PROCEEDINGS

OF THE

IDAHO STATE BAR

VOLUME XV, 1939

FIFTEENTH ANNUAL MEETING

PROCEEDINGS OF THE

LOCAL BARS SECTION

THIRD ANNUAL MEETING

BOISE, IDAHO

JULY 27, 28 AND 29

OFFICERS OF THE IDAHO STATE BAR

PAST AND PRESENT COMMISSIONERS

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N. D. JACKSON, St. Anthony, Eastern Division	1923-25
ROBT. D. LEEPER, Lewiston, Northern Division	1923-26
FRANK MARTIN, Boise, Western Division	1925-27
A. L. MERRILL, Pocatello, Eastern Division	1925-28
C. H. POTTS, Coeur d'Alene, Northern Division	1926-29
JESS HAWLEY, Boise, Western Division	1927-30
E. A. OWEN, Idaho Falls, Eastern Division	1928-34
WARREN TRUITT, Moscow, Northern Division	1929-32
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JOHN W. GRAHAM, Twin Falls, Western Division	1933-36
WALTER H. ANDERSON, Pocatello, Eastern Division	1934 —
A. L. MORGAN, Moscow, Northern Division	1935-38
J. L. EBERLE, Boise, Western Division	1936-39
ABE GOFF, Moscow, Northern Division	1938 —
C. W. THOMAS, Burley, Western Division	1939 —

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300 Capitol Securities Bldg., Boise, Idaho

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Ninth District Bar Association, F. L. Soule, St. Anthony, President; Robt. M. Kerr, Rexburg, Secretary.

Eleventh Judicial District Bar Association, F. C. Sheneberger, Twin Falls, President. T. M. Robertson, Twin Falls, Secretary.

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Vol. XV

FIFTEENTH ANNUAL MEETING

of the

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1939

J. L. EBERLE, President, Boise

SAM S. GRIFFIN, Secretary, Boise

COMMISSIONERS

WALTER H. ANDERSON, Pocatelo; ABE GOFF, Moscow

THURSDAY, JULY 27, 1939
(Morning Session)

PRESIDENT EBERLE: The meeting will come to order. I appoint as a canvassing committee Wm. A. Johnston, Thos. Y. Gwilliam, and Paris Martin. The report of that committee will be made here at 2 o'clock. The first matter on the program will be the report of the Secretary.

SECRETARY GRIFFIN: The Board of Commissioners during the past year consisted of J. L. Eberle, Boise, President; Walter H. Anderson, Pocatello, Vice-President; and Abe Goff, Moscow. Mr. Eberle's term as Commissioner from the Western Division expires with this session, and his successor is to be elected today.

FINANCES:

The sources of revenue of the Idaho State Bar are:

(1) Lawyers' annual license fees of $7.50 each. This is an increase of $2.50 over previous years, resulting from the direction of the last annual meeting to secure amendment of the license statute. As amended, Sec. 3-409 I. C. A. increased the fee, provided that it be paid prior to March 1st instead of July 1st, and directed that such fees be paid into the Bar Commission Fund, together with moneys directed by the Supreme Court to be paid therein, and the whole appropriated for the use of the Idaho State Bar. The Board has always construed the license fee to be for a calendar year, with a grace period for payment until the statutory date, after which the fee was delinquent and the delinquent attorney subject to discipline for practicing thereafter or having practiced during the calendar year theretofore.

The movement of the "deadline" from July 1st to March 1st did not, therefore, change the license year, but only the delinquency date.

(2) Costs in disciplinary proceedings. In some instances the Supreme Court assesses costs and expenses of the Bar in disciplinary proceedings against the offending attorney; in all cases of filing complaints for non-payment of license fees $1.00 costs are assessed and required to be paid before dismissal or reinstatement, under Rule 155 of the Supreme Court. All such costs collected are, by order of the Supreme Court, payable to the State Treasurer into the Bar Commission Fund.

(3) Examination and investigation fees. Pursuant to action of the last annual meeting the Board presented, and the Supreme Court approved, an amendment to Rules 105 and 112, under which applicants for admission pay an examination and investigation fee of $15.00 if not admitted to practice and practicing elsewhere, or $50.00 if theretofore admitted and practicing elsewhere. These amounts are, by order of the Supreme Court, payable to the State Treasurer into the Bar Commission Fund, except that under the conditions set forth in the Rule $7.50 thereof may become repayable to the applicant.

The Bar Commission Fund is, by Sec. 3-409 I. C. A., continuously appropriated for the purposes of the Bar Act. However, the Legislature has required budgeting of expenses and biennially appropriates specially therefor from the Fund, and probably this constitutes a limitation of its use. So far the Board has budgeted the entire amount of the Fund, including balances and estimated revenue for the succeding two years, although by keeping control of expenditures it has usually not spent the entire Fund in any two-year period.

Receipts and expenditures in the Fund are as follows since the report at the 1938 annual meeting:

Receipts (as of July 1, 1939):	
Balance, July 7, 1938	$2,133.41
Error per State Auditor	100.50
License fees collected	4,600.00
Costs Collected	210.00
Examination fees collected	409.50
TOTAL	$7,453.41

Note: Both costs and examination fees are more than may normally be expected annually due to payment into the Fund of accumulations from previous years heretofore carried in a Trust Account.

Expenditures:		
Office Expense	$1,223.59	
Travel	448.87	
Meetings	384.83	
Publication 1938 Proceedings	353.63	
Examinations	400.20	
Discipline	396.10	
Legislative	48.92	
TOTAL	$3,256.14	
Balance in Fund July 1, 1939		$4,197.27

As above stated, the Legislature appropriated out of the Bar Commission Fund for the biennium beginning January 1, 1939, the sum of $9,760.00, out of which had been spent since January 1, 1939, to July 1, 1939, $937.67, or 9.63% in 25% of the period.

The items of expenditure above for examinations and discipline do not refect the entire cost thereof, since they do not include allocation of a proportion of office and travel expense due to those activities, and which were more fully explained in the 1938 Report of the Secretary.

ADMISSIONS:

In Idaho all admissions are upon examination, there no longer being any admissions on Certificates from other states or courts. All applicants must apply to the Board on forms provided, and pay either $15.00 or $50.00 examination and investigation fee. If the Board is satisfied that the applicant meets the educational and character requirements of the Rules of the Supreme Court, permission to take examination is issued. Two examinations per year are given. The Board members draft proposed questions and the entire Board reviews, redrafts and accepts the questions before an examination. The place of examination is largely determined by location of applicants, examinations often being given simultaneously at three different places. Thereafter, the entire Board meets and grades.

Especial care is taken to prevent any possibility of identity of applicants during grading. The name must not appear anywhere on the papers. The applicant writes only his application number on the cover of the answer book, and before grading this is removed and an arbitrary number substituted, the original and arbitrary numbers being sealed in an envelope which is opened after grading is completed, the application number ascertained, and from that the applicant identified in the Board files.

Each answer of each applicant is graded by four graders, and their average grade granted. The examination, consisting of about 65 questions and 1 briefing problem, is divided into seven sections or sessions over a period of four days. A less number of questions

are given the first day to permit an opportunity for the applicant to settle down.

The results, of course, vary, the per cent passing running from a low of 28% to several highs of 100% during the past 18 examinations, including June, 1930, to and including December, 1938. During that period there were 156 examined, of whom 110, or 70.5%, passed at their first examination, and 136, or 87.1%, passed either on the first or a subsequent examination.

Figures from all other states show a variance of passing from a low of 20% to a high of 100%, and an average over the country of 43% passing in 1938. In Idaho 24% passed the June, 1938, examination, and 73% the December, 1938, examination; a year's average of 49%.

Since the last report 22 applicants were permitted examination, 1 rejected. Thirty-nine applicants (including repeaters) appeared for examination, of whom 25, or 64.1%, passed. Those failing may again be examined, and, as before noted, the result will undoubtedly be a higher per cent ultimately admitted.

EDUCATION FOR THE BAR:

The matter of education for admission has received the consideration of the Board, the Court, and the College of Law, University of Idaho. Several conferences have been held, and problems and possible solutions discussed and suggested. Among suggstions are admission from the College of Law, University of Idaho, upon diploma. This practice was once quite prevalent in the various states. In 1938, however, such admissions on diploma were permitted in but 5 states (Florida, Mississippi, Montana, South Carolina and West Virginia—Ann. Review of Legal Education 1937). The standards of the American Bar Association, adopted in 1921, rsconsidered in 1929 and since in effect, provides "The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the Bar, and that every candidate should be subjected to an examination by public authority to determine his fitness." The difficulties of supervision by the Court or Bar of the course of study, teaching methods, examinations, faculty members, etc., and of making distinctions between law schools, are some of the problems appearing and the subject of discussions. There are arguments on both sides of the question.

Also there has been suggested as a supplement to law school training a period of required internship in a law office under the supervision of a practicing lawyer, before examination, so that the applicant may adjust study to practice before admission.

Also there has been suggested a separate Board to prepare questions, conduct and grade xaminations, with members having long terms for continuity of policy, with fitness and temperament for such

work, and to permit the Board of Commissioners to devote more time to other probleme of the Bar.

These are only some of the matters with relation to education and admissions to which the Board has given study.

LEGISLATION:

Pursuant to the directions of the last meeting, an active Legislative Committee gave a great deal of time to proposed legislation approved by the Bar, such as some probate reform, the rule making power, judges' retirement, and laws affecting examinations of abstracts of title. A report on such activities will later be made at this meeting.

LOCAL BARS:

The Board has continued the policy of endeavoring to give opportunity to every lawyer member to pass upon the policy and problems of the Idaho State Bar through his local association, and upon recommendation of a committee proposed to the Local Bars a set of by-laws for the Local Bars Section, which in effect makes it the legislative branch of the Bar and at which delegates from the Local Bars act. These by-laws were adopted by the requisite number of Local Bars, and go into operation at this meeting.

DISCIPLINE:

Since the last meeting 3 attorneys have, upon recommendation of the Board, been suspended by the Supreme Court, 1 recommended for disbarment, 1 recommended for public reprimand, 2 suspended attorneys were recommended for reinstatement and reinstated, 1 attorney previously suspended was denied reinstatement, 6 complaints were dismissed as not justifying action, 1 attorney warned with respect to solicitation of business, 4 proceedings have been instituted and are now awaiting hearing, 2 investigations of illegal practice of law are being made, 2 complaints are being investigated.

Thirty-nine proceedings for suspension for practice without payment of 1939 license fees have been commenced. Nineteen of these have been dismissed upon payment of the license and costs of $1.00 each. In 20 service has been made, but time for appearance has not expired.

LICENSED ATTORNEYS:

	Average 1931-38	1939
Northern Division	120	111
Western Division	261	256
Eastern Division	125	123
Non-Resident	25	25
	531	515

There are also 21 State and 1 Federa Judge who, by Statute, are members of the Idaho State Bar, whose total membership is therefore 586.

DEATHS:

The following deaths have been reported since the last meeting:

Ralph Edmunds, Idaho Falls
John P. Gray, Coeur d'Alene
H. A. Griffiths, Caldwell
A. S. Hardy, Grangeville
A. H. Oversmith, Moscow
John P. Plowhead, Caldwell
M. J. Sweeley, Twin Falls
Riel Wilson, Cambridge
E. McClain Wright, Idaho Falls

Also former members:

D. L. Young, West Hollywood, Cal.
K. I. Perky, Long Beach, Cal.

PRES. EBERLE: If there are no objections the Secretary's report will be filed. The next item on the program is the President's Annual Address.

This is the fifteenth annual meeting of the Idaho State Bar. Almost forgotten are the efforts of those courageous and forward-looking lawyers who pioneered the establishment of the integrated Bar in Idaho, and in its early years labored and struggled with its work and problems. Rough and difficult indeed was the way. In retrospect it is interesting to note that the opposition and the obstacles came mainly from our own people and, at the time, it was the leaders of the Bar in other jurisdictions who felt and stated that Idaho, with its tradition of able and patriotic lawyers, by the establishment of an integrated Bar, had taken a forward step.

We have come a long way. Some of those who pioneered this organization are still with us. In the history of our profession, their efforts, unpublicized and unsung, shall always be an outstanding example of courageous public service and I would indeed feel remiss were I to permit this opportunity to pass without paying tribute to their vision and to their loyalty and devotion to our profession.

Our progress at times has seemed slow. Often those engaged in the work of the Idaho State Bar have felt a eense of frustration. In recent years, however, there has been an acceleration, not only in the progress of accomplishments, but also in the spirit of cooperation. In the early days of the Idaho State Bar our profession in Idaho was merely a lot of lawyers practicing law, with no sense of unity or accord. The habits of mind and standards of living of older members had grown far away from any need or desire to take part in Bar Association work. A number are still disinterested—a few are still openly hostile. But the younger lawyers have shown a keen interest in building a strong, coordinated, representative organization,

In part, this is due to the wiser policy of law schools inculcating in the students the thought that an organized Bar is an integral and inherent part of tbeir professional work, something that is ever an outlet for their ideals and their desire to render public service.

Soon those who have pioneered, and labored and struggled with the work and problems of this organization will disappear from the scene of action. No one who has had the experience that I have had with the younger members of our Bar the past three years can be pessimistic about the future of the organization or the disposition of tbe younger men to take their place and do their bit in the tasks of the profession. There will be no break in the continuity of leadership or policy, but witb this difference, they have apparently caught the spirit of a greater wisdom. When these younger men have grown older, and pause to inventory and value what they have acquired in and from the profession, they will not think chiefly of the briefs they have written, the cases they have argued, the fees they have collected; they will rate higher with the years the work they have done in this organization from a sense of aspiration for something better, and the friendships that they bave made and held along the way.

