Bob a salary from the C.L.E. Fund, and it will be on a self-sustaining basis if the fine cooperation shown by you in the past continues.

MR. BAKES: Thanks, Mr. Chairman. Our program this fall as Bob announced was a program on farm and ranch law and real estate transactions. This is based upon a program again developed in the State of California and it is based upon a publication which they have prepared, a book similar to the will drafting book which we used in our program last fall. This book covers almost the entire scope in the field and problems faced by clients who have farms and ranches or who engage in real estate transactions. It covers the field all the way from tort law through leasing, tenancy agreements, water problems and cooperatives and with a substantial amount of the book, several chapters, dealing with the tax problem, federal tax problems of all sorts of transactions including part of the problems of estate planning, problems peculiar to farmers and ranchers.

Again, we are preparing a supplement to this book annotating the Idaho law so as you read the matters in the book itself you can then turn to the Idaho supplement similar to what you do in your Code and find your Idaho cases and statutes applicable to the problem. And if there is any change or variation in the Idaho law it will be cited. In addition, we are preparing a substantial work on Idaho water law and some additional materials on timber, timber rights, sale of timber property and the tax consequences of the sale of timber property and substantial papers on grazing and grazing rights and the transfer of grazing rights and all the prob-

lems unique to Idaho so we feel it is going to be a very good institute and you probably saw that it is tied in with three University of Idaho football games: Idaho State at Pocatello; Washington State at Moscow, and the University of Oregon here at Boise.

Now, we have had a little problem in Pocatello because the tickets have been short over there so in Pocatello we will be in the ticket business and we would like to limit this and we would like the Pocatello lawyers to get their tickets there since you will have ready access to them. If you can't, we will have to limit the number of tickets on the first come, first served basis for the Pocatello institute. So, when you write in for your pre-registration for the institute if you are going to attend the Pocatello game and want tickets put that on the registration form and we will mail them out to the extent that we have them. We have 100 or perhaps as high as 200 football tickets at the Pocatello institute. Again, we want to encourage pre-registration because of the work load it takes off the Bar office at the last minute. You can register for this institute beforehand and you can attend any one of three or all of the institutes if you so desire and your institute materials will be waiting for you when you arrive at the institute if you pre-register.

Again as Bob indicated, the success of this program depends primarily upon the interest of the lawyers in attending these programs and the more lawyers attend the more finances the foundation will have and we can put on better programs in the future. And it should be a self-sustaining program paid out of the fees of the lawyers. That is the basis now and I am sure it will stay on that basis. We are going now to two institutes a year rather than one institute a year and there is no reason why it can't go to even more than that if we can just generate lawyer participation for it. Of course, it is tied directly with the programs and how well the programs are done so we appreciate any comments which you have concerning the programs and if you have any suggestions concerning the C.L.E. programs we ask you to write to the Bar office and we will sure put them in our file and consider them; thank you.

MR. BENOIT: I have another committee report and the title of this committee really doesn't mean what it says, if the judges are present; it's the Committee On The Removal of Judges. I think we kinda slipped up on naming that. The chairman is Karl Jeppesen. Is Karl here this morning? Would you like to read that Karl?

KARL JEPPESEN; The Committee on Removal of Judges, consisting of Karl Jeppesen, Chairman, and William Furchner and Len Bielenberg, was appointed by the Bar Commission to make a study and recommend constitutional and statutory changes permitting and providing a procedure for the removal of judges in case of incompetency or failure to properly perform the duties of their office.

In May of this year the Legislative Council Committee on Courts completed a comprehensive study and made broad preliminary recommendations with respect to our court system, including provisions for discipline and removal of judges. The Chairman, Senator Harold Ryan, and various members of that committee are members of the bar. Also, Tom Miller

and George Bell (Members of the Bar Committee on Courts) and other members of the bench and bar of this state served on the advisory committee assisting with that study.

The Bar Commission thereafter determined that in its opinion this Committee, on Removal of Judges would promote the best interests of all concerned by working in conjunction with said Legislative Council Committee, rather than by making competing proposals for constitutional or legislative changes.

Your committee concurs with this determination, and urges that the bar cooperate with the Legislative Council Committee on Courts in perfecting, finalizing and securing enactment of the necessary legislative and constitutional changes relating to this problem.

Your committee makes the following comments and recommendations with respect to the proposals of the Legislative Council Committee:

While brevity and avoidance of detail in a constitutional amendment are desirable from the standpoint of feasibility in effecting improvement and change at a later date, it is the committee's opinion that the Legislative Council's proposed amendment to Article V, Section 16, authorizing the legislature to create the Judicial Council, and the proposed amendment of Article VI, Section 7, on the selection of judges, are each inadequate in view of the Supreme Court of Idaho's decision in the case of *In re Kaufman*, 69 Idaho 297. In that case a statute which provided that graduates of the University of Idaho Law School should be admitted to practice law without passing a State Bar examination was held an unlawful interference with internal management of the judicial branch of the State.

In view of that decision, it is thought necessary that the constitution specifically authorize the legislature to enact legislation for the removal, suspension and discipline of judges. The legislative Council's proposed amendment to Article V, Section 16 of the Idaho Constitution is as follows:

Judicial Council. — A Judicial Council shall be created by law. Appointments to the Judicial Council shall be made with due consideration to the area representation and without regard to political affiliation. In addition to other duties prescribed by this Constitution, the Judicial Council shall conduct studies for the improvement of the administration of justice, make reports and recommendations to the Supreme Court and to the Legislature, and perform other duties assigned by law.

Your committee proposes that the Legislative Council draft be changed by adding after the word "shall," in the second sentence, the words "recommend the removal, suspension, discipline, and retirement of judicial officers," so that the sentence shall read:

"In addition to other duties prescribed by this Constitution, the Judicial Council shall recommend **the removal, suspension, discipline, and retirement of judicial officers**, conduct studies for the improvement of the administration of justice, make reports and recommendations to the Supreme Court and to the Legislature, and perform other duties assigned by law."

The Legislative Council's proposed Section 7 of Article VI is as follows:

Nonpartisan selection of supreme and district judges.—The selection of justices of the Supreme Court and district judges shall be nonpartisan. The legislature shall provide for their nomination and selection, but candidates for the offices of justice of the Supreme Court and district judge shall not be nominated nor endorsed by any political party and their names shall not appear on any political ticket, nor be accompanied on the ballot by any political party designation.

Your committee suggests that the second sentence be amended by adding the words "removal, suspension, and discipline" after the word "selection" so that the sentence reads as follows:

"The legislature shall provide for their **nomination, selection, removal, suspension, and discipline.** Candidates for the offices of Justice of the Supreme Court and district judge shall not be nominated . . ."

In the 1965 report of the California Commission on Judicial Qualifications, the original California constitutional amendment providing for removal of judges is redrafted to include suspension and discipline of judges along with removal, the California Commission stating that experience has shown that in a great majority of the cases meritorious complaints of misconduct on the part of judges brought before the Commission, a conference with the judge has proved sufficient to rectify the problem, and that it is felt by the California Commission that the existence in the law of a procedure for suspension and discipline would have a very salutary effect in correcting misconduct on the part of judges.

Informal discussion with some of the judges attending a recent citizens' conference on courts held at Boise revealed that it was the conclusion of these judges that the so-called "Missouri Plan" of selection of judges should only be enacted in conjunction with strong constitutional and legislative provision for disciplinary procedure, which must include suspension, disciplinary action, or removal. It must be remembered that under the "Missouri Plan" proposals of the Legislative Council, judges no longer would have to go before the people in a competitive (as distinguished from a noncompetitive) election, and in lieu thereof, some method must be devised for taking corrective action against an incumbent judge who is no longer properly performing his duties, but who, under the new plan would be assured, generally, of more secure tenure in office.

The proposal of the California Commission is that the constitutional provision on removal of judges read as follows:

(a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or information charging him in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his removal or retirement.

(b) On recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court may suspend a judge from

office without salary when in the United States he pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law, or of any other crime that involves moral turpitude under that law. If his conviction is reversed suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the Supreme Court shall remove him from office.

(c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the Court he is suspended from practicing law in this State.

(e) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

Furthermore, serious consideration should be given to placing of the removal machinery in a body independent of the Supreme Court, rather than having the final decision rest with the Supreme Court. Under the present Legislative Council proposals (as well as under the California provision), the Supreme Court would be the final authority on any action taken against its own members. It would appear to us that a better plan might be for the Judicial Council (or for a similar independent commission) to have final authority for suspension, removal and disciplinary proceedings. Your Committee makes no specific recommendations on this point at this time.

MR. BENOIT: Thank you Karl. I think it is very evident that a great deal of thought has been given to this report. I will now entertain a motion to accept this report and express our appreciation to Karl and his committee for their work. (Motion made and seconded and passed).

MR. BENOIT: There is one other committee that does not have a report but I think it must be acknowledged and that is our Legislative Committee which is chaired by Randall Wallis here in Boise. And I am happy to report that outside of one minor bill that the entire legislative program of the State Bar was passed by the Legislature at the last session, which I think can be due to the wonderful work of Randall and his many helpers and member lawyers here in Boise who devoted many hours without any compensation or anybody knowing how much work they were doing, and also to our lawyer members of the legislature. In talking to the other bar presidents I find that it is amazing the wonderful support we have from our lawyer members. Many states do not have that much

support. For instance, in this special session when the Constitutional Amendment on presidential disability came up we wrote to all the lawyers and sent them the information and I am happy to say that it was ratified by the Idaho Legislature, and to you members of the Legislature and members of the Legislative Committee the entire Bar expresses our gratitude.