Their courage, vision and solidarity will be sorely needed and put to severe test and strain in the generations in which they will practice. They will become keepers of our heritage and defenders of our institutions, which undoubtdly will be attacked as never before. The march of Socialism is on. Unless we close our eyes to current history we must realize that the forces sweeping over the nations of the world, and particularly Germany, Italy, Russia and Japan, are world forces, and that it is impossible for us to remain immune from them. The American variant of these forces will be largely moulded by these younger men.

Gone are the days when the profession can be led or guided by men who do not attend its meetings, catch its spirit and enter into its work. Most lawyers, and no small part of the press and the public, are thinking and talking about the better organization of the Bar, the Bar Association, its structure, its relation to the administration of justice and its usefulness to the public. No independent and self-governing legal profession can be commanded by retainers, coerced by public office or intimidated or silenced by threats and charges against lawyers individually or as a whole. Independent and self-governed, it is one of the best safeguards of freedom in the United States.

The younger lawyers apparently see crystal clear that the organized Bar offers the means of using their time, talents, and ideals in accomplishments for the profession and the public, without the sacrifice and digression inherent in seeking and holding public office. In my opinion it is the only way to enduring friendships among the profession. A friendly Bar gives you something that you cannot obtain in any other way, the friendship and confidence of men, whom you are happy to have and hold always as your friends.

The recognition of these things accounts largely for the type of leadership coming into State organizations, men who are busy, effective lawyers, who are still engaged in the give and take of active practice; men who have ideals and the willingness and determination to back them up and work for them; men who are open-minded, patient, tolerant of others' views, forward-looking and practical in methods; men who look upon Bar Association work as a duty and opportunity, and not a decoration or reward.

In self-appraisement, our work during the past year, may be summed up as an effort to meet frankly such candid criticisms by the members of the Bar as have come to our attention.

Time and time again, as I contacted members of the Bar in various parts of the State, I heard the criticism that the action of the Idaho State Bar at its annual meeting was not truly representative. The principal objection seemed to be that when the annual meeting was held in one section of the State the lawyers from that section dominated its action. Manifestly, if substantially all of the lawyers attended the annual meetings, there could be no merit in this criticism. However, inasmuch as this seems improbable, the criticism was sufficiently widespread to justify a change in machinery. As you know, the entire control of such action as may be taken at this annual meeting has been turned over to the local Bar section comprising delegates. This section manifestly cannot be dominated by any group. Each local organization is represented by its delegates and their action should be truly representative. Undoubtedly, some changes will be found wise, but the fundamental principle has now been established. After our discussions today and tomorrow, the delegates will meet, commencing Saturday morning, and in moulding the policy of the Association by their action, may they have in mind that the Bar Commission will endeavor to carry out during the ensuing year such action as they may take in behalf of the integrated Bar of the state.

So, likewise, we have sought to meet certain criticisms as to admission to our profession. Lest we forget, it was not without a struggle that we became self-governing, with control over the admission of members to our profession. Let us also be not unmindful that our control over such admission is still subject to constant attack. We have endeavored to keep abreast with the general tendency to raise the standards of admission. You may be assured that it has taken no small amount of courage and determination on the part of the Bar Commissioners to be firm in upholding these standards. Our problem is not unique. A study indicates that similar problems are found in almost every jurisdiction. This arises from the fact that a diploma is not, in itself, a qualification of admission. The Associatoin of American Law Schools admits that the law schools teach jurisprudence and that there is a gap between their teaching and the practice of the law. This gap has been bridged in various ways. In Pennsylvania, for example, a year's clerkship is required. In California the Bar Associations have established lectures on the practice of the law. It has been suggested that a six months clerkship in Idaho be required. It has also been suggested that University of Idaho law school students be admitted on diploma. This will be before you for your consideration. I feel quite keenly that such would be a step in the wrong direction. Permit me to call your attention to the position of the American Bar Association:

> "The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the Bar, and that every candidate should be subjected to an examination by public authority to determine his fitness."

Experience has demonstrated that where the diploma privilege exists, supervision of law school by state authority is necessary, but that such supervision is impractical and that the tendency is for the standard gradually to depreciate. Setting up requirements for admission to the Bar is a function which should be kept within the control of the profession for the purpose of protecting the public, and should not be delegated to law schools.

It has been suggested that the Bar Commission cooperate and coordinate with the law school. In my opinion the work of the Bar Commissioners is now sufficiently heavy that it would be impractical to attempt to add to such work any additional duties in connection with the law school. In fact, it has been my recommendation to the Supreme Court that the Bar Commissioners be relieved of the duty of preparing and grading examination questions. My thought in doing so was not only to relieve the Commission of these duties but to bring about continuity of policy. In other words, Bar Commissioners are not necessarily elected for their academic proclivities, their ability to frame and grade examination questions. The result is that as Bar Commissioners change, it may well be that the policy as to framing and grading questions may also change. If there were a separate Board of Bar Examiners such as there now is in various states, with lawyers chosen for their academic fitness, as well as their ability and knowledge of the law, with long terms and no other functions, excepting control of examinations, there manifestly would be a tendency toward continuity of policy.

In any event, it is manifest that the problem of determining an applicant's fitness to practice law involves many considerations of a technical nature which should be in the hands of those especially trained to deal with them. May you consider the problem quite seriously before waiving the right of examination as to any individual or group of individuals seeking admission to our profession. The present system undoubtedly is not a perfect test, but as it has been gradually developed by experience, throughout the country, it is the most practical, fair and effective means of determining the fitness of the applicant to discharge the responsibilities of a practicing lawyer.

We are enjoined by our Canons to support our courts and judges, and that they are entitled to receive our support against unjust criticism. Manifestly, we must have and take a deep interest in the conduct and independence of our judiciary. After all is said and done, it is our judiciary. You will note that a candid discussion of our judiciary is one of the subjects on our program. This resulted from what seemed to be a general criticism among lawyers throughout the state, justifying such a discussion. May we be reminded that the Canons of Judicial Ethics enjoin upon our judges to be courteous to counsel, patient, always avoiding a controversial manner of tone, fearless, indifferent to all influences, and that they should not seek to do what they may consider substantial justice in any particular case and disregard the general law as they know it to be binding upon them. It is our duty to make every effort to assist the judiciary in its functions, that it may be actually independent.

In line with this view, this Bar, at its last annual meeting, went on record in favor of a judicial retirement bill. Pursuant to such instructions, the Commission introduced a bill providing for such retirement in the last legislature. As you know, it failed of passage. The opposition came in a large part from our own members, who felt that the action of the Idaho State Bar was not truly representative. May this matter again be considered and acted upon by the delegates representing al of the members of the Bar, having in mind that it is our judiciary and that no step should remain untaken which might tend to make it in fact independent.

The matter of minimum fee schedules has been given considerable thought and I sincerely hope the matter may again be discussed fully by the delegates at their meeting. There must be borne in mind Canon 12, as amended, of the American Bar Association, which contains this provision:

> "In determining the customary charges of the Bar for similar services, it is proper for a lawyer to consider a schedule of minimum fees adopted by a Bar Association, but no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee. In fixing fees, it should never be forgotten that the law profession is a branch of the administration of justice and not a mere money-getting trade."

I feel that we are all not unmindful of the fact that the profession can also be cheapened by cut-throat competition to the extent where many members of the Bar do not receive a living compensation for their services. A number of decisions have been rendered in connection with this phase of our profession and should be carefully considered by the Bar as a whole in working out a rational and consistent policy.

As many of us know, pursuant to the action of this body a year or so ago, the Commission also introduced in the Legislature a bill

providing for the rule making power of the Supreme Court. Here again, the opposition came from a few of our own members, who are still hostile to the organized Bar. This subject is again on our program and I trust that some action may be taken. There can be no rational answer to the uniformity of rules in the state and federal courts. The tide is manifestly toward placing the entire rule-making power and the administration of a unified judiciary in the hands of the Supreme Courts of our various States. This action may be deferred for some years in Idaho but ultimately it must come to pass.

There are a number of other problems upon which various committees are at work. A survey should be had for the necessity of legal clinics, examination of abstracts, cooperation with the Grange and abstract companies to meet the criticisms of the public with respect to the expense of the examination of titles.

In these days of keen competition and difficult times our Canons and the spirit they breathe still serve to convey a message of hope to every lawyer to whom his profession is something more than a resource for making a livelihood and who aspires in the practice of it to play at least a humble role in a great organized movement to promote human welfare and happiness through some approximation of an ideal administration of justice. Something is expected of the legal profession which it is not completely fulfilling. Lawyers must think of their profession as a whole and not merely as a number of individuals practicing law. Lawyers must think of their work as that of a profession and not merely as a means of a livelihood, and should accept and fulfill the responsibilities of a profession not only to the public but to its members. The acceptance of this conception has a reciprocating effect in that, as more and more of the members of the Bar catch its spirit, a more fair compensation will be asked and received, and each member will be more considerate of the other members of the Bar. Although the profession is not merely a means of livelihood, nevertheless a cheapening of our services by cut-throat competition is not only contrary to the conception as stated but is unwholesome both for the profession and the public.

It is true that at times there comes to us the halting doubt whether every member of the Bar will ever do more than render lip service to this conception and fully realize that his every act, whether fixing a fee or in connection with any other relationship with the public, has a direct bearing upon the welfare and life of his brother attorney.

If, in self-appraisement, there comes a sense of frustration, may it be used to spur further endeavor towards this goal, which many of us still believe is measurably possible of attainment. It can only be attained, however, by an organized Bar and an assiduous cultivation of traditional ideals, particularly among the younger generation of lawyers. It is, therefore, for us, not as individuals but as an organized group, to plot our course through the possibilities and opportunities of a great profession to strive to make our ideals an actuality. Sometimes this call to high aspiration seems unadapted to the

stern exigencies of everyday life and inadequate for professional survival in these days of keen competition and difficult times; however, of this we may be certain, that if we waive it aside as an impractical ideal or postpone it, we will miss that which confers on life its essential significance and, on achievement, its true value. (Applause.)

PRES. EBERLE: Gentlemen, the next matter on the program is a discussion of Aids to the Attorney and His Practice. I am glad to introduce to you, Mr. E. B. Smith.

MR. SMITH: Mr. President and Members of the Idaho State Bar.

My assignment under "Aids to the Attorney and His Practice" is the subject "Should Attorneys Be Bonded?" I shall discuss the question as to whether an attorney should furnish a fidelity bond guaranteeing to indemnify his clients against loss on account of embezzlement, dishonesty or fraud. I shall present the affirmative side, knowing that a logical argument can be advanced against it.

I have made inquiry of representatives of insurance companies and of their underwriting departments concerning whether the laws of any state require attorneys to be bonded. So far as I can ascertain no such requirement exists. The subject matter in some of its phases has been discussed heretofore briefly by the American Bar Association and its Executive Committee; otherwise, it appears to be one of first impression.

In approaching the subject of "Aids to the Attorney and His Practice," I advance the premise that if attorneys' bonds would have the general effect of creating more confidence of the public in the Bar, then such would aid the attorney.

In the business world generally, all money handling officers, employees and clerks are required to furnish fidelity bonds. This applies in all classes of business, whether private or public in nature. It is also deemed good business that bonds be required for the faithful performance of contracts involving financial transactions and obligations. The attorney is realizing more and more that his profession is one of business. He must and does realize, as do other types of business men, that he is entitled to and may maintain his office so long as he can pay his overhead and make a reasonable living. He is essentially an adviser of business, hence an integral part of business. A practice deemed necessary in the business world should be one worthy of consideration by the legal profession.

Our administrative branch of government requires money-handling officers, employees and clerks to furnish fidelity bonds. This legal requirement overlaps into the judicial branch of government in that clerks of our courts, including the clerk of our Supreme Court, must funish fidelity bonds as money-handling officers.

Attorneys are quasi-public officers of the judicial branch of the government. They are officers of the courts. An attorney is granted

the right to collect and handle money for his clientele immediately upon his admission to the practice of law. That right is based upon the proposition that, upon due investigation, he has been found to be a person of good moral character having the requisite qualifications as to honesty and integrity. The judiciary assumes, and has the right to assume, that when an attorney has been investigated and has not been found wanting, he will respect his oath of office and the Canons of Professional Ethics touching upon his money-handling activities for others. In business and in the administrative branch of government, those desired to fill positions of trust also must pass such a test; the exceptions, if any, may be our elective officers. On the one hand fidelity bonds are not required, whereas on the other hand they are.

The annual registration of attorneys in Idaho has averaged about 500 in number during the period the Idaho State Bar has been functioning, from the year 1925 to the present time. The statistics show a very small percentage of infractions by attorneys in this state involving misappropriation or lack of accounting of funds. Approximately 5 cases during the last 15 years have been reported, a few of which involved the same individuals. The average is about 4 cases per year during that period, or slightly less than 1% of the Bar. Any such case causes criticism of the Bar in the community where the infraction occurs. Punishment of the wrongdoer by disbarment, suspension, or reprimand does not cure the financial wrong to the client. The client's financial loss must be repaid in order to accomplish full restitution. In some instances cases which have come before the Bar Commission have been dismissed upon restitution having been made; in others, the client could not be made whole. By the bond method a client should never suffer financial loss, since security would be afforded.