I want to make one more little clarification about the C.L.E. Fund. You know, we have a separate corporation called the Idaho Bar Foundation and all your registration fees for the legal institutes are placed in the Foundation account and the Foundation publishes the Advocate. Now, the desk books that we have over and above the ones we sent out will be sold for \$15 to new lawyers that are licensed and will be placed in the C.L.E. Fund. And we also have on hand this book on community property which was financed through the Idaho Bar Foundation and as those books are sold here and throughout the nation that money is also placed in the C.L.E. Fund. That fund is now in a good condition.

Now Jim, could you give the Secretary's Report, please?

MR. LYNCH: It has been customary for the Secretary to give a report at each annual meeting on certain statistics and financial figures. Ed has just covered the C.L.E. Fund which is handled by the Idaho State Bar Foundation, Inc. The Idaho State Bar also maintains another fund that does not constitute appropriated funds which we call a trust fund and this is a special fund not controlled by the State for reason that receipts are collected from sources unrelated to appropriated funds. The status of the fund is as follows: The cash on deposit, Idaho First National Bank as of July 1, 1966, \$1,648.24. The adjustment for sums presently due, \$104.77, making a total of \$1,753.01.

SECRETARY'S REPORT

The following report is made to the members of the Idaho State Bar for the purpose of reporting statistics pertaining to the financial condition of the Idaho State Bar, membership, Bar examination results, disciplinary matters, and other aspects of the work of the Board of Commissioners of the Idaho State Bar and their employees and committees. The following report covers the period from June 1, 1965 to June 1, 1966.

FINANCIAL REPORT

BAR COMMISSION FUND: The account books maintained in the Secretary's office, which are regularly audited by the State Auditor, reflect the following receipts, expenditures and balance in the Bar Commission Fund, a dedicated fund subject to State appropriation and control:

EXPENDITURES June 1, 1965 to June 1, 1966:

Personal service - - - - -	\$ 17,013.20
Travel expense - - - - -	10,932.26
Other miscellaneous expenses - - - - -	9,483.59
Capital outlay - - - - -	514.85
Transfer to Social Security - - - - -	560.06

IDAHO STATE BAR PROCEEDINGS

Transfer to General Fund - - - - -	736.65
Insufficient fund checks (licenses) - - - - -	150.00
Audit expense - - - - -	125.00
TOTAL - - - - -	\$ 39,515.61

RECEIPTS, BALANCE

Balance on hand June 1, 1965 - - - - -	\$ 25,071.06
Receipts, June 1, 1965 to June 1, 1966 - - - - -	32,212.03
TOTAL - - - - -	57,383.09
Less expenses - - - - -	39,515.61
BALANCE, June 1, 1966 - - - - -	17,867.48

Personal Services covers salaries of a part-time Secretary, a part-time Director of Continuing Legal Education, a full-time stenographer and a part-time stenographer, bar examination monitor and occasional clerical help. This item also includes fees paid to individual attorneys acting as General Counsel by appointment of the Commissioners.

Travel expense includes all costs of transportation, meals and lodging for out-of-town travel of the Commissioners, the Secretary, and other persons engaged in Bar activities, including Bar Committees and the General Counsel and other attorneys required to travel in connection with discipline investigation and prosecutions. It also covers a portion of the travel expense of the Idaho State Bar Delegate attending meetings of the House of Delegates of the American Bar Association.

Other Miscellaneous Expense includes the cost of printing the Proceedings of the Annual Meeting, that portion of the cost of printing and distributing the *Advocate*, which is attributable to disseminating official Bar information, the cost of preparing and mailing notices and other materials to Idaho lawyers, office expenses such as rent, telephone, postage, stationery and other supplies, and other miscellaneous Bar expense.

The Social Security Transfers represent the State Bar's payment as the employer of the above-mentioned personnel.

The General Fund Transfers refer to charges against the Bar Commission Fund by the State Auditor's office for bookkeeping and auditing services rendered to the Bar.

TRUST FUND: This is a special fund not controlled by the State for the reason that the receipts are collected from sources unrelated to official funds.

The status of that fund is as follows:

Cash on deposit, The Idaho First National Bank, Boise, as of July 1, 1966 - - - - -	\$ 1,648.24
Adjustment for sums presently due - - - - -	104.77
ADJUSTED TOTAL - - - - -	1,753.01
The July 1, 1966, balance of \$1,753.01 compares with a reported July 1, 1965 balance of \$1,868.96.	

MEMBERSHIP

BY DIVISIONS: The membership of the Idaho State Bar at this time as compared with a year ago is:

Division	1965	1966
Northern Division - - - - -	125	128
Western Division - - - - -	335	347
Eastern Division - - - - -	156	154
Out of State - - - - -	19	21
Military - - - - -	0	0
TOTAL - - - - -	635	650

Attorneys admitted and currently licensed in Idaho and who are not under disbarment or suspension, and all Idaho Supreme Court Justices and District Court Judges and U. S. District Judges for the District of Idaho, are members of the Idaho State Bar, I.C., 3-405. The Judges are included in these figures.

BY LOCAL BAR ASSOCIATIONS:

Division	1965	1966
Shoshone County - - - - -	15	16
Clearwater - - - - -	67	68
Third District - - - - -	193	200
Fourth and Eleventh - - - - -	87	90
Fifth District - - - - -	63	59
Sixth District - - - - -	20	21
Seventh District - - - - -	55	57
Eighth District - - - - -	43	44
Ninth District - - - - -	46	46
Twelfth District - - - - -	17	18
Thirteenth District - - - - -	10	10
Out of State - - - - -	19	21
TOTAL - - - - -	635	650

Rule 185(e) provides that at the Annual Meeting each local bar association shall be entitled to the number of votes represented by its total membership, and the members of any local bar association present at such annual meeting shall cast the entire vote of the members of such local bar association.

DEATHS OF ATTORNEYS

Since the last Secretary's Report we have learned of the following attorneys' deaths:

Name	Place of Birth	Date of Death	Admitted to Bar
Roger G. Wearne - - - - -	Waverly, Iowa	June 30, 1965	Oct. 11, 1904
William F. McNaughton - - - - -	- - - - -	July 28, 1965	Sept. 15, 1909
Frank Langley - - - - -	- - - - -	Aug. 26, 1965	Mar. 21, 1910

IDAHO STATE BAR PROCEEDINGS

James W. Galloway - - - Boise, Idaho	Sept. 19, 1965	Oct. 21, 1909
Ezra R. Whitla - - - Alexandria, Minn.	Dec. 29, 1965	Oct. 14, 1904
Miss Pearl Tyer - - - - - Adel, Iowa	Jan. 8, 1966	Feb. 1, 1922
J. H. Anderson - - Salt Lake City, Utah	Jan. 9, 1966	Nov. 17, 1909
Harry J. Benoit - - - Crookston, Minn.	Jan. 10, 1966	Mar. 31, 1919
J. P. Pope - - - - - Vermont, La.	Jan. 23, 1966	Nov. 17, 1909
George L. Barnard - - - Renville, Minn.	Jan. 29, 1966	Jan. 16, 1945
Arthur C. Inman - - - Star Lake, Wis.	Feb. 1, 1966	Feb. 8, 1938
Lester S. Harrison - - - Colfax, Wn.	April 15, 1966	April 8, 1912
D. L. Carter - - - - - Nevada, Mo.	April 19, 1966	Sept. 18, 1911
E. G. Elliott - - - - - - - - - - -	April 25, 1966	Dec. 23, 1908
Vernon K. Smith - - - Pocatello, Idaho	May 2, 1966	Sept. 16, 1940
Judge John Jackson - - - Murray, Utah	May 16, 1966	Sept. 26, 1913
Stewart S. Maxey - - - Caldwell, Idaho	May 25, 1966	June 13, 1929

One Bar Examination was given since the last Annual Meeting, on September 1, 2 and 3, 1965. Thirty-four applicants took the examination and thirty passed. Of the four who failed, one filed a petition for review to the Supreme Court, which was denied.

DISCIPLINE MATTERS

We have a total of 39 complaints of one type or another filed with the Bar Commission in the last year. This is a considerable reduction from the last two years.

It was not necessary to file any formal complaints of a disciplinary nature, and we have now pending only four complaints which are under investigation. We have one special complaint under Rule #177 which is a formal complaint, but is not for a disciplinary matter.

We have concluded one formal complaint with a hearing, which resulted in the disbarment of Orvil Atkinson.

MR. BENOIT: Thank you Jim. We now have the Report of the Committee on Courts of the Idaho State Bar by Mr. Tom Miller.

MR. MILLER: The Committee on Courts of the Idaho State Bar makes this report to the Board of Commissioners and to the members of the Idaho State Bar:

**REPORT OF THE COMMITTEE ON COURTS
OF THE
IDAHO STATE BAR**

July 9, 1966

TO THE COMMISSIONERS AND MEMBERS OF THE
IDAHO STATE BAR:

Gentlemen:

The Committee on Courts of the Idaho State Bar makes this report to the Board of Commissioners and to the members of the Idaho State Bar.

By way of background information, it will be recalled that your committee in 1964 recommended that the Legislature appropriate at least \$25,000.00 to the Legislative Council for a comprehensive study of the court system in Idaho, and make recommendations for improvement therein. It was also recommended that the Legislature enact a statute providing for the office of administrator of the courts, with a supporting appropriation. Finally, it was recommended that the constitution be amended to provide for six-man jury trials in cases triable in courts inferior to the district court (as distinguished from the present \$500.00 line for demarkation).

The Thirty-Eighth Session of the Legislature in 1965 appropriated \$35,000.00 to the Legislative Council for the court study, and adopted a joint resolution for the constitutional amendment. The proposal for a court administrator failed to pass the Senate; a substitute appropriation bill passed both houses in the last days of the session and was vetoed—apparently for lack of specific limitation on use of the funds, rather than on the merits. (Your committee feels that a court administrator bill has excellent prospects of enactment into law in 1967.)

During 1965 the very competent staff of the Legislative Council made a comprehensive caseload study of the district courts, probate courts, justice courts and police courts for the year 1964, the results of which have been collected and digested onto electronic computer cards and are being summarized in report form.

Incidentally, we are very fortunate in having as the staff director of the Legislative Council, Mr. Myran Schlechte who, among his other credentials, was a member of the staff participating in the recent court study in Colorado.

The Legislative Council appointed a Committee on Courts, chaired by Senator Harold Ryan, to make the study. That committee, in turn, appointed an advisory committee consisting of representatives from various groups interested in the matter of court modernization; we were pleased to represent the Idaho State Bar on that advisory committee. A list of the committee and advisory committee is attached for your information.

The committee studied the present Idaho court system, the Colorado system (which is basically a three-level system, with a supreme court, district courts, and county courts), and the Illinois system (which is basically a two-level system, with a supreme court, and a general trial court, but with an intermediate appellate court). The committee also heard presented a proposal for a family court system either in addition to, or as a part of the district court system. The committee studied a proposal for a modified Colorado system proposed by the magistrates and probate judges' associations. It also had the benefit of a presentation by a court report relating to the recording and transcription of trial records.

The committee considered various systems for the selection, tenure and removal of judges, and various proposals for a judicial council consisting of laymen as well as judges and lawyers established for the purpose of advising the supreme court and the legislature in the improvement of judicial organization and administration.

IDAHO STATE BAR PROCEEDINGS

After numerous meetings, and having had the benefit of various papers prepared by the Legislative Council staff and by members of the advisory committee, the committee adopted in May the following preliminary recommendations, which are necessarily summarized here very briefly.

1. A two-level court system, consisting of the supreme court and district courts, with district court magistrates appointed to handle assigned cases. The senior district judge would appoint, and a majority of the district judges of the district could remove any magistrate. (a). The probate, justice and police courts would be abolished, and their functions and duties transferred to district court. (b). District court magistrates, at least one in each county, would be appointed to handle certain civil and criminal matters (misdemeanors and civil cases not exceeding \$1,000.00). Lay magistrates would be limited generally, to handling noncontested cases plus contested fish and game violation cases and contested traffic cases, except drunk driving, reckless driving and negligent homicide cases.
2. Consolidation of the present 13 judicial districts into seven districts (the first and eighth being combined, as well as the second and tenth, the fourth and eleventh, the fifth and thirteenth, and the sixth, ninth and twelfth; the present seventh and third districts would remain unchanged). The present chambers of district judges, however, would remain unchanged.
3. A Missouri- or California-type plan for the selection, tenure, retirement, discipline and removal of supreme court justices and district judges. The Judicial Council would screen candidates for the Supreme Court and district court, recommend three names to the Governor for each position from which slate the Governor must appoint. The justice or judge would run on a noncompetitive basis in the first general election after his appointment (provided it were at least 12 months after his appointment) and every eight years thereafter in the case of supreme court justices, or every six years in the case of district judges. Justices and district judges would be subject to retirement, discipline or removal by the supreme court upon recommendation of the Judicial Council, after due hearing.
4. Judicial Council. In addition to its duties in respect to the selection, retirement, discipline and removal of justices of the supreme court and district judges, the Judicial Council would be charged with the authority to make studies and recommendations to the supreme court and to the Legislature for the improvement of the organization and administration of courts. The Judicial Council would consist of seven members appointed for six-year staggered terms, including two attorneys and one district judge appointed by the Bar Commission with the consent of the Senate, three laymen appointed by the Governor with the consent of the Senate. The Chief Justice would serve as chairman. The members would receive their necessary expenses and, except for the district judge member and the chief justice, would receive a per diem allowance of \$25.00 for actual attendance at meetings of the Judicial Council.
5. The Judicial Administrator would serve as the administrative arm of the Supreme court, to handle continuing caseload studies, making recommendations for efficient use of judicial talent, assist the courts in arrang-

ing seminars for the continuing education of judges and magistrates, and generally assist the courts in their fiscal and other nonjudicial duties.

The Legislative Council Committee proposes that the two-level court system go into effect in January, 1969.

Your chairman, at the request of the Bar Commission, attended a citizens' conference on the courts in the courts at Pierre, South Dabota in October, 1965. Based on that experience it was determined that the Idaho State Bar, cooperating with the American Judicature Society, would sponsor a like conference in Idaho.

The Citizens' Conference on Idaho Courts was held in Boise on June 2-4, 1966. It was attended by about 50 laymen from throughout the state, assisted by out of state judges and lawyers and by Idaho attorneys who presided over and reported on the group discussions held during the first two days. The Governor and Chief Justice gave welcoming addresses that furnished great inspiration and impetus to the conference and its delegates. The addresses by the visiting judges and lawyers on various aspects of the subject were of tremendous assistance to the laymen-conferees in their group discussions.

The success of that conference and the enthusiasm of the conferees were literally amazing! The citizens—after most careful and searching study—unanimously adopted a consensus statement endorsing the preliminary proposals of the Legislative Council Committee on Courts. In fact, a very strong minority thought that the proposals—as dramatic as they are—did not go far enough in upgrading the quality of our judicial system. This minority, however, did agree that the proposals probably are a practical compromise, considering geography, economics and other factors.

A permanent committee of that conference is presently working on plans to lend further support to the Legislative Council Committee's general proposals. Their efforts may be vital, if not decisive, in furthering the cause of court modernization in Idaho.

The Legislative Council Committee, also, is scheduling several public hearings on its proposals to be held in September or October in various parts of the state, prior to finalization of its recommendations for submission to the 1967 Legislature.

Copies of the proposals have been sent to the members of this bar. We trust that all of our lawyers and judges will study them carefully, and that many will offer constructive suggestions for their improvement. We trust, also that many of our members will attend and contribute their voices to the public hearings this fall.

We, who have worked on this cause for some time, can feel an unmistakable and powerful surge toward judicial improvement in Idaho. It cannot be ignored. It can, however, be allowed to wander from indirection and to be dissipated by petty differences.

Although the courts belong to all of our citizens, nevertheless they look to the bench and bar for guidance and assistance. If we fail to heed that call we shall have failed our profession; we shall have failed our state.

IDAHO STATE BAR PROCEEDINGS

Let us now show the people of Idaho the finest aspects of our profession. Let us now show them the example of unselfish statesmanship.

Respectfully submitted,

Thomas A. Miller, Chairman
George M. Bell

**LEGISLATIVE COUNCIL
COMMITTEE ON COURTS**

Senator Harold L. Ryan, Chairman, Weiser
Representative William J. Brauner, Vice Chairman, Caldwell
Senator Woodrow W. Bean, Cascade
Senator J. Burns Beal, Moore
Senator George L. Blick, Castelford
Senator Jack M. Murphy, Shoshone
Senator Ray W. Rigby, Rexburg
Senator J. Cecil Sandberg, Blackfoot
Representative Harold Agee, Meridian
Representative Wilbert Cammack, Blackfoot
Representative Kitchener E. Head, Driggs
Representative Edith Miller Klein, Boise
Representative John A. Molyneaux, Coeur d'Alene
Representative Harold Snow, Moscow
Representative A. L. White, Orofino

ADVISORY COMMITTEE

Chief Justice J. J. McFadden, Boise, Idaho
Judge Gus Carr Anderson, District Judge, Pocatello
Judge James G. Towles, District Judge, Wallace
Judge Gilbert C. Norris, District Judge, Weiser
Judge Charles Scoggin, District Judge, Fairfield
Judge Winston L. Benson, Probate Judge, Blackfoot
Judge Glenn A. Phillips, Justice of the Peace, Arco
Judge R. Don Bistline, Municipal Judge, Pocatello
Professor George M. Bell, Professor of Law, Moscow
Mr. Thomas A. Miller, Attorney at Law, Boise
Mr. Ralph H. Haley, Prosecuting Attorney, Orofino
Mr. James May, Prosecuting Attorney, Twin Falls
Mr. Leon Fairbanks, County Commissioner, Boise
Mr. Ray W. Wooten, Youth Rehabilitation Director, Boise
Dr. Terrell O. Carver, State Health Department Director, Boise
Chief Jack Barney, Chief of Police, Boise
Mr. Francis Wander, Court Reporter, Weiser
Mr. Clarence A. Planting, Clerk of the District Court, Boise

MR. BENOIT: Thank you Tom. The next is the President's Address and my address is Box 366, Twin Falls, Idaho. (laughter) I have no report. In the last edition of the Advocate I set out my comments and they are all there for you to read.

We are right on time for a coffee break. The only other business we have is to take up the resolutions and I suggest when you reconvene at around 10:15 and that you sit in your local bar groups because there are some resolutions which must be voted upon by local bar associations as units. Now, in case there is any trouble this morning Jack Hawley is here as Parliamentarian to take over the resolutions. We will now adjourn for the coffee break.