Certain undesirable practices ought to be eliminated if the attorney is required to post bond. It is an admitted fact, and none of us will otherwise argue, that in case of financial infraction by our fellow attorneys, the act is committed because of extreme financial distress. Seldom do we find an attorney who is criminally bent. Most of us would desire to protect our fellow attorney; and perchance the same feeling pervades our Bar Commission and Courts. Our sympathy may be aroused, but fundamentally we desire to protect our profession.

By the bond method, the matter of any misappropriations or failure of accounting by the attorney should be entirely eliminated from those protective agencies. The matter of investigations would rest in the hands of independent surety company investigators. It may be urged that such practice would not be desirable, since the Bar can take care of its own problems in that regard. That would be true if the Bar had a fund created for the purpose of reimbursing wronged clients or had adequate security for that purpose. If some other agency, such as the surety company, is responsible for the se-

curity afforded, then it should be afforded the opportunity of making any investigation deemed necessary and proper.

The bond application of an attorney should not be accepted by the Bar Commission unless all his known existing infractions in money matters had been remedied. Under such a condition precedent, present violators would have to "clean house" automatically or cease the practice of law. The suggested procedure should not be retroactive since it then might be penal in nature. There should be no criticism, however, in requiring the attorney to remedy existing complaints to the satisfaction of the Commission in order to be eligible as an applicant for a fidelity bond covering his future activities.

Two suggested procedures occur as to the matter of coverage by a fidelity bond. Each attorney could be required to furnish a bond in a sum to be fixed or, perhaps a blanket bond, covering all practicing attorneys, written in favor of the Commission or the State may be the solution. The cost of a blanket bond pro-rated should be nominal.

If an individual bond be required, a graduated scale of its amount should govern, based upon the time the attorney had been in practice and the business handled; for instance, a bond of $1,000.00 ought to be sufficient coverage for the young attorney during his first two or three years of practice, it then to be increased to $3,000.00, with a maximum of $5,000.00 coverage to apply at the end of his fifth year in practice and thereafter. The Commission ought to allow approved securities to be furnished in lieu of bond.

The adoption of such procedure should aid in maintaining high standards in the profession:

High standards as to the attorney, becauee of his knowledge that an impartial surety would be the investigator of any infraction in money matters committed by him. The matter of protective agencies heretofore mentioned would be removed;

High standards as to the profession generally, since there should result a lesser tendency for the commitment of such infractions;

Greater security as to the clientele, since clients, having financial matters requiring an attorney's' attention, could place greater faith in the profession. That faith would be founded upon the knowledge that security was afforded in case of infractions committed; also upon the further knowledge that in case of proved damage, restitution would be afforded.

It is doubtful whether the suggested procedure would result in any appreciable increase of business. It might result, however, in a redistribution of concentrated business involving collections and the handling of moneys. Nevertheless, it should develop a feeling of willingness on the part of the clientele to litigate matters or make collections, rather than to forego the same.

The procedure which suggests itself, with reference to the bond application, to apply whether the individual bond method or blanket bond method is pursued, is:

1. The attorney's application for the bond, or to come under the blanket bond, should be approved by the Bar Commission or a designated member.

2. Due investigation should be made to the end that a certificate of good moral character be executed as a part of the bond application and as a condition precedent; it should recite that no known infractions existed involving the misuee of moneys or things of value.

3. The bond should run in favor of either the state, or preferably, the Bar Commission.

4. A direct action on the bond in favor of any party damaged, should be provided.

5. Moneys belonging to others should be required to be kept in a separate trust fund.

Such procedure ought to result in the exercise of great care and vigilance by the Bar Commission and its committees. If the Commission was named the obligee, certainly it would not desire being named a party litigant on the relation of an injured party plaintiff; members of the profession would entertain the same feeling. It would seem the exercise of greater care, both by the Commission and the Bar ought to result. The procedure would be an application of the principle of the ounce of prevention rather than a pound of cure.

The question arises as to how acts of foreign counsel could be safeguarded against under the suggested bond requirement. The responsibility in financial transactions would automatically rest with the local counsel. Under our present court rule, local counsel is held responsible for every step of a proceeding in which foreign counsel is an attorney. Foreign counsel cannot appear in our courts unless joined with local counsel. The responsibility of local counsel would include the accounting by him, although the moneys had been remitted by opponent client, direct to the foreign counsel.

The legality of the matter of requiring attorneys to be bonded at first might appear to be questionable. The courts, however, representing the judicial branch of the government, have the power to impose reasonable regulations upon attorneys; nor must the principle be overlooked that the attorney's right to practice law is not a natural or constitutional right, but is one resting in privilege, franchise or license, granted by the judiciary; hence, the matter of requiring the attorney to furnish bond rests in the reasonable exercise, by our judiciary, of a sound and just judicial discretion. The regulation would be a reasonable one designed for the protection of both the Bar and the clientele, with "a speedy remedy afforded," by restitution from the security afforded, for the civil wrong.

I entertain the view that if attorneys were required to be bonded by our Bar Commission, it would result in added confidence of the public in the Bar; after all, we are professional business men who are dependent upon that public for whatever business comes to our offices. Any plan which would tend to create greater public confidence in the Bar, most certainly would aid each individual attorney in the practice of his profession. The matter of the attorney posting a fidelity bond for the protection of his clientele, so far as his private business is concerned, is not a new idea. Those bonds are written by several surety companies. The idea is a new one, however, that our Bar Commission should require an attorney to post a fidelity bond as a prerequisite to entering the practice, or continuing in the practice of law. The subject presents much food for thought.

PRES. EBERLE: Paris Martin, Jr. wil also discuss this subject. Mr. Martin.

MR. MARTIN: Pres. Eberle, Gentlemen: It is probably to some extent true that the American Bar has for some time past been extremely busy balancing its high hat at a fashionable tilt—an angle that has kept its eyes from seeing a number of current trends and conditions in modern existence until after those trends have become well intrenched and established facts. The result has been that there are reports that law business is falling off, that a great number of lawyers do not pay income taxes—not because they are sufficiently clever to avoid them, but simply because they haven't any income on which to pay, and that in many instances business formerly done by lawyers is being taken elsewhere.

Very recently Robert Jackson, Solicitor General of the United States, a painfully consistent New Dealer, but an able lawyer nevertheless, put the profession on notice in another matter relative to current trends. Mr. Jackson said:

> "The Government is already, through relief rolls and W.P.A. projects, providng support for a very substantial number of lawyers. At the same time it sees a large number of citizens who help pay taxes, deprived of legal services because they cannot pay the provisional scale of prices.
>
> "I have grave doubts that society will continue to support idle lawyers and at the same time go without their service once it wakes up to what it is doing.
>
> "Our Bar cannot claim to be discharging its full duty to society by rendering service that is out of reach of an increasing proportion of our people."

Now, I mention these things not because they have any direct connection with the subject of my remarks, but rather because they are circumetances inviting our attention to the general subject of

"Aids to the Attorney and His Practice." They are conditions which lend, more than perhaps might otherwise be the case, a certain quality of timeliness to the discussion which is to follow. It is a matter of genuine regret, though I am sure that the announcement will be the occasion for no great surpprise, that I am unable to announce an ism which will obviate need for further aids to practice. I have been requested, rather, to discuss, under the general heading, the topics of "Legal Clinics" and "Cooperative Bar Association Advertising." You will kindly note that there is no advocacy for these things on my part, nor will I draw conclusions of any other kind.

The term "Legal Clinics" has reference to sessions for members of the Bar designed to offer short courses in various branches of the modern law. Such clinics, usually organized under the auspices of a city Bar association, have been tried with success in a number of the large cities in the eastern part of the United States. In some instances they have been conducted at the invitation of a local Bar association, by the faculty of a law school. In other places, they have consisted of lectures by practicing attorneys who are experts in the field of study being offered. The costs are ordinarly borne by those who take advantage of the courses. The type of course offered may vary. Recently such a clinic was held in New York offering five lectures during the period of three days in the field of Administrative Law. On other occasions the clinic has offered one or two lectures only on various branches of the law. Such courses are generally confined to discussion of new and current developments in the various fields being discussed. The program of a typical clinic of this nature was as follows:

> One lecture on Insurance Law.
> Two lectures on the New Federal Practice.
> Two lectures on Cost Accounting as a basis for determining legal fees.

That is probably sufficient to identify the suggestion. You will, of course, see that it is similar in nature to the clinic system long in use by the medical profession. You will no doubt recall that that system includes the inevitable notice in the brevity column of the local papers that Dr. Soandso will go for six weeks to Rochester where he will attend a clinic on dyathermy and will visit his old family home before returning to the city. There is always the notice of return with special emphasis on the attendance at the clinic and the good doctor's business is expected to thrive thereafter. However, that may be, the medical profession has recognized a need for facilities in keeping abreast of the times.

There are those in the legal profession who suggest that we have the same need. It is their thought that changing economic and social conditions call for opportunities for the lawyer to consider modern legal problems in broader scope than can be done, in actual practice where his time and attention is usually confined by the case

at hand to a consideration of few limited points in a much broader field. I can see some merit to this suggestion. Just recently I discovered, after deciding a sales question relative to agricultural produce to my own satisfaction on the basis of the law of sales, that while I wasn't looking the gentlemen of the United States Department of Agriculture had developed an entirely different set of rules on which they based decisions on administrative law having no conceivable connection with the law of sales. We either follow those rules or have our broker's license jeopardized while we appeal to the courts under a procedure which would cost more than the combined net profits of the last three years.

There are those in the legal profession who see no value in legal clinics, particularly in areas where specialization may not be the rule. The value of the sessions from a general informational standpoint is granted, but it is felt that the practical value of such courses does not justify the cost where as a general thing we are making our living by study of specific cases and by study which ultimately we must do ourselves.

I submit the matter for your consideration.

The second topic of my remarks, "Cooperative Advertising," might well be headed, "You Need a Lawyer." In many instances it is no doubt unfortunate that the law does not possess sufficient elasticity to cover the consequences of human indifference, folly or downright recklessness. The average man is very likely to shy at the mere suggestion that he needs an attorney to guide him through the conventional pattern of his existence. Lawyers, he intimates, are sharpers and, having delivered this judgment, he goes blandly away to buy, sell, borrow and lend and to promise to do other things which bristle with legal risks and which may very well have a slicker as the party of the second part. In fact, more than ever before, with governmental intervention and regulation being what it is today, certainly even the little business man needs a lawyer (not a lawyer's hand) in his hip pocket.

Now it has been suggested that the failure of the average man to avail himself of the services of an attorney has resulted from two things:

1st—The high cost of legal advice.
2nd—The fact that he doesn't know—until afterwards—that he needs an attorney.

A classical example of the latter is the story told of the young man whose wife had a baby at the hospital. He called to take wife and child home only to be told that they could not go until the hospital bill was paid. A lawyer hastily solved the problem by advising the hospital that he was about to tell the police that a woman and child were being held for ransom. Installment contracts, real

estate transactions, used car deals—all of these and countless others involve problems where the services of an attorney should be used.

It is true that in many instances the public is not aware of this necessity. To so advise them it has been suggested that Bar associations engage in advertising campaigns along lines pursued by banking associations, manufacturers' associations and similar groups in public relations advertising. Such campaigns would be supported on a cooperative basis and the costs borne from Bar funds. The message would be directed primarily at least to drawing attention to the necessity of legal services and to general education concerning the fields and instances in which those services are used.

There are those who feel that the legal profession has a story to tell the public and that this is a suitable and justifiable way to tell it. They consider the method in keeping with our forms of economic and social existence and point out that it is a recognized competitive manner to retain for the profession business which in a competitive world is being attracted elsewhere.

There are others who feel that such advertising would reflect to the discredit of a calling which is a profession. They feel, further, that, if it were not such a reflection, it would at most be nothing more than a stop-gap. This group acknowledges that public relations advertising might well take the form of newepaper and magazine distribution or the less objectionable form of educational literature, public address and purely explanatory articles in current periodicals. Yet, they say, the diffictulties of the legal profession are more deep-seated than being merely the result of the forces of competition. It is suggested that the legal profession cannot hope to improve or extend its position until it has altered its practices and procedures in such a way that it will make its services again desirable to business because it can do the work which business wants done.

I submit the matter for your consideration.

It has been a distinct pleasure to appear before you. I am grateful for your time, and I am so bold as to suggest that if you conclude, in the discussion which is to follow, that either of these proposals have merit, that you do not pass resolutions concerning them.

PRES. EBERLE: Discussion will be led by Judge Baum.

MR. O. R. BAUM: President Eberle and Members of the Idaho Bar. After being advised that I was on the program I received from a member of the Supreme Court of a certain state, a letter reading something like this: "I have a fellow who wants to go into the practice of law. I wonder if you know of anyone who has office equipment, library, desk, etc. If so, let me know." Well, I thought the situation over and I replied that I had no use for a library and no use for a desk and office, but I didn't suppose the public was aware of that fact and I sincerely hoped that he would keep the informa-

tion to himself as I wanted to remain in practice a few years longer.

Today we are confronted with a very peculiar and changing situation. I see before me here a great number of practitioners, a large number of whom tried many cases before me during the time that I was on the Trial Bench; a real advocate was a necessity in every county and in every district. If you will take your present court calendars and compare them with the calendars ten to twenty years ago, you will note that there has been an alarming decrease in causes actually filed or causes to be tried. We are undergoing a complete change in our economic life and this change is having a wholesome effect upon the type and character of business that an attorney today enjoys.