(Coffee break)

MR. BENOIT: We will now reconvene. The business left to be considered are the resolutions to be acted upon by the 40th annual meeting. By way of background, I would like to explain that these resolutions were circulated among the local bar associations and then acted upon by the Bar Resolutions Committee last Wednesday which is composed of the respective presidents of the local bar associations. Last year we did not have too much to act upon and we turned the committee into an informal meeting with the local bar presidents which was very fruitful and out of that evolved the idea of having the mid-winter meeting of the local bar presidents. We went into a great detail about the financial operation of your State Bar Association and explained it fully to all your local bar presidents and if any of you have any questions at any time I think you will find that your local president fully understands the operation of the Bar. By custom the president picks as chairman of the Resolutions Committee the president of his local bar association at the time he was president who was Bob Rayborn, so I will ask the Chairman of the Resolutions Committee, Bob Rayborn of Twin Falls, to give the report.

MR. RAYBORN: Mr. President and members of the Commission and members of the Bar, at the Resolutions Committee meeting last Wednesday a total of 19 resolutions were adopted. The first resolution provides as follows:

RESOLUTION NO. ONE

Whereas, certain Statements of Principles with respect to the practice of law have been formulated by representatives of the American Bar Association and various business and professional groups; and

Whereas, the Board of Commissioners of the Idaho State Bar Association has directed that a study of certain of the aforesaid principles be made by the State Unauthorized Practice of Law Committee, and that the results thereof, be made known to said Commissioners in the form of a recommendation; and

WHEREAS, the State Unauthorized Practice of Law Committee has completed said study and has recommended to your commissioners that the attached Statements of Principles with respect to the practice of law be adopted by the Idaho State Bar Association with respect to realtors.

NOW, THEREFORE, BE IT RESOLVED that the Idaho State Bar Association adopt the attached Statements of Principles with respect to the practice of law formulated by representatives of the American Bar Association and Realtors as recommended by the Unauthorized Practice of Law Committee of the Idaho State Bar Association.

REALTORS**ARTICLE I.**

1. The Realtor shall not practice law or give legal advice directly or indirectly; he shall not act as a public conveyancer, nor give advice or opinions as to the legal effect of legal instruments, nor give opinions concerning the validity of title to real estate, and he shall not prevent or discourage any party to a real estate transaction from employing the services of a lawyer.

2. The Realtor shall not undertake to draw or prepare documents fixing and defining the legal rights of parties to a transaction. However, when acting as broker, a Realtor may use an earnest money contract form for the protection of either party against unreasonable withdrawal from the transaction, provided that such earnest money contract form, shall first have been approved and promulgated for such use by the Bar Association and the Real Estate Board in the locality where the forms are to be used.

3. The Realtor shall not participate in the lawyer's fees.

ARTICLE II.

1. No lawyer in rendering professional services should for any reason other than in the interest of or for the protection of his client express an opinion discouraging the consummation of a real estate transaction, where the parties have been brought together by the real estate broker.

2. The lawyer shall not participate in the Realtor's commissions.

3. A lawyer who engages in business activities ordinarily undertaken by a Realtor shall qualify under the Real Estate License Acts if required by Idaho Law when his business activities are such that qualification would be required if he were not a lawyer.

ARTICLE III.

1. The State Conference of Realtors and Lawyers shall consist of five (5) Realtors appointed by the President of the State Association of Real Estate Boards, and five (5) lawyers, members of the Idaho State Bar Association, to be appointed by the President of the Idaho State Bar Association.

2. The State Conference shall seek to have the two Associations:

(a) Engage in common effort to simplify laws and procedure governing real estate transactions;

(b) Eliminate detrimental practices arising in connection with the taking of expert testimony of the valuation in litigations involving the value of real property;

(c) Maintain a constant exchange of information concerning any practices on the part of their members which may be detrimental to the public or to the members of either Association.

3. The State Conference may consider any controversies referred to it between Realtors and lawyers and shall seek to settle and dispose of same.

4. The State Conference, in line with the principles herein stated, shall from time to time issue such further statements of principle as may be agreed upon which are deemed in the public interest and in the interests of Realtors and lawyers, and which are approved by the Board of Governors or the House of Delegates to the American Bar Association, and the Board of Directors of the National Association of Real Estate Boards.

5. The State Conference, in the public interest and for the purpose of implementing and making effective the carrying out of the principles herein stated and which may hereafter be promulgated and the amicable and cooperative solution of disputes or misunderstandings in relation thereto, shall seek to be of assistance in an advisory capacity to local bar associations and real estate boards.

I move the adoption of this resolution.

(Resolution seconded and passed)

MR. RAYBURN: Resolution Number Two.

WHEREAS, a number of the statutes governing commercial transactions, namely, the negotiable instruments law, uniform warehouse receipts act, uniform stock transfer act, and the uniform sales act, were drafted approximately 50 years ago. Subsequent to the drafting of these acts, other legislation has been enacted applicable to commercial transactions such as the bulk sales act, conditional sales act, an act providing for chattel mortgages, and, an act providing for accounts receivable. All of this legislation was useful and needed, but business practices have changed and revolutionary changes in transportation and communication have occurred affecting all commercial transactions. Interstate commercial transactions have increased many fold. Although all of these statutes were good acts, they have ceased to serve the needs of modern commerce and finance, and none of them were prepared in contemplation of the changes in transportation and communication.

AND WHEREAS, a new act has been drafted by the National Conference of Commissioners on Uniform State Laws, and known as the Uniform Commercial Code, to modernize the law regulating commercial transactions. The Uniform Commercial Code was drafted in the atmosphere of our modern facilities for communication and transportation and with the realization that business practices are changing with greater rapidity than before. It also has the objective of achieving uniformity among the several states in the laws regulating commercial transactions.

NOW, THEREFORE, BE IT RESOLVED by the Idaho State Bar Association that the Uniform Commercial Code with appropriate modifications, if any, to conform with special customs of this state, is hereby approved, and the 1967 session of the Legislature of the State of Idaho is hereby urged and requested to enact the Uniform Commercial Code.

AND BE IT FURTHER RESOLVED That a copy of this resolution shall be sent to the Governor of the State of Idaho, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Council of the State of Idaho. Mr. President, I move the adoption of that resolution. (Resolution passed unanimously.)

IDAHO STATE BAR PROCEEDINGS

MR. RAYBURN: Resolution Number Three.

BE IT RESOLVED by the Idaho State Bar Association that Section 1-1504, Idaho Code, be amended to provide as follows:

"R 1-1504. Fee of Officer Serving Notice.—The officer serving such notice shall be entitled to receive from the plaintiff two dollars for such service, which sum, together with the fee of the justice of the peace named in Section 1-1503, shall be added to any judgment given the plaintiff."

Mr. President, I move the adoption of this resolution.

MR. BENOIT: Call for a vote by local districts. Shoshone County, (yes); Clearwater, (no); Third District, (yes); Fourth and Eleventh, (yes); Fifth, (no); Sixth, (yes); Seventh, (yes); Eighth, (yes); Ninth, (yes); Twelfth, (no response); Thirteenth, (no response); I declare the motion passed.

MR. RAYBURN: Resolution Number Four.

BE IT RESOLVED That the Legislative Committee of the Idaho State Bar Association work toward the early enactment of legislation deleting the provision in the Idaho Workmen's Compensation Act which limits a widow or widower to a lump sum settlement of not more than 100 weeks' compensation. I move the adoption of this resolution.

MR. BENOIT: Before calling for a vote, any discussion desired on this resolution?

Shoshone County, (no); Clearwater, yes; Third District . . . could we have a moment?

MR. BENOIT: We will pass you temporarily. Fourth and Eleventh, (yes); Fifth, (yes); Sixth, (yes); Seventh, (yes); Eighth, (yes); Ninth, (yes); Tenth and Third District?

MR. BERGQUIST: No.

MR. BENOIT: No one here from the 12th and 13th? 385 to 16; that resolution is declared passed.

MR. RAYBURN: Resolution No. Five:

WHEREAS, the Eleventh Judicial District has a higher case load per judge than any Judicial District other than the Fourth Judicial District; and,

WHEREAS, Twin Falls County has the largest population of any county in the Eleventh Judicial District; and,

WHEREAS, the Trial Calendar in Twin Falls County is crowded to the point that more than one case is being set for the same date; and,

WHEREAS, the geography of the Eleventh Judicial District is such that it is not feasible nor practical for the District Judge presently having chambers in Burley, to regularly assist with the crowded calendar in Twin Falls County.

NOW, THEREFORE, BE IT RESOLVED that the Legislative Committee of the Idaho State Bar Association prepare and present to the Thirty-ninth Session of the Idaho Legislature a bill proposing the addition of a third district judge in the Eleventh Judicial District of the State of Idaho. Mr. President, I move the adoption of that resolution.

MR. BENOIT: Shoshone County, (yes); Clearwater, (yes); Third, (yes); Fourth and Eleventh, (yes); Fifth, (yes); Sixth, (no); Seventh, (yes); Eighth, (yes); Ninth, (pass); Anybody here yet from the Twelfth and Thirteenth? (no response); Which one passed? I presume they weren't going to vote one way or the other? (Ninth District passed); Ninth, what was the vote? (passed); 475 votes yes and 21 no, and even with some abstaining there is a majority in favor and that motion is considered passed.

MR. RAYBORN: Resolution No. Six.

WHEREAS, certain Statements of Principle with respect to the practice of law have been formulated by representatives of the American Bar Association and various business and professional groups; and

WHEREAS, The Board of Commissioners of the Idaho State Bar Association has directed that a study of certain of the aforesaid principles be made by the State Unauthorized Practice of Law Committee, and that the results thereof, be made known to said Commissioners in the form of a recommendation; and

WHEREAS, the State Unauthorized Practice of Law Committee has completed said study and has recommended to your commissioners that the attached Statements of Principles with respect to the practice of law be adopted by the Idaho State Bar Association with respect to Banks with trust functions set out below:

BANKS WITH TRUST FUNCTIONS

Statement of General Policies†

FOREWORD

Trust institutions are corporations engaged in the business of administering estates and trusts and in other trust activities, and acting as agents in all appropriate cases. Legal services are required in connection with many phases of trust business. Trust institutions are not authorized to engage in the practice of law. For the protection of the public and in aid of the administration of justice, the practice of law has, by the courts and legislatures, been delegated and restricted to attorneys at law, members of the bar. Attorneys at law constitute a professional group that performs essential legal functions in the conduct of trust business, and have a community of interest with trust institutions in the common aim of service to the public.

† Adopted on September 27, 1941, by the National Conference Group Composed of five representatives of the American Bar Association and five representatives of the American Bankers Association, Trust Division. Approved by the Executive Committee of the Trust Division of the American Bankers Association on September 29, 1941, and approved by the American Bar Association on October 1, 1941.

Declaration of policies

It is in the interest of the public that proper principles, with respect to functions of trust institutions in relation to the practice of law and to functions of attorneys at law with relation to trust business, be set forth and agreed upon by trust institutions and members of the bar to guide trust institutions and attorneys at law alike in their important relationships in this public service and as a basis for agreements between trust institutions and groups or associations of attorneys at law. Therefore, to that end, the following declaration of policies is adopted by the National Conference Group, a joint Committee of the American Bar Association and the Trust Division of the American Bankers Association.

I. Trust institutions should neither perform services which constitute the practice of law nor otherwise engage in such practice; therefore, they should not draw wills or other legal documents or perform services in the administration of estates and trusts where such acts by law or local procedure are considered the practice of law.

II. The development of trust business by a trust institution should be on the basis of assistance to the customer in the use of the institution's trust services and facilities as related to his business or financial matters.

In all legal questions which may arise in the development of trust business, the trust institution should advise the customer to confer with his own lawyer or a lawyer of his own choosing.

III. The trust institution should respect and not interfere with the professional relationship existing between an attorney and his client, and an attorney should respect and not interfere with the business relationship existing between a trust institution and its customer. It is recognized, however, that in all cases the interest of the client is paramount. An attorney at law must reserve the right to advise his client with respect to the choice of a fiduciary. The attorney should not seek to displace the institution or the client's choice by inducing the appointment of some other institution or individual unless the attorney believes the client's affairs demand services peculiar to some particular institution or individual, or where the attorney believes that the true interest of the client will suffer if such substitution is not made.

If the trust institution is requested by its customer to recommend counsel, any counsel so recommended should be in a position to advise the customer disinterestedly, and it is preferable that the trust institution, when making such recommendations of counsel to its customer, submit, without recommending one above another, the names of several attorneys in whom it has confidence, leaving the choice of the selection to the customer.

IV. A trust institution, qualified and authorized by law as a legitimate business enterprise, has an inherent right to advertise its trust services in appropriate ways. It should not, directly or indirectly, offer to give legal advice or render legal services, and there should be no invitation to the public, either direct or by inference in such advertisement, to bring their legal problems to the trust institution. Its advertisement should be

dignified and the qualifications of the institution should not be overstated or overemphasized, and it should not be implied in any advertisement that the services of a lawyer are only secondary or ministerial, or that by the employment of the services of the trust institution, the employment of counsel to advise the customer is unnecessary.

V. In the employment of counsel, the trust institution should endeavor, in the absence of compelling reasons to the contrary, to engage the attorney who drew the instrument, or who represented the testator or donor, to perform any legal work required in the course of trust or estate administration.

* * *

The National Conference Group hereby recommends to state and local bar and trust organizations the creation of joint conference committees, composed equally of representatives of the trust institutions and the bar associations, for the purpose of implementing and making effective the carrying out of these principles and the amicable and cooperative solution of disputes or misunderstandings in relation thereto.

Statement on Advertising*

The National Conference Group formed by the American Bar Association and the American Bankers Association Trust Division believes it in the public interest that, in the services rendered by corporate fiduciaries and by lawyers, there should be cooperation and harmony in order that the public may be best served.

It deems it desirable at this time again to call to the attention of corporate fiduciaries and lawyers of the country the following points in the Statement of Principles of Trust Institutions heretofore adopted by the Trust Division and approved by the Executive Council of the American Bankers Association on April 11, 1933:

"Advertising: A trust institution has the same right as any other business enterprise to advertise its trust services in appropriate ways. Its advertisements should be dignified and not overstate or overemphasize the qualifications of the trust institutions. There should be no implication that legal services will be rendered. There should be no reflection, expressed or implied, upon other trust institutions or individuals, and the advertisements of all trust institutions should be mutually helpful.

"Relationship with Bar. Attorneys at law constitute a professional group that performs essential functions in relation to trust business, and have a community of interest with trust institutions in the common end of service to the public. The maintenance of harmonious relations between trust institutions and members of the Bar is in the best interests of both and of the public as well. It is a fundamental principle of this relationship that trust institutions should not engage in the practice of law."

*This statement was drawn up and published by the National Conference Group in the fall of 1940.

The National Conference Group recommends to corporate fiduciaries that in accordance with the foregoing, particular care should be taken that advertisements should contain no direct or implied statement that corporate fiduciaries offer to render legal services, or that the services of a lawyer are only secondary or ministerial.

* * *

A study made by this group of numerous statements of principle adopted by state and local associations of corporate fiduciaries and by bar associations throughout the country, indicates that the principles underlying the above recommendations are generally accepted, and this statement is published as a reminder of the importance of carrying these principles into practical effect.

Trust Advertising—Estate Planning Statement**

Complaints have been made to the National Conference Group, formed by the American Bar Association and the American Bankers Association Trust Division, that through carelessness or inadvertence some trust institutions are not abiding by Clause IV of the National Conference Group Statement of Policies adopted by the American Bankers Association Trust Division on September 29, 1941 and by the American Bar Association on October 1, 1941, which reads as follows:

"IV. A trust institution, qualified and authorized by law as a legitimate business enterprise, has an inherent right to advertise its trust services in appropriate ways. It should not, directly or indirectly, offer to give legal advice or render legal services, and there should be no invitation to the public, either direct or by inference in such advertisement, to bring their legal problems to the trust institution. Its advertisement should be dignified and the qualifications of the institution should not be overstated or overemphasized, and it should not be implied in any advertisement that the services of a lawyer are only secondary and ministerial, or that by the employment of the services of the trust institution, the employment of counsel to advise the customer is unnecessary."

The advertising complained of is of a character which overemphasizes the qualification of trust officers and minimizes or ignores the function of the client's lawyer in the matter of "estate planning."

The National Conference Group recommends that trust institutions in offering their services to the public should emphasize that in matters relating to the planning of an estate, the client should receive the advice of his own lawyer and where substantial insurance problems are involved, the client should receive the advice of his life insurance adviser.

We again repeat that trust institutions should abstain from advising or rendering services in the field of law and that cooperation between trust institutions, life insurance men and lawyers in planning a client's estate is not only desirable but requisite if the public's best interests are to be served.

**Published by National Conference Group, February 8, 1950.

Further Statement on Estate Planning***

The Statement of General Policies adopted by the National Conference Group formed by the American Bar Association and the Trust Division of the American Bankers Association on September 27, 1941 and thereafter approved by both Associations is hereby reaffirmed.

The proper planning of an individual's estate, so as to provide for the orderly arrangement of his property and affairs in such manner as to take care of his needs and those he may wish to benefit after his death, is definitely in the public interest. Trust institutions and lawyers working together can be of great public aid in this field. The consideration of an estate plan requires expert and considered knowledge as to the investments and as to the way in which investments are to be dealt with in an estate plan. Corporate fiduciaries, through their broad experience in relation to these matters, are of substantial assistance. The setting up of the estate plan sometimes requires conferences which have to do with the kind and character of the assets of the estate in question. In connection with these matters, there are bound to arise, sometimes at the outset and certainly in the course of the planning of the estate, numerous legal problems involving law of all kinds in which it is essentially necessary for the person seeking to plan his estate to have competent legal advice. The harmonious understanding of the proper functions of corporate fiduciaries and lawyers in matters of this kind has been developed and made great progress since the creation of our National Conference.

A trust institution is granted charter powers to act as a fiduciary and to conduct a trust business. It may analyze the assets and estates of its customers and discuss with them the problems, other than those involving the giving of legal advice, of disposition of such assets and estates and the services and facilities of the trust institutions that may be used in aid of carrying out such dispositions. The experience acquired by trust institutions in handling trust estates of various kinds is of great value in assisting a person planning his estate. Hence trust institutions are often consulted by their customers in relation to these matters. However, any such discussions involving the disposition of the assets and estates of such customers should be general and preliminary only and subject to the consultation and advice of the customer's own lawyer.

The primary purpose of participation in estate planning by the trust institution should be to motivate its customer to initiate the arrangements for the orderly disposition of his assets and to confer with his own lawyer or a lawyer of his choosing regarding those arrangements. In reviewing the assets and estate of its customer, the trust institution should at the earliest practicable date include the customer's own lawyer in the development of the plan.