The attorney today associated or connected with business or who knows about practical business problems is the man who is being financially rewarded.. One of the growing fields for a lawyer today is the tax field and to properly handle the same, the lawyer must know something of practical business problems, have a touch of accountantcy and be well versed, not only with laws pertaining to taxes but the regulations of the various Departments.

The young practitioner today, unless he has given some consideration to the change that we are undergoing, is indeed having, and will have, a difficult time in establishing a remunerative practice. I have associated with me a very delightful young man, the son of a man whom you all knew, General Peterson, a great advocate. Ben frequently inquires: "When are there going to be trials?" The register of actions in Bannock County disclosed that in the early twenties there were almost 1,000 cases filed in one year, and only yesterday I made an investigation of the register of actions in Bannock County and in seven months there was less than one case filed for each working day. Some lawyers will answer my statements by saying that litigation comes in cycles, that is, for a period there will be lots of litigation and then for other periods there will be very little, but as a whole they will average up. That may be true, but I doubt it. The change that we are undergoing at the present time economically and with the establishment of Boards and Commissions clothed with judicial powers has and will continue to lessen the work for a real advocate.

The speaker who preceded me, Mr. Martin, made some very interesting comments as to the establishing of clinics. The establishment of clinics, in my opinion, should be given serious consideration. One would be able, by attending a clinic, at all times to be properly advised as to the new conditions that a practitioner must meet, and by so doing a practitioner could adapt himself to the business that was most profitable. The accountants today are persons who are interested in accountancy and who have permission to practice before the various Tax Bureaus, hence are depriving practitioners of some very profitable business.

I rather believe that we take ourselves too seriously. We should so conduct ourselves as a body that we will have the respect of the community. A number of years ago when Uncle Joe Cannon was Speaker of the Houee, a Representative from Indiana tried day in and day out to be recognized but Uncle Joe wouldn't recognize him. At last, in desperaton, he went to some of Joe's friends. These friends took him to Uncle Joe and explained the trouble. Uncle Joe advised him to read the rules and then if he was not recognized, to come back and discuss the matter with him. The Representative studied the rules very diligently and still could not obtain recognition. He went back to Uncle Joe and said: "I have read the rules and yet you will not recognize me." Uncle Joe said to him in a whimsical way: "Have you read rule 13?" He said: "No, I wasn't able to find rule 13—tell me, what is it," and Uncle Joe replied: "Don't take yourself too damned seriously."

You may think my remarks are idle, but I am going to undertake to show you why as a body we are not looked upon with favor by the pubic. For some years past we have been attempting to stamp out, as we put it, the illegal practice of law, and every time we occupy ourselves as a body in prosecuting some real estate man, we are ridiculed by the general public. The Scriveners in England at one time were the only class of people skilled in drafting transfers of real estate and like instruments. The Scriveners were not lawyers, but we as lawyers assume the right to draw, and to see that no one else draws, such instruments. In commenting upon this matter, I do not intend to criticize any member of the present Commission or any members of the Bar who has been a member of the Commisson heretofore, but I want to call your attention to the fact that our association, some two years ago, caused an Abstracter in the town of Soda Springs, Idaho, to be charged with illegal practice of law. There was one attorney in Soda Springs at that time, one in Paris and one in Montpelier, and that one in Soda Springs was not interested in drafting deeds, mortgages, etc., and would leave them all to the Abstracter. The Abstracter was far more qualified to draft a deed covering Soda Springs property than any lawyer in this house. The Abstracter was defended by Mr. A. L. Merrill of Pocatello, whom you all know and respect, myself and Mr. R. J.. Dygert, the only attorney practicing at Soda Springs, Idaho. Now, as we go about Soda Springs, our friends say: "Do you belong to the Bar Association of Idaho?" This one action by the Bar caused the Bar generally to be held up to ridicule. What right have we to say to a man who owns property and wants to have it transferred whom he shall employ? It is his property, but we try to make ourselves his guardian, and you know when one attempts to compel persons to patronize themselves that the general public looks with disfavor upon such action.

We have heard during the past few months a great deal about "socialized medicine," and if we are not careful, we will have socialized practice of law. Conditions have changed and changed immensely. When I began practice in Idaho, perhaps the dumbest in-

dividual who ever was admitted to practice law could have made a decent living, but that is not so today. We perhaps do mass thinking today instead of individual thinking, and a regular clinic might or might not be the best for the young practitioners. If there is one profession wherein individuality counts most, it is in the law profession.

We are now going through a complete change in governmental activities and I think perhaps one of the greatest aids to lawyers generally would be for all members of our profession to be just a little more active in civic affairs in their own county. If unable to participate in the affairs yourself, you should at least see that a member of the Association does so. I am not interested in what your individual politics are. We have non-partisan Boards today and we have non-partisan judiciaries, and when I say we should be active politically, I mean that you should take an active part in the various governmental activities in your respective communities. If you cannot go yourself, see that some of your brother lawyers do go to the Legislature and to Congress, and by so doing you can assist in getting the government out of business, and by so doing you will be putting more business in the individual law offices.

D. A. CALLAHAN: From your investigation down in Soda Springs, would you say there was any connection between the fact that for a long time deeds and so forth have been drawn by an Abstracter, and the present condition of titles in that county seat?

JUDGE BAUM: I would say this, Mr. Callahan. That probably in all but two instances the titles in Caribou county have been balled up by lawyers. What I was trying to say was, (and I was using that as an illustration), I don't think the Bar should go out and try to take a corner on business by court or legislative action, because it doesn't create a good-will among the public.

MR. CALLAHAN: You suggest that the lawyers go to the legislature. Will you suggest any means of getting them to elect lawyers to the legislature?

JUDGE BAUM: Yes, if the lawyer has behaved himself at home he will be elected.

P. J. EVANS: I have listened with a good deal of interest to the remarks of Mr. Smith, and while I am not, as probably none of you are, convinced that the time is ripe, or the necessity sufficiently great, to require the bonding of attorneys in order to guarantee the payment to their clients of the moneys that may be collected by them, I think anyone who is acquainted with the conditions existing and the feeling that the general public has for the attorneys, feels the time is about ripe for the attorneys of the State of Idaho to clean their own house lest the public clean it for them. This morning Mr. Johnson, the Prosecuting Attorney of Franklin County, was telling me of a little incident that happened to him the other day that indicates the

estimation in which the members of the legal profession are held by the general public. He told me of a fellow who is carrying a cartoon around with him which depicts two individuals contesting over the possession of a cow, one pulling at the head and the other at the tail, and at the same time two attorneys, one on each side, milking the cow. It is quite amusing, but that is the conception the general public has of the attorneys.

Isn't it true that some of the law lists have adopted a practice somewhat analogous to bonding attorneys? I don't know of any law list that requires an attorney to furnish a bond as a condition of being accepted as a member of that list, but I do know of some that furnish bonds to their customers who use the attorneys recommended by those lists. It might be a good idea to appoint a committee to investigate this suggestion and at least give it some serious consideration. It is evident that Mr. Smith has devoted a good deal of attention to it. I think that we will do more good to our profession and to its members, and rehabilitate it in the estimation of the public if we will show ourselves alive and ready to accept constructive criticism and do those things that would create greater confidence on the part of the people in the members of our profession.

If the legal profession itself should adopt and should go before the people of the country with the suggeston that it is prepared to recommend or establish a requirement that the members of the profession should furnish bonds in order to guarantee that the profession should not be contaminated with members who are unfit to receive the confidence of the public, it might go a long way to assure the public that the members of the legal profession took their obligations seriously and desire not only to receive but to deserve the confidsnce of the public. It is a new proposition. I have no definite conclusion about the matter, but such voluntary action on our part might go a long way to prevent the attempt on the part of the public to adopt more severe disciplinary measures.

Mr. Smith gave you some statistics regarding the number of attorneys who have been disbarred for failing to account for moneys collected for their clients. I want to tell you this, that the number who have actually received disciplinary action from the members of our State Bar Commission are only a small percentage of those who have been guilty of such conduct in this state. I know of some in our own section and I know of some at the present time against whom complaints of that character have been made. Now, the thought occurs to me that we are rapidly falling, in the estimation of the people, to the same lowly position that members of that other great profession have fallen, the medical profession. You lawyers who have had occasion to bring suits against members of the medical profession for malfeasance or malpractice, know how difficult it is to get a man of the medical profession to testify in a case of that character. The members of the medical profession seem to have entered into an agreement with each other that the ethics of their

organizaton prohibit them from testifying in malpractice suits against each other. This is a very general impression.

You might just as well look the matter straight in the face and recognize the fact that the impression is becoming general among members of the public that it is impossible to get any lawyer to take any action against a brother lawyer who has appropriated funds belonging to a client. They have entrusted bills to lawyers to collect, and know that the lawyers have collected the bill, and have not been able to receive any accounting for the money, and have gone to other lawyers and solicited advice as to what they should do to make the first lawyer pay over to them the money he has collected, and every lawyer shies from taking any action against his brother member.

These suggestions made by Mr. Smith are deserving of our most serious consideration.

PRES. EBERLE: Gentlemen, if there is no further diecussion, we will adjourn until two o'clock.

THURSDAY, JULY 27, 1939
(Afternoon Session)

PRES. EBERLE: The meeting will please come to order. The report of the canvassing committee shows the following result: George Donart, 27; C. W. Thomas, 81. Mr. Thomas is, therefore, appointed Commissioner for the Western Division.

First in the line of business this afternoon is an address on the topic, "Is the Bar Satisfied With the Judiciary?" delivered by Wilbur L. Campbell, of Grangeville. Mr. Campbell.

MR. CAMPBELL: This assignment is one which I feel to be outside of my ability. There have been occasions where in connection with my practice before the courts, I might have become voluble and vociferous. Undoubtedly it is better not to approach this subject under the heat of provocation.

Judges are men, and like mankind are unfortunately in many instances influenced by flattery, directed in too many instances by an inflated egotism, and are too easily influenced by criticism, even though it be constructive and educational.

The position is exalted and one to whom the average man and woman looks with respect, by reason of the fact that a judge is ordinarily considered to have been a leader, in his profession, and that he has been elevated to his position by reason of eminent qualification and experience, to sit as an arbiter in the disputes between men.

Possibly the one thing to which criticism may be directed as the most vicious is a judge's attempt to establish political influence. Possibly all judges are more or less affected in this respect. It is disgusting to listen to the trial judge who is speaking over the lawyer's head, and addressing the courtroom audience, or the jury, and his remarks being solely directed for the purpose of personal aggrandizement, nothing more nor less than vulgar campaigning for the coming election.

It is doubtful whether any benefit is derived by such conduct. We may assume that it does not affect the individual of average intelligence, who really loses respect for the judge. And it is doubtful whether the individual whose intelligence is below average will be influenced to any extent beneficial to the judge. At least his influence would be small if any in the judge's behalf.

The worst effect occasioned by such conduct is the fact that the jurist thereby lowers his dignity and position and destroys the average man's respect and veneration for courts and judges. No good excuee is available. Such conduct is inexcusable and in reality vulgar. If anything is worse it is the desultory remarks and conversation directed by the judge to the litigant in court or witness in the court room, whom he assumes has a power to exert influence in the county or district.

It leads to remarks of the individual that the judge can be reached or influenced; that he may be "fixed." That, "The Judge and I are good friends," "And the Judge will see me through." And this is further encouraged by the fact that sometimes judges do discuss matters in litigation outside of the court room to the man on the street, who is not directly interested or concerned, and even with a litigant or party in interest.

Then there is egotism of the jurist with which we must contend. It has been said that egotism is a mask for ignorance. At least, it is evidence of ignorance, and its exhibition is more depressing when coming from a man in honored judicial position, than from the street gamin, who is solely influenced by ignorance and want of training and experience.

You know the type. He who prefaces his remarks with a history of his experience, training and ability and who reviews the responsible positions he has held; his wide and extensive use of newspaper publicity, which glorifies the judge, belittles the losing adversary and minimizes the professional work of the successful advocate.

Ego is responsible for more miscarriage of justice, disregard of law and fact than any other vice. Egotism directs the judge to interrupt your presentation of a carefully prepared argument supported by an exhaustive presentation of authority by a cool statement that he is fully informed as to the law. It prompts the judge to substitute his opinion for the law and the facts. It develops after a while into a case of egomania, and unconsciously influences the acts and conduct of judges who are really capable and have real judicial ability.

Judges, as well as lawyers, should properly realze that the majority of their acts become mattere of record, open to the eyes of the world. And while much of the arrogance, unfairness, prejudice and misconduct is not recorded, sufficient is preserved to clearly indicate the lack of integrity, fairness and ability of the jurist or of the advocate.

Uncertainty and indecision on the part of a judge is fully as bad as egotism where it exists. I refer to the type who by reason of his being incompetent, indolent or lacking character, never decides a case, or makes a decision and reverses himself. This type is of course the incompetent, and the only relief is to replace him by a competent man, as we should the vicious and corrupt.

Then there is the judge who is a compromising jurist. He who departs from the legal authority and awards a dogfall, where it is assumed that each party is awarded sufficient to appease, but insufficient to justify either in asserting that his rghts have been established and/or wrongs remedied.

All these are mentioned. No need to detail the rest, and although these criticisms seem directed more to the trial judge than to the appellate, yet they apply with equal force to each. Both are too prone to refuse to remedy wrongs and to establish justice, and to base their decisions upon precedent, and to evade the relief granted under the basic principles of elementary, common, and unwritten law.

What I have attempted to convey is better said by Judge Cardoza, in his book, "The Growth of the Law."

> "Judges march at times to pitiless conclusions under the prod of a remorseless logic which is supposed to leave them no alternative. They deplore the sacrificial rite. They perform it none the less, with averted gaze, convinced as they plunge the knife that they obey the bidding of their office. The victim is offered up to the gods of jurisprudence on the altar of regularity."

And I may add that this type of jurist attempts to justify his position by a long list of cited precedents—they exhaust all written authority.

We are entitled to criticize judicial indirection, to a certain point. Criticism that is fearless, just and constructive will alleviate much evil, and adjust conduct in many instances.

The members of the Bar are to be criticized for maintaining an apparent spirit of indifference. In failing to take a forceable stand, instead of trying to obtain special favors and treatment at the hands of a judge, and in submitting to treatment that should be forcibly and fearlessly denounced instead of being condoned.

I recoil from offering abstract criticism of the jurist, whose acts are so apparently fraught wtih narrow perception, bigotry, egotism, and with apparent corruption. Such a man is prostituting a noble and honorable profession, is beyond hope of redemption. Criticism does not alleviate or have any correcting effect where he is concerned. He drowns himself in inordinate selfishness, and invites disaster as does the criminal.

I feel that the greatest good and relief may come from reviewing and discussing the careers and accomplishment of those jurists who in the past have honored and illuminated the law and the profession by exhibition of ability, progressiveness, fairness, and by exemplification of their beliefs that law should be interpreted and administered for the benefit of all mankind.

Of course much good comes from fair and fearless criticism, which although it may not effect a reformation of the jurist who departs from his duties, although in some instances it may, yet arouses public opinion to the point where replacements are made upon the bench.

It would be wonderful if every man in judicial position would shape hie course and official conduct in the light of those who in their judicial position have attained the utmost.

The great Justice Holmes has said:

> "If the world were my dream, I should be God in the only universe I know. But although I cannot prove that I am awake, I believe that my neighbors exist in the same sense that I do, and if I admit that, it is also easy to admit that I am in the universe, and not it in me."

In closing, for a rule and guide to jurist and to advocate, in the words of Spinoza, a man has done his utmost when he can say:

> "I have labored carefully not to mock, lament or execrate the actions of men; I have labored to understand them."

(In accord with the program, calling for candid, and unreported, discussion, the discussion is omitted.)

PRES. EBERLE: Reform and Control of Legal Education and Admission to Practice. Mr. Haga.

O. O. HAGA: Legal Education and Admission to the Bar have received more thoughtful consideration by the American Bar Association than perhaps any other subjects. The many addresses that have been delivered, the many articles that have been written, the heated discussions that have been had, during the past 30 years by eminent members of the Bar, by learned deans and professors of law schools, and by members with long experience as Bar examiners leave but little for original thought or new ideas on the subject assigned to me for discussion.

The most valuable contribution that I can make to the deliberations of this convention on this subject, will be to review the action that has been taken by the organized Bar of this country and by other organizations created especially to deal with the subject.

THE AMERICAN BAR ASSOCIATION

As far back as February, 1913, the Section of Legal Education of the American Bar Association requested the Carnegie Foundation to make a thorough investigation of the subject and report its findings and conclusions. The Carnegie Foundation spent 8 years of patient labor in response to that request; and in August, 1921, submitted its report, containing some 420 pages. At the convention of the American Bar Association held about 10 days later, the Section of Legal Education—of which Elihu Root was chairman and John W. Davis was vice-chairman—after a conference with the author of the report, formulated resolutions which were adopted by the American Bar Association on the motion of Mr. Root.

The minimum requirements as set forth in those resolutions have never been departed from, rescinded or modified by the Association. The standard thus fixed has served as a guidepost for law schools, for courts, legislatures, and law students.

The resolutions read as follows:

> RESOLVED, (1) The American Bar Association is of the opinion that every candidate for admission to the Bar shall give evidence of graduation from a law school complying with the following standards:
>
> (a) It shall require as a condition of admission at least two years of study in a college.
>
> (b) It shall require its students to pursue a course of three years' duration if they devote substantially all of their time to their studies and a longer course if they devote it to other studies.
>
> (c) It shall supply an adequate library for the use of the students.
>
> (d) It shall have among its teachers a sufficient number giving their entire time to the school to ensure absolute personal acquaintance and influence upon the whole student body.
>
> (2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the Bar, and that every candidate should be subject to an examination by public authority to determine his fitness.
>
> (3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not, and make such publications available, so far as possible, to intending law students.
>
> (4) The President of the Association and the Council on Legal Education and Admissions to the Bar, are directed to cooperate with the state and local Bar associations to urge upon the duly constituted authorities of the several statee the adoption of the above requirements for the admission to the Bar.
>
> (5) The Council on Legal Education and Admissions to the Bar is directed to call a conference on legal education in the name of the American Bar Association, and the state and local associations shall be invited to send delegates for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles above set forth.

Mr. Root, speaking for the Section on Legal Education, in support of his motion for adoption, said:

> "* * * if there is to be a standard, the line must be drawn somewhere. Wherever it is drawn, there will be somebody who will be inconvenienced. I should be sorry to have the gentlemen representing law schools that do not care to conform to this standard inconvenienced, but I care a great deal more about the honor and dignity of the American Bar than I do about their convenience. I care more about having the Bar an agency comcompetent to secure effective administration of justice in this disturbed country, than I do about the gentlemen's convenience; I care more about having somebody in America, some organized body, with the courage and decision of character that make it competent to meet the new conditions that confront us, and which are tending to bring the Bar and the administration of the law and the law itself into disrepute and ineffectiveness. I care more for that, than I do, sir, about the inconvenience of however-close a friend."

Since the adoption of these resolutions by the American Bar Association, 101 of the 180 law schools now in the United States have obtained, after due investigation, the approval of the Association and are classed as "approved" schools; the remaining 79 law schools are classed as "unapproved." The list of approved and unapproved schools is published annually by the Association in its Review of Legal Education in the United States. All schools that can qualify seek classification on the approved list. The reason is obvious.

THE ASSOCIATION OF AMERICAN LAW SCHOOLS

In 1900 there was organized the Association of American Law Schools. This association hae supplemented the minimum standards fixed by the American Bar Association, and adopted in some instances even higher standards. All law schools that can qualify have also sought membership in that association, and 97 of the law schools of this country are now members of the Association of American Law

Schools. This association is closely affiliated with the American Bar Association and with the Section on Legal Education and Admissions to the Bar.

PRE-LEGAL EDUCATION

Forty-one states now require, by statute or rules of court, at least 2 years of college work before the student enters the law school. Some 20 of these states have added this requirement within the last 5 years. The law schools have gone even further. About 109 now require two years of pre-legal study; about 32 require 3 years, and 9 require a degree from a 4-year course. The schools are not only increasing the period of pre-legal study, but many of them are now demanding a very high standard of scholarship as a prerequisite to admission.

Some of the larger and more important schools have entered upon a rather intensive study of the type and kind of pre-legal education that is proving most useful to the law student. The records so far available show that at least as far as the work in the law school itself is concerned, the 3-year pre-legal students make a better showing than those who have had 4 years; that the 2-year pre-legal students make substantially as good a record in the law schools as the 3-year men. In other words, there seems to be a point where the law of diminishing returns begins to operate in regard to the amount of pre-legal education that will show the best result in the student's work in the law school. When the experiments and tests are extended to the success AFTER admission to the Bar, the results may be different.

The American Bar Association in its resolutions, for obvious reasons, did not specify the subjects that should be included in pre-legal education. That matter, however, has received and is still receiving much consideration by the deans and faculties of the law schools. The tests now being made should lead to rather definite conclusions.

BAR EXAMINATIONS

The American Bar Association, by its resolutions fixing minimum standards, opposed the admission of attorneys on the basis of a law school diploma. That action has had a most important influence on the type and quality of instruction. The schools must now keep in closer touch with the heads and requirements of the Bar. Unless they can equip the student to pass the Bar examination, he can not turn to account the investment he has made in his law school education. The Bar and Bar Examiners must not overlook the fact, however, that the law schools must deal largely with moot questions; that questions of pleading and practice must be left to a large degree to be acquired by the student after he has been admitted to the Bar; that the schools deal fundamentally with the principles of the law on the various subjects generally recognized as important, and that they strive to develop in the students the power of factual analysis and the ability to think in a legal fashion. The learned men who now

generally constitute the deans and faculties of the law schools are doing a good job and are alert to their responsibilities to their students and the public.

Law schools and medical schools have sometimes been compared much to the disadvantage of the former; because a much larger percentage of the medical students successfully pass the medical examination.

This comparison is not entirely fair. All of the sub-standard medical schools have been eliminated for many years. There are now only about 80 medical schools in the country whereas there are 180 law schools. The medical schools, for many years, have demanded very high scholastic standing in pre-medical studies as a condition to admission to the medical school.

But there is another vast difference. The medical student does not deal with moot questions, he deals practically throughout his entire course with the human body, diagnosis, diseases, treatments and operations, the same as he will deal with those subjects after he graduates. He receives practical training in the hospitals as an interne. The medical student does not have constantly changing factual problems, such as the attorney encounters in the modern business world. The human body is the same today as it was 100 years ago. There may be improvements in the diagnoses and treatments of diseases and in the technique of operations, but, after all, the medical school deals with fairly-well standardized problems. In the legal profession every case presents facts peculiar to that case, and the statute law is constantly changing, and so are—to some extent—the decisions of the courts.

I have referred to the fact that the American Bar Association stands by its resolution that no graduate of a law school should be admitted to the Bar without first passing an examination given by an independent board of examiners. The so-called "diploma privilege" is now recognized in only a few states, and many of those states have always had rather primitive requirements for admission to the Bar.

Dean Kirkwood of the Stanford School of Law, in an address before the National Conference of Bar Examiners at San Francisco this month, said:

> "The American Bar Association was undoubtedly right about the lack of wisdom of the diploma privilege in 1921. It is even less defensible in 1939."

Embarrassment has arisen in some states because of the failure of many graduates from approved law schools to pass the Bar examinations. That difficulty is being solved by attacking the problem from two angles:

First: Law schools are demanding a higher standard of pre-legal scholarship and better grades in the law school, and they are giving

more consideration to the standard fixed by the Bar examiners for admission.

Second: The Bar Examiners are giving more consideration to the real function of the law school and to the type of training which the student can reasonably be expected to receive in such institutions.

California is making notable advancement in this matter through a committee on cooperation between the law schools and the State Bar of California. At the convention of the American Bar Association in San Francisco this month a symposium was presented on the California system. Addresses were made by:

The chairman of the California Committee on Cooperation, a practicing lawyer of wide experience;

The chairman of the Committee of Bar Examiners;

The Dean of the School of Jurisprudence of the University of California;

The Dean of Hastings College of Law;

The Dean of the School of Law of Stanford University;

Members of the California Committee of Bar Examiners, and

The President of the State Bar of California.

These men were most enthusiastic over the results they had accomplished for the general good of the law schools, the students, and the Bar of California. The Committee on Cooperation consists of the deans of the several law schools, the members of the Board of Bar Examiners, President of the State Bar, and a committee of practicing attorneys selected by the State Bar.

Similar cooperating or coordinating committees are now functioning in a number of states. Without such cooperation there is danger of regimentation of the law schools of the type of Bar examinations. It must be conceded that the educational function of the law schools can best be managed and directed by those specialists who are giving all their time and attention to the educational process and who, by numerous tests and experiments and the exchange of ideas and statistics through conferences with the faculties of other law schools, are in a position to pass upon the capacity of students who are without practical experience at the Bar, and on the subjects and training that will best furnish the foundation for a successful professional career.

The deans and faculties of law schools are alert to the demand that is being made upon them to send out students equipped to meet the requirements of the practitioner of today. It may be of interest to note the survey made this year by Dean Harno of the University of Illinois Law School. He sent questionnaires to about 700 of the alumni of his school. The questionnaire listed every subject which might be included in the curriculum. He requested the recipient to note the extent to which each subject had been used in his practice, and to note what subjects he had omitted from his course that later experience showed he should have taken, and what subjects he had taken which his experience showed were of little value, also what subjects he would now include in the pre-legal curriculum. Some 461 questionnaires were returned. The answers were classified according to the size of the city in which the attorney was practicing. The information thus obtained was most illuminating, and it also showed how the practice of law is shifting.

Among the subjects which had been omitted and which subsequent experience showed should have been taken, Taxation headed the list, followed by Bankruptcy, Insurance, and Administrative Law, in the order named.

ADMISSION OF ATTORNEYS FROM OTHER STATES

Most states admit attorneys from other states without examniation if they have been engaged in the active practice of the law for a number of years and can furnish the necessary credentials as to character and professional standing. In other states where examinations are given, or may be given, to practicing attorneys from other states, the examination is substantially different from that given to student applicants. I believe Idaho is one of only six states requiring examination from outside attorneys and giving to all applicants the same type of examination. The other states are Florida, Louisiana, New Jersey, Texas, and West Virginia. A change in that matter should be given consideration.