Because the formulation and execution of a plan for the disposition of a customer's assets necessarily involves the application of legal principles, of the law of wills and decedent's estates, the law of trusts and future in-

***Released July 27, 1960 by the National Conference Group formed by the American Bar Association and the American Bankers Association, Trust Division.

terests, the law of real and personal property, and the law of taxation, as well as practice in the Probate and Chancery Courts, and other fields of law, advice in respect thereto is the responsibility of the customer's own lawyer.

Accordingly, there should be no implication in its advertising by a trust institution that legal services will be rendered by it or that the services of a lawyer are unnecessary or only ministerial. Trust company advertising should be dignified and should not overstate or overemphasize its qualifications in this field.

Since the adoption of the original Statement of General Policies on September 27, 1941 and the creation of this National Conference Group, it is gratifying to note the very great cooperation that has developed between corporate fiduciaries and lawyers in rendering this important mutual service to the American public.

NOW, THEREFORE, BE IT RESOLVED That the Idaho State Bar Association adopt the preceding Statements of Principles with respect to the practice of law formulated by representatives of the American Bar Association and Banks with trust functions as recommended by the Unauthorized Practice of Law Committee of the Idaho State Bar Association. Mr. President, I move the adoption of this Resolution. (Motion unanimously carried by group vote)

MR. RAYBORN: Resolution No. Seven.

WHEREAS, The recent decision of the Supreme Court of the State of Idaho in the case of Leonard v. Leonard, 88 Ida. 485, 401 Pac 2d 541 (1965) and the decision of the Supreme Court of the United States in the case of Armstrong v. Manzo, 380 U.S. 545 S. Ct. 1187, 14 L. Ed. 2d 62 (1965) have held that in adoption proceedings where the father has not given his consent, notice of the adoption proceeding is necessary in order to satisfy the constitutional requirements of due process; and

WHEREAS, Title 16, Chapter 15 of the Idaho Code makes no provision for notice and service of notice in such non-consensual adoption proceedings; and

WHEREAS, It is necessary to amend said Title 16, Chapter 15, Idaho Code, to add a new section to provide for notice in said adoption proceedings;

NOW, THEREFORE, BE IT RESOLVED That the Idaho State Bar Association adopt the attached legislation providing for the enactment of a new section to Title 16, Chapter 15, Idaho Code, to be known as Section 16, 1506A, to provide for notice in non-consensual adoption proceedings. Mr. President, I move the adoption of this resolution.

MR. BENOIT: I think you have all seen the procedure of the proposed resolution. Any discussion? We must now vote by local association. Shoshone County, (yes); Clearwater, (yes); Third, (yes); Fourth and Eleventh, (yes); Fifth, (yes); Sixth, (yes); Seventh, (yes); Eighth, (yes); Ninth, (yes); Twelfth and Thirteenth, no response. I will declare it passed unanimously.

I think Bob Rayborn is getting a little tired of reading; we have a very distinguished man in Coeur d'Alene who I promised a few minutes on the program. Bill Reagan, do you want to come up here a minute?

MR. REAGAN: I won't take too long; half an hour. I appreciate this opportunity to say a few words and I want you to know right off to begin with that although I have a small interest in a hotel it's not going to prejudice me against going there. Sincerely, the members of the Coeur d'Alene Bar and the Eighth Judicial District Bar do earnestly invite you the members of the Bar to hold the convention in Coeur d'Alene in 1967 and request the commissioners to give it their earnest consideration. We do have some fine facilities. We haven't had the facilities to invite the Bar there before but we have facilities that were recently built and we feel that we can take care of the Bar Association in a fine manner. We have a convention center now that will seat over a thousand people and eight hundred in banquet style and with a motor hotel connected with it. I think you will find that all of your activities can be centered in a very small area. There are numerous things for the wives to do. Golf tournaments can be arranged and barbecues and so on. We do invite you to come to Coeur d'Alene next year. Thank you very much.

MR. HAL RYAN: I have a question: are there sufficient golf carts available on your course?

MR. RAYBORN: We don't have any carts at all but we'll have a few coolies. (laughter)

MR. JAMES MAY: Mr. President, as President of the Fourth and Eleventh I would like to endorse the request of the Eighth and request that it be held there.

MR. BENOIT: That is of course by rule up to the commissioners. I have personally nothing to say because I am just about a hasbeen.

MR. RAYBORN: Resolution No. Eight.

WHEREAS, Section 1-1804 of the Idaho Code provides that "No judge or other judicial officer shall have a partner acting as attorney or counsellor in any court of this state," and

WHEREAS, There are numerous practicing lawyers who are judges only on a part-time basis, and who must look to their private law practice for a substantial, if not the majority of their livelihood, and

WHEREAS, It appears unnecessary and unjust to prohibit said part-time judges and magistrates from having law partners,

NOW, THEREFORE, BE IT RESOLVED That the Idaho State Bar Association support the attached Amendment to Section 1-1808 of the Idaho Code, permitting part-time judges and magistrates to practice law in partnership. Mr. President, I move the adoption of this resolution.

MR. BENOIT: Shoshone, (yes); Clearwater, (passed); Third, (yes); Fourth and Eleventh, (yes); Fifth, (yes); Sixth, (passed); Seventh, (yes); Eighth, (yes); Ninth, (yes). I declare the resolution passed.

IDAHO STATE BAR PROCEEDINGS

MR. RAYBORN: Resolution No. Nine.

WHEREAS, The Committee on Courts of the Legislative Council of the State of Idaho together with its staff and advisory committee during 1965 and 1966 have studied the Idaho Court system and modernized court systems adopted and in effect in other states; and,

WHEREAS, The bench and bar of this state are pleased to have had the opportunity to contribute to that study, and to the preliminary recommendations for court modernization proposed by that Committee; and,

WHEREAS, The report and proposals of that Committee of the Legislative Council have been disseminated to the members of the Idaho State Bar for their careful consideration and recommendations; and,

WHEREAS, Public Hearings are scheduled to be held throughout the state during the coming months to afford to the citizens of Idaho the opportunity to make known to said Committee and to the Legislature of the State of Idaho any recommendations they may have with regard to any aspect of said report,

NOW, THEREFORE, BE IT RESOLVED By the Idaho State Bar in convention assembled at Boise, Idaho on July 9, 1966, that the Committee on Courts of the Legislative Council, its advisory committee and the staff of said Council, be commended for their diligent and exhaustive study of the matter of improvement of the organization and administration of the court system of this state, and,

BE IT FURTHER RESOLVED, That the Idaho State Bar endorse and approve the general proposals set forth in the report and recommendations of said Committee; and,

BE IT FURTHER RESOLVED, That the members of the Idaho State Bar, individually and collectively in their respective local bar associations, are strongly urged to contribute their best efforts toward the perfection, finalization and enactment into law of the recommendations of said Committee on Courts of the Legislative Council. Mr. President, I move the adoption of this resolution.

MR. BENOIT: You noticed that resolution endorses in general the principles, recognizing that there has to be public hearings and undoubtedly some changes made in the resolution that was appended to the report. Any discussion? Shoshone, (yes); Clearwater, (yes); Third, (yes); Fourth and Eleventh, (yes); Fifth, (yes); Sixth, (yes); Seventh, (yes); Eighth, (yes); Ninth, (yes); Twelfth and Thirteenth, no response. That resolution unanimously passed.

MR. RAYBORN: Resolution No. 10.

WHEREAS, The United States Supreme Court has recently made decisions more clearly setting forth the rights of a criminal defendant.

BE IT RESOLVED That the Commissioners of the Idaho State Bar appoint a committee to study the decisions more fully and set up mechanics necessary to put into effect the recent U.S. Supreme Court decisions in Idaho. Mr. President, I move the adoption of that resolution.

(Resolution passed by group vote).

MR. RAYBORN: Resolution No. 11.

WHEREAS, the Bancroft-Whitney Company, The Caxton Printers, Ltd., the Bobbs-Merrill Company, the West Publishing Company, and the Commerce Clearing House have generously donated various legal publications for door prizes at this annual meeting, and

WHEREAS, The Mutual of Omaha Insurance Company has donated the funds necessary for this morning's coffee break,

BE IT RESOLVED, That the Idaho State Bar extend its thanks and appreciation to these companies for their generous prizes and contributions which contributed to the interest of those attending this meeting. Mr. President, I move the adoption of this resolution. (Resolution seconded and carried by group vote).

MR. RAYBORN: Resolution No. 12.

WHEREAS Paul Boyd generously donated a great deal of his time in making appearances before the local bar association meetings in connection with the article on bankruptcy which he drafted for inclusion in the desk book,

BE IT RESOLVED That the Idaho State Bar extend its thanks and appreciation to Mr. Boyd. Mr. President, I move the adoption of this resolution. (Resolution seconded and passed unanimously by group vote).

MR. RAYBORN: Resolution No. 13.

WHEREAS, the Bank of Idaho sponsored and generously donated the the funds necessary for the cocktail party Friday evening preceding the Banquet.

BE IT RESOLVED, That the Idaho State Bar extend its sincere thanks and appreciation to the officers of the Bank of Idaho for their generous contribution to the success of this year's annual meeting. Mr. President, I move the adoption of this resolution. (Resolution seconded and unanimously carried).

MR. RAYBORN: Resolution No. 14.