A BOARD OF BAR EXAMINERS

Idaho, I am told, is the only state in the Union in which the Commissioners of the State Bar also serve as a Board of Bar Examiners. That system is not considered desirable. In discussing this matter at the recent San Francisco convention with men of wide experience in the subject now under discussion, there was a concensus of opinion that the Commissioners of the State Bar should be relieved of the burden and, by rule of court or by statute, provision should be made for the appointment of a Board of Bar Examiners who should be elected with special reference to their qualifications for that particular type of work. Bar Examiners who are intereted in their work and who give it the proper consideration and attention are generally retained on the Board by reappointment from time to time. Experience and training in that work is highly desirable. Furthermore, the criticism and embarrassment resulting from Bar examinations tends to impair the usefulness of the Commissioners of the State Bar if that Commission acts as Bar Examiners. The Commission has a sufficient load if it handles the disciplinary problems and attende to the numerous other things that require the attention of the Commission in the interest of the State Bar.

The Bar Examiners should be removed as far as possible from an

appointing power that is in any sense political. The approved system recommended by those most experienced in this field is that the appointment of Bar Examiners be made by the Commissioners of the State Bar, and that there be established a coordinating or cooperating committee, functioning along the lines of the California committee

I recommend, therefore, that the rules of the Supreme Court be changed so as to permit the Commissioners of the Idaho State Bar to appoint Bar Examiners, and that the Commissioners also provide in their rules for the creation of a coordinating committee consisting of the Dean, and perhaps one or more of the members of the faculty, of the Law School, the Bar Examiners, and either the President or the Commissioners of the Idaho State Bar, and three or five practicing attorneys in the state.

PRES. EBERLE: Gentlemen, we have determined to shorten the sessions at this annual meeting and play a little bit. I shall defer further discussion on this subject until ten o'clock in the morning.

FRIDAY, JULY 28, 1939
(Morning Session)

PRES. EBERLE: The meeting will please come to order. We will continue the discussion of the subject of legal education and admission to practice this morning, led by Mr. V. R. Clements, of Lewiston.

MR. CLEMENTS: Mr. President and Members of the Bar. Those of you who were present yesterday afternoon were privileged to hear a scholarly paper delivered by Mr. O. O. Haga of the Boise Bar. I doubt if more than a few of you appreciated the true significance of the subject and the amount of time and study in its preparation. What I have to say is only calculated to excite your interest to the point of emphasizing that you proceed with caution in any recommendations that you may decide to make. In my opinion, it will be necessary for this Bar to consider and act upon questions related to this subject within the next year or two. By reason of our present situation the powers of this Bar must be enlarged and redelegated.

Mr. Haga's paper was entitled "Legal Education and Reform." When I was invited to discuss this paper I was told the subject embraced the following:

(1) Should the Bar control the law school?

(2) Whether graduates of the University of Idaho law school should be admitted to practice upon diploma.

(3) Should a board of Bar Examiners be appointed?

Mr. Haga in his paper has recommended that graduates should not be so admitted. He also recommended the appointment of a Board of Bar Examiners. From my investigation of this matter,

I am now willing to say that I subscribe to and concur in Mr. Haga's recommendations.

We must start with a premise. What brings up this question and what present-day relation does it have to the practicing profession? You must consider it from two viewpoints:

(a) Whether our scholastic training has been inadequate, or

(b) Whether our training and qualifications for moral fitness have been and now are inadequate.

Tuesday I heard this Association addressed by several members who remarked that the legal profession was in disrepute and that the time had now come for the legal profession to clean its own house. I was reminded of the admonition given, either last year or the year before, by the President of the American Bar Association, that the profssion must clean its house of the few undesirable members that were casting unwholesome reflections upon the entire profession. Such a necessity must be recognized from the significance and influence of current public print, articles of the nature now being pubished by Collier's Magazine for the last two weeks by Dixie Davis, who relates his experiences and activities as a lawyer for the most notorious mob of gangsters that ever existed in any civilized country, and those reporting the trial and conviction of a federal judge for accepting huge sums in bribes for his judicial decisions. These cannot but shock public conscience and incite revolt against continuance of such things. Such conditions and a prevention of them renders of paramount importance the subject discussed by Mr. Haga. However, let it now be said that such conditions are not universal but they probably are to such extent that the whole of the profession must suffer from the mass condemnation for the acts of relatively few.

Practically speaking, the public is not concerned with the scholastic training of their lawyers. They are interested in results, and only a small percentage have direct contact with the profession. Consequently, public belief is largely founded upon public print, which in many instances is distorted as to the nature and extent of the unpardonable conditions existing in the profession by reason of a pernicious few. However, we must recognize that by reason of the few, we must proceed to correct and prevent such conditions. This then prompts the consideration of whether or not our students are now being properly educated and trained along ethical and practical lines. It appears to me that this should be the keystone to the house that we are now asked to clean. I will revert to it later after a discussion of the sub-heads of the subject.

Should the Bar control the law school? In speaking of our Law School and University I do not want to be misunderstood. I appreciate that I am partisan because I am a graduate. I don't pretend to be any credit to it, but I do say that this Bar and every taxpayer in the State can be justly proud of the record of the Law School of

the University of Idaho when its entire history is fairly considered. It is an accredited law school of first rating by the American Bar Association. If there is anything thought to be wrong with the Law School and its system let me venture to say that it is due solely and entirely to misunderstanding, or more appropriately, to lack of undersanding by this Bar, our Supreme Court and Legislative officials.

It is my opinion that this Bar should not attempt to control the law school other than pledging its ability, resources, and energies to see that it gets sufficient legislative appropriations to run it as it should be run in accordance with its standards and necessities. For those of us who have criticized it for not being practical enough, and most of us have, let us be honest with ourselves. No one can maintain that a student can be trained within a period of three years to be a competent practicing lawyer. It must be recognized that the teaching of the law and the practice of it are two separate and distinct undertaking, and that it is a tremendous job nowadays with the change in economic conditions and the philosophy of the law, to crowd into a youngster's mind in three years all the fundamental principles and theories of law necessary to equip him as a practicing lawyer. About all the law school can be expected to do is to prepare the student to find the law and be grounded in the fundamental principles sufficiently for the Bar examination to determine if he can reason legally, rather than merely to get the correct answer. If it does this it has accomplished its purpose.

Now to the next point. Should our law graduates be admitted to practice upon diploma? I say as Mr. Haga said, "No." I say this without criticism of our Law School.

The opinion I have just expressed is not intended to influence yours. I will relate to you the facts I have considered for what they are worth to you.

At the present time there are only seven states in the United States that admit graduates of accredited law schools to practice upon diploma without an examination by a board of examiners. The practice is not endorsed by the American Bar Association. Those states are Arkansas, Alabama, Florida, Mississippi, West Virginia, South Dakota, and Wisconsin. In the case of South Dakota the act has been repealed but will not become effective until 1948. After that time the graduates must submit to examination.

The graduates of the University of Wisconsin, which has a splendid law school, are admitted upon diploma, as well as the graduates of other accredited law schools of that state. However, Wisconsin requires examination of graduates of other outstanding and recognized schools such as Yale, Harvard, and Northwestern. I have in my files a letter from the Clerk of the Supreme Court of that state in which he expressed the opinion that it is only a question of time until this system will be discontinued and that state will adhere to the recommendation of the American Bar Association requiring graduates to take an independent examination. So in reality there are only five states following the practice. I also have in my files a letter from a member of the Alabama commission in which he says that in his judgment the system is not a fair one. He said that he did not consider the system practical because regardless of the many precautione taken, from time to time both visible and invisible political pressure is exerted in favor of particular applicants.

The history of this system shows that in most instances it was enacted as a method of competition to attract students.

The State of Washington at one time admitted graduates of their university upon diploma. This was changed largely at the suggestion of the dean of the law school, who contended the necessity of a Bar examination had a tendency to cause the students to constantly review their subjects rather than contenting themselves with their class examinations.

At one time North Dakota had this system, but experience resulted in it being abandoned in favor of a Bar examination.

Now to the third sub-head of the subject. Should a board of Bar Examiners be appointed? Yes, provided that related boards and committees are created to enable them to function properly. In Mr. Haga's paper he outlined the California system which is similar to that of Washington. I think you will recognize and appreciate that as our act is now written there are too many administrative duties placed upon our Commissioners. It is humanly impossible for them to physically accomplish all of the duties imposed upon them. What I mean by that is this. I previously remarked that the criticism of the Law School arose from a lack of understanding between the Bar, the Supreme Court, and the University. If we had a system similar to California or Washington this would be corrected. Washington, for instance, has a board of five governors elected by the Bar. They are charged with the executive duties of the act. Under this board is a committee denominated Legal Education Committee, which consists of a member of the Bar, the deans of both law schools and a member of the Board of Bar Examiners. This committee meets at stated times to discuss and determine the general character of the examinations to be given applicants. This results in balancing the theory with the practical aspects of the law. Our Law School has been criticized for not teaching more statutory law. Suppose one or two years were devoted to this, might not the Legislature repeal most, if not all of it? Therefore the most that can be expected is to teach so much of the statutory acts as are related to the fundamental principles of the law. If the fundamental principle is taught in such a manner to excite legal reasonaing, then statutory rule becomes a matter of reference, the existence and proper application of which the practitioner must necessarily never cease in his efforts to discover.

The one criticism that is made and should be heeded is the present deficiency in our system of legal education to mold the moral and

ethical characters of the applicants. This serves as the bottom upon which this discussed subject rests. If it is given proper thought and consideration, along with the creation of proper procedure, it will tend to eliminate many of the evils for which we are being criticized today and which have given rise to the demand that we clean our house. We must reach the conclusion that those instances of members bringing the profession into disrepute result from the absence of moral fitness rather than scholastic training. We cannot say that those millions of dollars that have been spent in the support and maintenance of our law schools for the last twenty years have not improved generally the theoretical and technical teachings of the law. But less strict considerations have been given to the improvement of the moral fitness for the lawyer. If we are to succeed in this we must proceed on the theory of building an army, train the young and discipline the old. The medical profession requires a year of internship, to demonstrate a moral and technical qualification to practice, regardless of the scholastic attainments, but no similar practical plan has yet been offered for the legal profession. However, it seems reasonable to assume, with our general improvement in techical education, that if the applicant is a person of high moral character and sufficiently grounded in ethical training and philosophy, he may proceed to practice without fear of disgracing the whole of the profession.

It is now being proposed in some states, and I believe practiced in some, that when an applicant registers for a law course in an accredited school, that he also register with a probation committee of the Bar association and thereafter report regularly as to his scholastic and private life, and this affords observation of the student during his academic career by competent disinterested people who are in a better position to judge his moral fitness to become a practitioner than his own friends or lawyers who have had no previous contact with him. Such a system should be seriously entertained by this Bar as well as recommending prescribed courses in ethical conduct and practices in the curriculum of the law school. If we start right we have better chances to end right. Such a course must be the responsibility of the Bar.

As to eliminating from the profession the few undesirables who cast a cloud over the whole, that is a simple matter. The means and authority is already established. It is now purely a question of attention and execution. No doubt methods of procedure can be greatly improved. Improvements will come, however, only from frank discussions between the agencies of power and not from propagandized publicity. We are now suffering from too much publicity as to the initiation of proceedings. Results alone should be publicized. If there could be a board or body capable of giving a person a fair trial by a speedy proceeding and a just judgment, it should be a group of trained and practicing lawyers. Unfortunately with initiation so elaborately printed and the long delay incurred in the prosecution of the proceedings, the announcement of ths result is less effective and

is sometimes detrimental to all concerned. So after all, if conditions are what they are referred to as being, it is simply a matter of speedy and merciless judgment. Whether conditions are as bad as they are represented is for us to determine. The determination, however, must be immediate. We cannot afford to approach the problem with an inferiority complex or without proper consideration of the fundamental facts. If this Bar gives proper consideation to the subjects suggested by the paper I have discussed, and the accomplishmente of other states who have recognized them, then it should not be long until the general situation is improved.

In closing let me say. Simply because this profession is advertised as being in disrepute over the nation, it does not follow that it is in disgrace in Idaho. Of course we should not be provincial, but after all, we are Idaho lawyers and so far as your record is concerned on the moral conduct of lawyers no lawyer that is practicing now has anything to be ashamed of on account of his profession. I thank you.

PRES. EBERLE: This matter will be referred to the delegates tomorrow morning. As I have said, Dean Howard of the University of Idaho Law School has been most cooperative, and although no machinery has been set up as has been suggested for the Board of Bar Commissioners to cooperate with the Law School, nevertheless the Commissioners have had a number of conferences with Dean Howard. I know Dean Howard is here and if he has anything to be added to this subject we would appreciate it.

DEAN PENDLETON HOWARD: Mr. Chairman, I have prepared no speech; I hadn't been asked to participate; I have not undertaken to prepare any material. I can only say that the University of Idaho Law School is a State institution governed by public authority, and any solution of this problem which is reached is satisfactory so far as the faculty of the Law School of the University of Idaho is concerned. I have been connected with this institution for the last ten years and the record of the university law graduates during that time, not only in regard to passing the state Bar examination, but the record made by those young men in actual practice of law in this state, has been a record of which I am very proud. The percentage of applicants who have passed the Bar examination each year has been very high, relatively higher than the record made by graduates of institutions outside of the state. The University Law School wants to work in harmony with the Bar; wants to work in harmony with the judiciary. That has been the attitude of the faculty since the time I have been connected with it. I know that the Law School is always willing to receive suggestions from the organized Bar and from the judiciary relating to curriculum, relating to the teaching of law, and the preparation of lawyers for the practice in this state.