WHEREAS, The Twin Falls Bank and Trust Co. of Twin Falls sponsored and generously donated the funds necessary for the local bar president's cocktail party Wednesday evening;

BE IT RESOLVED, That the Idaho State Bar extend its sincere thanks and appreciation to the officers of the Twin Falls Bank and Trust for their generous contribution to the success of this year's annual meeting. Mr. President, I move the adoption of this resolution. (Resolution seconded and unanimously carried).

MR. RAYBORN: Resolution No. 15.

BE IT RESOLVED That the Idaho State Bar express its sincere and grateful appreciation to the management and staff of the Downtowner Motel, the Crane Creek Country Club, and the Hillcrest Country Club for

their efficient and courteous service to the members of the Idaho State Bar, their wives and guests during the annual meeting at Boise. Mr. President, I move the adoption of this resolution. (Resolution seconded and unanimously carried).

MR. RAYBORN: Resolution No. 16.

WHEREAS, the Idaho First National Bank scheduled meetings with many local bar associations for the purpose of showing a film on the subject of the living trust.

BE IT RESOLVED That the Idaho State Bar express its sincere appreciation to the officers of the Idaho First National Bank for sponsoring these meetings and the showing of the film. Mr. President, I move the adoption of this resolution. (Resolution seconded and carried unanimously)

MR. RAYBORN: Resolution No. 17.

BE IT RESOLVED That the Idaho State Bar extend to Messrs. Joseph H. Gordon, William W. Gaunt, Philip M. Newman, Hamer H. Budge, Bob Myers and William Klinedorfer, our most sincere thanks and grateful appreciation for honoring us by their personal appearance at our annual meeting and delivering to us their extremely interesting and most informative addresses and program. Mr. President, I move for the adoption of this resolution.

MR. BENOIT: Let's call for a vote for the motion. All in favor please signify by saying "aye." (Resolution passed unanimously by group vote)

MR. RAYBORN: Resolution No. 18.

WHEREAS, Sherman Bellwood has served the Idaho State Bar extremely well in his capacity as appointed delegate to the American Bar Association from the State of Idaho and has recently resigned.

BE IT RESOLVED, That the Idaho State Bar extend its sincere appreciation to Sherman Bellwood for his valuable contribution. Mr. President, I move the adoption of this resolution. (Resolution unanimously carried by group vote)

MR. RAYBORN: Resolution No. 19.

BE IT RESOLVED That the Idaho State Bar express its appreciation to the Commissioners and the Officers of the Bar who have served during the past year, for their contribution of time and effort, which has resulted in accomplishments of an active and productive year of Bar activity. Mr. President, I move the adoption of this resolution. (Resolution unanimously carried by group vote)

MR. BENOIT: Now, that completes the resolutions. Now, there is a procedure whereby with the permission of two-thirds of the votes a resolution can be introduced from the floor and adopted. Does anybody have any proposal?

MR. KARL JEPPESEN: (Resolution No. 20.) I move that we commend

the Bar Commission for their promulgation and distribution of the Desk Book. I think that is one of the finest things that has gone out.

AUDIENCE: Seconded.

MR. BENOIT: Does anybody want to move that we suspend the requirements and allow that resolution to be presented?

AUDIENCE: Seconded.

MR. BENOIT: All in favor of the motion to suspend the rules please signify by saying "aye." All opposed? All those in favor of the resolution as presented by Mr. Jeppesen please indicate by saying "aye." Opposed? Thank you; unanimously carried. Anybody else have anything to present from the floor? Frank Chalfant? Frank would you come up and use the mike?

MR. CHALFANT: Mr. President and members of the Bar. I have a resolution which reads as follows:

(Resolution No. 21).

WHEREAS, The registered traffic citation ticket approved by the Department of Law Enforcement of the State of Idaho as prescribed by Idaho Code Section 49-1121, does not meet the requirements of a complaint as set forth in Idaho Code Section 19-3901 for charging a traffic offense:

AND WHEREAS, Idaho courts handling traffic offenses are required to prepare a separate complaint upon the appearance of an offender in a traffic case in order to satisfy the requirements of Idaho Code Section 19-3901 calling for a complaint under oath, in order to give the court jurisdiction over the subject matter;

AND WHEREAS, There is considerable confusion, inconsistency, and duplication of effort amongst the several courts handling traffic offenses because of the apparent conflicts between said statutes;

AND WHEREAS, The requirement for a sworn complaint in traffic cases is being ignored by many courts of the State of Idaho, and even where such requirement is met the proceeding is a mere formality, if not an actual farce;

AND WHEREAS, The Supreme Court of Idaho failed to implement the uniform rules of traffic procedure for the reason that the present statute requires a sworn complaint;

AND WHEREAS, The Commissioner of Law Enforcement of the State of Idaho has authorized the expenditure of funds for the actual printing of a new uniform traffic citation including a complaint, summons, report of conviction, and other forms necessary to the proper disposition of traffic cases for the benefit of the traffic courts of the State of Idaho, and a resolution by the Idaho State Bar implementing and supporting the adoption of such uniform traffic citation would be salutatory and in the best interest of the people of the State of Idaho;

AND WHEREAS, The adoption of a uniform traffic citation is not incon-

sistent with reforms proposed for courts handling traffic cases in the State of Idaho;

NOW, THEREFORE, BE IT RESOLVED, That the following resolution be adopted by the Idaho State Bar in convention July 8, 1966:

RESOLUTION

BE IT RESOLVED, By the Idaho State Bar in convention duly assembled, that the Idaho Legislature convening in January, 1967, be urged to amend Idaho Code Section 19-3901 to read as follows:

19-3901. COMPLAINT. All proceedings and actions before Probate and Justices' courts for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint, provided, however, offenses charging a violation for which an officer may issue a written traffic citation as provided by Idaho Code Section 49-1113, in the form required by Section 39-1121, may be commenced by a complaint containing a form of certificate by the police officer to the effect that he certifies, under the penalties provided in Section 49-1113, that he has reasonable grounds to believe and does believe, that the person cited committed the offense contrary to law, and such complaint shall be a part of the uniform traffic citation ticket required by Section 49-1121 showing the name of the person charged and the offense of which the person is charged, together with the date, time and place at which the offense allegedly occurred. Mr. President, I move that the rules be suspended for consideration of this resolution.

MR. BENOIT: All right, we will first vote on that motion to suspend the rules and it's going to take a two-thirds vote to do so. And again we'll have a vote by local bar associations. This is the motion so we can discuss the resolution. Shoshone County, (no); Clearwater, (yes); Third, (yes); Fourth and Eleventh, (yes); Fifth, (yes); Sixth, (yes); Seventh, (no); Eighth, (yes); Ninth, (no). Anybody here from the 12th or 13th yet? All right, that motion has met the requirements, so we are now ready for a motion on the adoption of the resolution followed by discussion.

MR. CHALFANT: Mr. President, I move the adoption of this resolution.

AUDIENCE: Seconded.

MR. BENOIT: Now, any discussions? I am sure that Frank Chalfant can answer any of your questions that you might have. All right: Shoshone County, (no); Clearwater, (no); Third, (no); Fourth and Eleventh, (yes); Fifth, (yes); Sixth, (yes); Seventh, no; Eighth, (yes); Ninth, (no). Anybody from the 12th and 13th? I find that only a majority vote is required to determine whether it passes or not. I declare that that resolution has been adopted. Anybody else have any further resolution or proposal?

MR. RAYBORN: If there are no more resolutions . . . ? I neglected to say one thing that is quite important. It has definitely been firmed up that

there will be a three-state trial judges convention in Coeur d'Alene next summer and apparently this organization has some assurance that a U.S. Supreme Court Judge will be there to address them. They are in hopes that this could be held at about the same time as the Bar Association Convention would be held so we could take advantage of some of the speakers that would be brought in for this three-state judicial conference and I think you should consider that also. Oh, one more thing: Mr. Fanning who used to be a resident of Wallace was quite perturbed that I didn't mention that Coeur d'Alene is only 35 miles from Wallace. (laughter)

MR. BENOIT: No further comment or anything else from the floor? We will give away a few books. (Drawing held and book awarded to Karl Jeppesen)

MR. BENOIT: I guess that just about concludes the business. I would like now to present the new president, Vern Kidwell; Vern. (applause)

MR. KIDWELL: Really, It's not quite that impressive, and you gradually work your way up through the chairs to this exalted position. The thing that disturbs me is that I volunteered for this to start with. I would like to on behalf of the chair recognize Mr. Kuhn from the Mutual of Omaha who will make a presentation to Mr. Benoit.

MR. KUHN: Thank you Mr. President. Members of the Commission and members of the Bar, it is with great pleasure for me through my company, Mutual of Omaha, to present to your outgoing president a small token of our esteem which should be to him a reminder of dignity and honor of a most successful reign as president of your Idaho Bar. I present this to you. (applause)

MR. BENOIT: Thank you very much. Also, thank you for the coffee break.

I find myself incapable of saying anything.

MR. KIDWELL: That is the first time that that has happened in two years. (laughter) In all honesty and all sincerity, it has been a real pleasure to work with Ed. and with Alden and I am looking forward to another year with Jerry and Nick, the new tiger from Weiser County as he was introduced earlier. I feel that we probably did not properly recognize some of the real spirits that keep the Bar Association going. I would like to introduce Mrs. Benoit, Norma Lou and Leslie Bennett. And I also would like to introduce Betty Lou Smith, the brunette member of the commission and Jo Speropulos who was last night not real sure whether she was going to put up with this job or not. And also the redheaded member of the commission, my wife Glenda. (applause) Also I don't feel we have properly recognized some of the hard working staff from the Idaho Bar office. You have possibly seen the ladies taking your money and taking care of the myriad of details that is involved in a bar convention and we would like to say thank you to Maxine and to Olive.

I have no deathless prose as the new president and I can assure you that I approach the job with all humility. Ed. has left a great heritage in the past — not much finances but he has done a terrific job and I think

only the members on the commission and former bar presidents know how much time and effort that Ed has spent as Bar President. We have enjoyed working with him and we hope that he will come back next year. For the ensuing year I make no rash promises. We will diligently pursue the legislative enactments that were adopted here today. We will consider Coeur d'Alene and we will continue with the emphasis on C.L.E. and the work with the local bar presidents. We frankly feel that the Idaho Bar is the envy of the neighboring bars and we promise you that we will strive to continue to merit that confidence. With respect to Ed, I have turned the mike back and I am going to give him one more chance. We recognize that historically the State Bar has presented a certificate of merit to the outgoing president. Unfortunately it has been delivered too often in absentia because at the following meeting the bar presidents have this happy problem of not returning. So, in order to forestall this problem at the 1967 convention, on behalf of the Board of Commissioners, I would like to present to Ed, the certificate of appreciation from the Idaho Bar.

(applause)

MR. BENOIT: Thank you.

MR. KIDWELL: I didn't overlook Jim. He has done a yeoman's job as Bar Secretary. By way of explanation, since the first of the year the Bar has run the citizens conference, it has published the desk book and it has screened 42 applicants for a bar examination. It has set up and printed the bar questions for those 42 applicants. He has had a bar convention and in addition has been setting up the C.L.E. It's only July and we'll figure out something for him to do the rest of the year but he has done a beautiful job and I think you should all pay proper tribute to Jim Lynch. (applause) It has been customary in the past to present a token of esteem statement from the new board to the outgoing president. This year it is my happy privilege to present to you your new vice president, Jerry Smith, from Lewiston, who will make the proper presentations. Jerry.

MR. JERRY SMITH: Thank you Mr. President. I want to say that it's been my extreme pleasure to work with Ed, and he has been a source of inspiration to me as the junior commissioner. I am happy now to have graduated from the position of junior commissioner so that I will no longer have to hustle the ice, (laughter) and I am very glad to have Nick join us. I am glad to turn those duties over to him. Yesterday I spoke briefly and in making reference to Ed, I referred to him as der fuehrer. This I want to say resulted from the first vote that we had as I came on the commission. It was at the reorganization meeting of the commission at Sun Valley following our annual meeting last year. At that time we had learned that Sun Valley was no longer going to hold conventions or allow us to hold conventions there during the months of July or August, and so we had under consideration the question of whether or not we were going to hold a convention in Sun Valley during the month of September which was open to us, and so we held a vote on that and Vern and I voted in favor of having the convention at Sun Valley in September and we were never allowed another vote during the balance of Ed's administration and he overruled us on that one, (laughter) and we wound up here in Boise, which of course now that we have had such a successful convention (I think it's

been successful) and we're very happy that Ed. did this and we recognize his was a wise decision. But in view of this situation we felt that as a past president of the Idaho State Bar Association that he might be called upon again by some association or some organization to act in a capacity as chairman or as a presiding officer and we thought he could benefit by this little token of our esteem for him. (Whitney's Parliamentary Procedure).

Ed. has devoted a great deal of his time as bar president and he has been a real inspiration to Vern and me and he has done a tremendous job. He has traveled a lot during the course of his administration as bar president. He has been to Miami and he has been to Las Vegas and he has been down through California and he has been around and he has not been in his office very much, and we know that lawyers unless they keep abreast of the developments in the law tend to become perhaps not quite knowledgeable in certain areas and in this respect we decided that we should give him this little token of our esteem to kinda help him get back on the right track towards a successful practice. (Law Guide for all).

MR. BENOIT: I can tell you how I am to start. I planned a lot of work next week to catch up and I called the office yesterday and found out one of the secretaries has the mumps. (laughter)

MR. SMITH: Vern and I spent a little time yesterday afternoon making these very wise selections for Ed. in our haste to get to the golf course. But we have another one. As I say, Ed. did spend a lot of time in the work of the association and making all of these trips and Vern and I were very puzzled over the situation of the wearing down of him physically and these things so we found something that we thought would be very helpful to him in this respect, so I would like to make this last presentation to him, another token of our esteem for Ed. He didn't read the envelope; I have it there, Der Fuehrer.

MR. BENOIT: Stop Feeling Tired and Start Living. (laughter)

MR. SMITH: Now, I'll turn it back to your new president.

MR. KIDWELL: Thank you Jerry. To show that we learned well under Mr. Benoit, there will be a Commissioners' meeting this afternoon at 1:30. (laughter) I would also feel remiss if I didn't tender my appreciation to the members of my firm for keeping the store open while we were out on bar work. If there is no further business of note, I will declare this meeting adjourned.

INDEX

- A -

A.B.A. Delegate	4
ADDRESSES:	
(Full texts have been deleted from Proceedings. Copies may be obtained from Secretary of the Idaho State Bar)	
BUDGE, HAMER, Washington, D. C.	8
"Securities and Exchange Commission"	
GAUNT, WILLIAM W., Denver, Colorado	11
"Colorado Court Reform"	
GORDON, JOSEPH H., Tacoma, Washington	9
"Office of Economic Opportunity Panel Discussion"	
KLEINDORFER, J. WILLIAM, Chicago, Illinois	7
"Division of State and Local Bar Services, ABA"	
MYERS, ROBERT, Salt Lake City, Utah	10
"Bar Press Relations"	
NEWMAN, PHILIP, Los Angeles, California	9
"Office of Economic Opportunity Panel Discussion"	
Adkins, Howard	31
ANDERSON, J. BLAINE, Report of Delegate to ABA, House of Delegates	4
Anderson, Myron	13

- B -

Bakes, Robert E., Director of Continuing Legal Education	32
Bar Commission (See Reports and Resolutions this index)	
Bar Commissioner, Election of N. G. Speropulos	34
Bell, George (Dean, College of Law, University of Idaho)	10, 12
Bellwood, Sherman J., Motion of Commendation	6
Benoit, Edward L., Presiding	3
et seq.	
Conclusion of Presidency and Report	44
Bergquist, Kenneth	3
Bowler, Bruce	26
Boyd, Paul	57

- C -

Canvassing Committee, Appointments	3
Report	8
Chalfant, Frank E., Jr.	59
Christensen, Cullen, President Utah State Bar	10
Clemons, Dale, Introduction of Hamer Budge	8
COMMITTEE REPORTS:	
Communist Tactics and Strategy	28
Continuing Legal Education	31
Courts, Committee on	40
Group Insurance	27

Internal Revenue Service	13
Judicial Conference	29
Legislative Committee	36
Life Underwriters Liaison	29
Prosecuting Attorneys	31
Real Estate Agents—Attorneys Liaison	26
Removal of Judges	33
Rocky Mountain Mineral Law Foundation	29
Unauthorized Practice of Law	27
Coughlan, Glenn	8
Courts, Reform of—Panel Discussion	12
Hal Ryan	
Myran Schlechte	
George Bell	
Thomas A. Miller	
Hon. Lloyd J. Webb	

- D -

Dworshak, Calvin	29
------------------------	----

- G -

Gasser, Clark	27
Gaunt, William W.	4
Address	11
Gordon, Joseph H. (Address)	9

- H -

Hawley, John T., Parliamentarian	45
Hiller, M. B.	26
Hull, Alden	7, 10
Huntley, Robert C.	31

- I -

Imhoff, Joseph, Introduction of Robert Myers	10
Invocation	3

- J -

Jeppesen, Karl	33
Introduction of William W. Gaunt	11

- K -

Kidwell, R. Vern, Presiding	9
New President—Acceptance	61
Kleindorfer, J. William (Address)	7

- L -

Lynch, James B., Secretary's Report	37
---	----

No. 9 Commending Committee on Courts of Legislative Council and Endorsing Report and Recommendations of Committee.....	56
No. 10 Study of Recent U.S. Supreme Court Decisions.....	56
No. 11 Appreciation to law book companies and Mutual of Omaha Insurance Company	57
No. 12 Appreciation to Paul Boyd.....	57
No. 13 Appreciation to Bank of Idaho	57
No. 14 Appreciation to Twin Falls Bank and Trust.....	57
No. 15 Appreciation to Downtowner Motel, Crane Creek Country Club, and Hillcrest Country Club	57
No. 16 Appreciation to Idaho First National Bank	58
No. 17 Appreciation to Speakers	58
No. 18 Appreciation to Sherman Bellwood.....	58
No. 19 Appreciation to Bar Commissioners and Officers	58
No. 20 Appreciation to Bar Commission for Desk Book.....	58
No. 21 Uniform Traffic Citation	59
Richards, Reverend Stacy—Invocation	3
Richmond, James, President Oregon State Bar	4
Robson, Robert	26
Ryan, Hal	11

- S -

Schlechte, Myran	8, 12
Scott, Elmer, President Wyoming State Bar	8
Smith, Hon. E. B.	11, 29
Smith, Jerry V., Presiding	11
Remarks	62
Speropulos, Nicholas G.—Elected Commissioner.....	8
St. Clair, Gilbert	8
Sullivan, Willis	7

- T -

Transtrum, Wallace	3
--------------------------	---

- W -

Wallis, Randall	36
Ware, Marcus	29
Webb, Hon. Lloyd J.	12
Wolfe, John	7