Mr. Clements called your attention to the fact that any law school is faced with this difficulty. It has a period of three years in which to prepare a young man for the practice in the profession. Obviously, not everything can be covered in that space of time. We have to

select and we have to choose, and we have to pick the essentials. The purpose of the law training, as I see it, in any accredited law school should be to give the students fundamental knowledge of common law principles; sufficient preparation concerning statutes and practice in the state where the young man intends to practice to acquaint him with problems which exist in that particular jurisdiction. We can't cover the whole field of law; we can't undertake to make him an experienced technician, but we can give him a knowledge of fundamentals, we can teach him how to think in legal terms, how to analyze legal problems, and we can teach him how to find the law. I think if we do that we have done all that can reasonably be expected of any law school. We can't make that man a finished practicing lawyer. He's got to learn that when he gets out of school. I think this is an important topic and I am glad that the State Bar of Idaho has interested itself in this topic.

I want to repeat what I said at the outset. Any solution which is reached, which is approved by the Bar and by the Supreme Court of the State, will be satisfactory with the Idaho Law School.

FRANK MARTIN, JR.: Dean, we have heard from practicing lawyers around the state that the Law School has not been satisfied with the nature of some of the Bar examinations that have been given. This is an opportunity to confirm that or put it to rout. I'd like to know what the real attitude is.

DEAN HOWARD: You mean with the nature of some of the questions?

MR. MARTIN: In regard to the questions, I take it.

DEAN HOWARD: Of course, I haven't made any detailed study of the examination questions. I think on the whole the Bar Examiners have been a very industrious and very able board, and have endeavored to do their best all the time. I have no criticism of the motives of the Bar Examiners. I have seen questions on Bar examinations that I couldn't answer myself, and I wondered how many practicing lawyers could answer them, but I suppose that is to be expected. I suppose that some of the examination questions the Idaho faculty might propose would be difficult and might be susceptible to criticism. My principal criticism of some Bar examination questions that I have seen is the fact that there has been a little too much emphasis on the statutes, tendency to ask small detailed points, questions which are lifted out of the Code. Now, a young lawyer ought to have a general familiarity with the statutes of the state where he intends to practice, but I take it most any lawyer is going to practice only about fifteen feet away from the Idaho Code, and if he doesn't know what the particular statute is he's going to look it up. My suggestion is that the examination ought to test more of the fundamentals rather than the detail acquaintanceship with the particular statutes. I don't know whether that answers your question.

JAMES BLAINE: I think, as one who has taken one of the examinations not too long ago—in fact I took it twice—Dean Howard is quite correct when he says that the questions deal entirely too much with the decisions of the Supreme Court of the State of Idaho and the statutes. Mr. Clements said a while ago that the purpose of the law school is to teach the student how to theorize these cases. That is the whole purpose, to get your legal reasoning in law school; that is what you are taught, and the law examination in this state dwells, it seems to me, entirely too much upon the case law which is in a good many cases not based upon any general theory but a good many of them are very peculiar to the State of Idaho. If I was recommending anything I would recommend an examination where the questions can be answered entirely by theory and not related at all to the statutes or to case law of a particular state. I know it is hard for the Bar Commissioners; they have a tough time with that, because they are practicing lawyers and these questions present themselves much more frequently than a purely theoretical question. I think that we could get around that difficulty very easily by a Board of Bar Examiners whose term would be considerably longer than the present Commission. As you all know and realize, the average lawyer is not a good teacher, nor is he capable of writing an examination question. He has been out of school too long to know what kind of examination questions are given in the law school. The type of Bar examination questions is entirely different from that you get at the law school.

FABER TWAY: As a recent product of the Law School and admitted to the Bar in recent years in Idaho, I feel that the discussion has resolved itself down to this. When we are admitted to the Bar and receive our license we are holding ourselves out to the public as being able to advise the citizens of Idaho on Idaho law and procedure. Because after all, people who live in Idaho are interested in what the law in Idaho is and not what it is in New York or in any other state.

As Dean Howard has said, the law school teaches fundamentals and teaches how to think and to find the law. Then we should require a little practical training before we allow a man to take the Bar examination. Frankly, when I took the Bar examination and received my license I didn't feel I was qualified to advise people on Idaho law. And I think that a young lawyer should, before receiving his license, be forced to serve a clerkship or apprenticeship for a period of time either before he takes the examination or before his license becomes final. The law school from which I graduated, Ohio State University, is trying to get at the practical side of the legal training. It has started a legal clinic. In a larger city there are lots of people who are out of funds and who need legal advice, and Bar associations have committees to take care of those people. In recent years the Bar associations in conjunction with the Ohio State University, have established a legal clinic which is in connection with one of the relief set-ups in that state, and people come in and the young lawyers counsel with them and in cases where it is merely advice they want the

boys give it to them. In cases where court action is necessary, the members of the legal aid committee of the various Bar associations instruct the students in the handling of the cases and allow them to sit with them in the court room. I think that we should have some requirements of practical experience, either before the examination or before the license becomes final, and I think, too, that if the younger lawyer were apprenticed to an older man it would give the older man a chance to investigate the character and ability of the young fellow and before the license becomes final a report could be made to the examining authority, and I imagine that it would probably help us a lot in some of our ethical questions that come up.

P. B. CARTER: In view of what Dean Howard has said, this has occurred to me; is it or is it not desirable or acceptable to the Bar examining committee to receive from the faculty of the University of Idaho, suggested forms of questions for the Bar examining committee to give to the prospective lawyers? It occurs to me that the Law School faculty could submit very practical questions on subjects that the boys had been instructed on during their course of law, and let the Bar examining committee determine whether they would give them or not.

MR. CLEMENTS: One of the important things which I overlooked, but the most important consideration of this new program, is by whom are the Board of Examiners to be constituted and how are they to be selected? Now, the answer to Mr. Carter's inquiry I think is this committee I suggested for Idaho similar to that in the State of Washington, a committee designated Committee on Legal Education, appointed by the Board of Governors. That committee is represented by the Dean of the law school, one member of the Board of Bar Examiners, and then two or three other members that are selected out of the profession as a whole. That is the very purpose of that sort of a committee, to get together the technical and the practical problems upon which the questions should be based. Thus the theoretical does not have any predominant power, neither does the practical, but it affords a conference or a forum where a common agreement can be reached between the two. A Board of Bar Examiners is really the most important step in this whole system. Experience has taught other states that these men should be selected upon a basis of their peculiar fitness. You will agree that the average practicing lawyer is not capable of fulfilling a position of that kind. However, among your profession there are men who, by virtue of their academic education and legal experience, are fitted for that purpose. Those men should be appointed for longer terms, at least four if not six years, because it requires a considerable devotion of time and peculiar training and experience to adequately fulfill the duties of that position.

PRES. EBERLE: This matter and the discussion of it will undoubtedly be continued tomorrow morning when the delegates meet and take some action. In answer to Mr. Carter's question I might suggest that questions in law schools are based upon the teaching of jurisprudnce. As I said yesterday, they do not purport to teach the practical practice of law in that they cannot and do not teach the provincial law. On the other hand, the Bar Commission is confronted with the problem that the moment a man hangs up his shingle he is holding himself out to the public as a qualified lawyer. The next morning he may have an abstract. When he examinee that abstract if he is not familiar with the community property or provincial law of this State he is absolutely lost. That ie one thing that must be considered in arriving at a happy soluton.

PRES. EBERLE: The next subject is recent legislative matters and enactments of interest. A paper to be given by Francis Bistline of the Pocatello Bar.

MR. BISTLINE: I shall proceed upon the assumption that you are primarily interested in the enactments of the 1939 Session which directly affect procedure and practice. I realize, of course, you have all read the Session Laws. However, I shall first give a brief resume of such enactments, and in so doing shall start with the justice court and move upward.

Only one act affected Justice Courts and that was one which changed the witness fee in criminal cases from $2.00 to $3.00 a day and reduced the mileage rate from 20 cents to 12 cents. (Chap. 12).

There appear to be five changes relating to practice in the Probate Court:

Chapter 22 provides that on showing by verified petition that no executor or administrator has been appointed the Probate Court may without notice or further proceedings make an order setting aside to the surviving widow an amount not to exceed $300 from bank deposits. There is no cost for filing this petition.

Chapter 88 amended Secton 15-1840 to include the right of the mother of a minor to compromise a disputed claim exparte in the Probate Court if the father be insane or incompetent. As the statute was prior to amendment the mother could do this only if the father were dead or had deserted or abandoned the minor.

Chapter 97 provides that no bank or trust company authorized to act as executor or administrator is required to give bond and validates all appointments and acts in proceedings where no such bond was given. Where the will specifically requires bond, however, it must be given.

Chapter 114 added a new section, 15-905A, and provides that an executor or administrator may lease real property without an order of the Court when the tenancy is from month to month, or for a term not to exceed one year, and the rental does not exceed $300 a month.

Chapter 151 provides that persons afflicted or suspected of being afflicted with mental diseases may be admitted to the State Hospitals without an order of commitment by the court upon proper submission of history to the Department of Public Welfare and physician's opinion that person is mentally ill, or in such mental condition

as to warrant further observation, diagnosis, or treatment in a State Hospital, and that such person himself sign an agreement to submit himself to such observation, examination or treatment.

While strictly speaking this enactment is not one of court procedure, it is mentioned because it is a departure from court procedure. Its purpose, as explained by those in charge of our mental hospitals, is to try to catch those cases that have not reached the incurable stage of insanity. I do not believe that there was any thought that it might be utilized in criminal cases where insanity is contemplated as a defense. However, it may prove useful in that respect.

So much for the Probate Court. Now for the District Court:

Only one act exclusively affected District Court procedure and that was Chapter 184 which added to Section 5-303 the right of a board of control created or operating by contract or otherwise, under or pursuant to the Federal Reclamation Act, and/or for irrigation district or districts of this State or other States to sue without joining the persons for whose benefit the action is prosecuted.

Likewise there was only one act directly affecting procedure in the Supreme Court (Chapter 70) which provided that on appeal from the Industrial Accident Board to the Supreme Court three copies, instead of one, of the transcript must be furnished.

One act affected practice in the Federal Court (Chapter 110) which defined a taxing district and authorized taxing districts as so defined to file a petition in Bankruptcy to facilitate readjustments and relief from special assessments. This was requested by attorneys for several such taxing districts.

In addition to the foregoing there were several which affected practice and procedure generally, the same being:

Chapter 12 providing that if personal property attached be claimed exempt that the same rule applies as under execution.

Chapter 98, which added Section 8-201A and granted the right to garnish state employees.

Then there were two acts relating to evidence, both uniform laws.

One, officially designated as the "Uniform Official Report as Evidence Act," provides that written reports or findings of fact made by state officers within the scope of duty, may be admitted as evidence of the matters therein stated, after proper notice, and subject to the right of cross-examination by the adverse party.

The other, officially designated as "Uniform Business Records as Evidence Act," defines the term "business" and provides that a record of any act, condition or event shall be competent evidence if the custodian or other qualified witness testify to its identity and mode of preparation, and if, in the opinion of the court the sources of information, method and time of preparation were such as to justify its admission.

Two other uniform laws pertaining to evidence were introduced and passed by the House, but failed of passage in the Senate.

There may be some other enactments that are of interest to lawyers individually, but I believe that the foregoing about covers those that are of interest to the profession collectively.

However, there were many matters of interest. Chief among these were two recommended by the Bar at Coeur d'Alene last year.

One was the Judge's Retirement bill.

The other was the bill placing the procedure making power in the courts similar to the present Federal system.

The Judge's Retirement bill provided for retirement of District and Supreme Court Judges on half pay from a fund to be derived from certain increases in filing fees and a small percentage deducted from their salaries. Retirement was optioned to any judge who had attained the age of 65 and served for at least ten years. This bill passed both houses but was reconsidered in the Senate, recommitted to Committee and remained there to the end of the session. Just why it was voted to be reconsidered I am not prepared to say.

The other bill, the one granting the rule and procedure making power to the courts, was prepared by a committee of the Bar and presented to the Senate Judiciary Committee for introduction. But it was not introduced by that Committee. It was then brought to the House Judiciary Committee and immediately introduced. Like all other bills, it was first sent to the Reference Committee. The Reference Committee is the committee having the say as to whether or not a bill shall be printed. After numerous prods into the Chairman of that committee, one day I was summoned to appear before it and explain the bill. Apparently I did a very poor job of it, because the next morning the bill was reported out with a recommendation that it be not printed. (And who was it said that lawyers control the legislature?) Mr. Hamer Budge and I then went to the Chairman of the Committee and asked him why the adverse report had been rendered, and he replied that it carried an appropriation of $7500.00; that if this were removed he felt the committee would probably vote to print the bill. So we removed the appropriation feature and thereafter the bill was printed. But it got no farther, because we were informed by the lawyer members of the Judiciary Committee of the Senate that there was no need to send it over because they would see to it that it got nowhere, so our efforts were dropped. But out of fairness to those lawyer members of the Senate, whose principal objection was that it was giving the courts too much power, I will say that they said that another two years of observation of how this was working in the Federal Courts would probably be advisable. That, if after that time, it looked safe, if they were in the next Legislature they would probably give it favorable consideration.

Realizing that it was going to be impossible to get that bill through, Mr. Budge and I introduced a bill embodying the features of

pre-trial as now in effect in the Federal Courts. This bill passed the house unanimously but met the same argument in the Senate Judiciary Committee as the rule making bill, and was still in the possession of that committee when the session adjourned.

There were a great many other bills, mostly of minor importance, which pertained to changes in procedure, but they didn't pass, consequently I am not going to touch upon them.

But before concluding there are a few things in connection with a Legislature that I do want to mention, that I believe are of interest to the legal profession, and chief among these is the Legislature itself.

It is to be regretted that more lawyers do not get the opportunity to serve in the Legislature. It is good for the lawyer and it is good for the State. And before finally concluding this speech I believe that I have some suggestions, which if followed would permit more lawyers to serve in the Legislature.

A Legislature as it is constituted and as it operates under our Constitution is a weird and wonderful thing. It is weird for many reasons and it is wonderful because in the final analysis good generally results instead of evil. In making this statement I am not critical of the personnel. Quite the contrary. The members are, in nearly every instance, leaders in their respective communities and are just exactly the type of men who should pass judgment upon important matters pertaining to the state.

No, it is the manner in which a Legislature has to work that I criticize. Any member may throw any kind of a bill into the hopper. There is no systematic method of obtaining any information as to the reasons back of a certain bill, or prophesying as to what their probable effect will be. Most of them are a disconnected portion of a large body of law, and in themselves have no particular meaning. From the time a session starts until its final adjournment there is generally a feeling that you are in sort of a race against time—that speed is the principal objective. And when, toward the end of a session, with the bills all jammed up, 27 farmers, 14 business men, 7 school teachers, 3 lawyers, and a few more from scattered vocations, finally succeed in acting upon 52 bills in one day, there is a general feeling of pride and satisfaction that we are really doing something for the State we so dearly love. Of course, at that stage of the game, most of the members have become familiar with Judge Baum's Rule 13 and learned not to take themselves too damn seriously, so they generally don't go to the trouble to even try to find out what they are voting on; but how they do vote!

But let us assume that they did want to know what they were voting on. What could they do about it? I will give you a few illustrations of the workings of the Legislature.

I mentioned the rule making bill, and the fate it met in the Reference Committee. Now, mind you, here was a bill unanimously endorsed by this Bar, introduced by the Judiciary Committee on which

Committee were three lawyers, and a committee chairmaned by an agrriculturist passed upon the merits of that bill by decreeing that it wasn't fit to be printed.

Take another instance. H. B. No. 373 was about to come up for consideration. This was a bill making several changes in the manner of handling the public assistance. Mr. Cyr, the Representative from Kootenai, came to me and said that he had been studying this bill and that he couldn't understand it, that he had spoken to the Attorney General, to try to get an explanation but that he was unable to get any satisfactory explanation from him; that he feared, from what he had heard that if passed it would result in taking assistance from a great many needy persons now receiving it, and that in addition thereto it would place an exceptionally heavy burden on the counties, which would be more than Kootenai County could stand.

The House being at recess at this time Mr. Cyr and I repaired ourselves to the Attorney General's office where we went over the bill with the Attorney General and two of his assistants.

We could find no positive answer to Mr. Cyr's worries. When the bill came up for consideration, Mr. Sullivan of Ada County attempted to explain it. I asked him specifically the questions that had been worrying Mr. Cyr and they were answered to our satisfaction and if I recall correctly there was scarcely a dissenting vote against the bill.

This was just a day or two before I returned home. Immediately upon my return home the County Commissioners and the Probate Judge took me to task for having passed H. B. 373. And when I asked them what was the trouble, they explained that they didn't see how they could operate for over three months on their direct relief, and that a lot of needy were going to have to forego assistance and they knew we'd have to special session inside of two months to correct the situation. To this date I don't know what the effect of that bill has been. Apparently no one has been cut off from public assistance who was entitled to it, and apparently no county has been suffering from an undue burden on account of it. I might state that earlier in the session several bills pertaining to changes in the public assistance law were carefully explained to us in general caucus from which we were able to get some understanding of them.

I don't want to burden you with illustrations, as I could go on and on and give you just one instance after another where it was necessary to vote on bills without having any idea of what you were voting on or what the effect would be if such bills became laws. One that may interest you is this:

H. B. 187 provided that affidavits pertaining to title such as affidavits of marital status, dates of marriage, dates of death, etc., could be placed on record and when so placed on record would be prima facie evidence of the facts stated in them. This bill passed both houses unanimously, and was vetoed by the Governor. I just learned last evening why this bill was vetoed and it was because of an objec-

tion from the Federal Land Bank and I further learned that the same lawyers who had drafted the bill after getting the land bank's objections joined in urging the veto.

Personally I voted for the bill because, from my experience, I thought it would be a good idea, and not because I had any idea as to what its effect would be. The other attorneys in the House voted for it for the same reason and the rest of the House voted for it because we told them it was a good bill and should pass.

Another illustration was the anti-deficiency judgment bill in 1937.

Now that I have made my criticism, I would not feel that my task was complete if I did not suggest a remedy. In fact, I couldn't call myself a "New Dealer," if I didn't have a remedy.

First, I suggest that the procedure making power be placed in the courts.

Second, that some sort of a Legislative research bureau be established to analyze bills from the standpoint of history, comparative legislation and their legal effect if enacted.

In view of the fact that the Rule making power is on the program immediately following this subject, I shall make but few remarks with regard to it, other than to say, that lay members of the Legislature rely entirely upon the lawyer members when it comes to bills pertaining to court practice and procedure. Yet under our present system these lay members who admit they know nothing about how courte should proceed, make the laws of court procedure, and those who spend a life-time working with court procedure have to sit on the sidelines and watch those who admit their incompetence tell them how they shall proceed.

Take for illustration in 1937, I happened to be the only attorney in the house. And it might be said that I had a virtual monopoly on procedural law, so far as the House was concerned.

In the '39 session, however, there were three attorneys in the House and in addition a voluntary committee from the Boise Bar were very helpful in connection with matters of interest to the profession.

However, as I said before, this topic comes on for discussion immediately after this one, so I will not take any more time discussing it here.

As to the second suggestion: That some sort of a legislative research bureau be provided, I wish to call your attention to an article in a recent issue of a current magazine entitled, "Kansas and the Well Made Law." It is very short and I am going to read from it: (Condensed from Current History as reprinted in The Readers Digest for February, 1939).

"Sam Wilson, manager of the Kansas State Chamber of

Commerce, was talking to a number of state legislators. 'If an automobile company operated the way a legislature does,' he said, "you'd see cars broken down all along the road; they'd put out a newfangled engine without first making sure it would work. That's the way we now make a law—on guesses or opinions, with no facts. No one knows if it will wrok, or how —and yet laws are the things we live by. I say a proposed law should be considered as scientifically as the materials they test in the Bureau of Standards.'

"Wilson set influential people thinking, and in 1933 Kansas stepped out with a new device designed to take the guesswork out of lawmaking—a device so sensible that it has since been copied in Illinois, Nebraska, Kentucky, Connecticut, Virginia and Michigan, and is being considered in three other states.

"Called the Legislative Council, the machinery consists of two well-coordinated parts: a bi-partisan group of 25 regularly elected members of the state legislature, who determine what new lawmaking is needed; and a permanent staff of independent research experts, who study all experience elsewhere that applies to an immediate problem.

"In most states, where legislatures meet—usually every other year—with no plan or program ready, hastily considered laws are all too frequently jammed through, without much knowledge of their probable effect. Moreover, the legislative procedure is necessarily amateurish, because studies show that about half the members of an average legislature are serving for the first time.

"Kansas feels that the Legislative Council has largely eliminated hit-or-miss methods. Instead of being spasmodic, lawmaking is orderly and almost continuous. The Council sifts out non-essentials, and the research experts concentrate on what is really important.

"The Council meets quarterly. While it is in session, any legislator, the governor, or any ordinary citizen may make suggestions. Each proposal is referred to a special committee, which either eliminates it or passes it on to the research staff for an analysis, according to the project's merits. When, for example, a farmer reported that bindweed was damaging crops and asked for remedial legislation, the research staff was asked to get the facts. Researchers soon found out just how the weed spreads; the extent of the damage; and costs of eradication by various methods.

"On one occasion, a legislator was insistently pushing a scheme to obtain more revenue by a higher tax on beer. The research staff, with figures from other states, showed conclusively that where the levy on beer was moderate it provided more revenue than when the rates were higher.

"All kinds of pet projects are dropped when a sponsor learns that his idea was tried and discarded elsewhere years ago; or that hundreds of pages of research material show most of the arguments to be on the other side. This has saved money and conserved a tremendous amount of time. Often there is no need for long committee hearings, a report covering all phases of the subject under consideration having previously been given to each member.

"The Council's research reports, summarized for easy reading, are sent not only to legislators but also to thousands of citizens who have asked for this service. Newspapers use them for editorial discussions. Thus legislators have a chance to learn from constituents what THEY think should be done; the voice of the people is heard. Another result is that pressure groups are placed at a disadvantage, since both legislators and public already have the facts on both sides.

"Much of the success of a legislative council depends on a wise choice of research director. At the head of the staff in Kansas is Frederick H. Guild, professor of political science at the University of Kansas at the time of his appointment, who had worked in the legislative field for a quarter of a century. His chief assistant was previously research director for the state Chamber of Commerce, and has taught poltical science. There are three other research assistants—young men selected for their training—besides stenographers, calculating-machine operators, accountants, and clerks—a total, except at peak loads, of less than a dozen. Considering the results obtained, the research costs little, only $20,000 a year—less than is spent on research by scores of small business corporations.

"The Kansas experiment has done much to minimize mistakes that arise from remedial ignorance; it has made a contribution to the success of the democratic idea by making a democracy more workable."

Some states such as Wisconsin have what is called a legislative reference bureau consisting of one legally trained man and a staff of assistants who specialize in the drafting of the bill for the legislature.

There may be other plans under which other states are working that might be more feasible for Idaho, or perhaps a combination of plans could be worked out.

At least two attempts have been made in Idaho to establish a reference bureau. One was a bill sponsored by Senator Stratton in 1935, and was again introduced by George Curtis and myself in 1937. No particular study was given the plan and it was therefore subject to the same criticism as all the other bills.

Now in final conclusion let me say that I am not advocating any particular system, but that I am urging that something be done along this line. It would be my suggestion that if a committee of this

Bar could be appointed who would go into the matter and study the various plans, that if a well worked out plan could be presented to the succeeding legislature I believe it would be a very progressive step.

Cost may be a deterrent. Along this line retired judges, if and when retired, could assist in the work of the bureau. Perhaps the Law School could be utilized in connection with the research, many other things have been suggested that might be worked into the plan.

I believe that if this were done that our Legislative sessions could be very materially shortened, in fact it would seem to me that two or three short sessions to vote upon bills which had been considered by such a legislative council as Kansas has could dispose of the bills very promptly as under such a plan a legislature would only have to vote as to policy and not as to form. This would enable more lawyers to feel that they could take part in legislative work without material loss of time as under our present system.

Like Mr. Martin, I am not asking for a resolution, I am merely throwing out suggestions and you may take them for what you think they may be worth.

PRES. EBERLE: The discussion will be led by Howard Davison.

MR. DAVISON: Mr. President and Members of the Bar. I suppose my remarks should be confined to the proposed legislation as suggested by President Eberle in his letter to some of us in the latter part of September. These proposals for legislative enactment were matters which were first brought out by Mr. Paul Hyatt and later by Mr. Ward Arney, of Coeur d'Alene, at our meeting a year ago in Coeur d'Alene. Mr. Eberle's letter came too late, as the Legislature was to convene in a few days, and these matters should have been given more mature consideration. Work of this kind should be started immediately after a convention, so as to acquaint the lawyers all over the state with what we hope to accomplish. Between twenty and thirty lawyers at different times took part in the many meetings held and helped to draft the proposed bills.

Among the matters pointed out by Mr. Hyatt and Mr. Arney were probate sales of mining property. This had to do with a law that affects not only the sales of mining property but also real property in general. Under our present law, there is no provision for sales other than for cash or the giving of a deed and taking a mortgage back on the property.

It was formerly the law that mining property could be sold upon written bonds or contracts subject to the approval of the court, but this provision was repealed in 1937. Whether the old law was what it should have been, I do not say, but I do feel that the present law governing the sales of mining property should be changed so as to provide for lease and option under proper safeguards. This was a very important matter, and Carey Nixon, together with Dean Driscoll and Sam S. Griffin, spent a great deal of time working out two bills,

one of which dealt with the sale of mining property and the other with real property. These two bills were well gotten up.

The next proposal was to eliminate by specific language the order to show cause and order of sale in guardianship sales. In 1929 we amended our law and did away with the order to show cause in the sale of real property in decedents' estates, but it has always been a question as to whether or not the guardianship requirement was repealed by that change.

Another matter was the matter of notices of sale. It was pointed out by Mr. Arney that the law provided that notice of sale of real estate at private sale must be published for two weeks. We have the California decision based on the same law that says that two weeks mean three publications, so it was proper to attempt not only to rectify this but to make more clear the requirements as to time of publication and the various notices required to be published. Mr. Frank Martin, Jr., prepared a bill which was entirely clear and worthwhile.

Another matter we were asked to consider was to provide for admitting to probate of joint estates of a husband and wife where both died leaving a will. Our Legislature has heretofore provided for such joint proceedings where the husband and wife died intestate.

Another matter was that of inheritance tax notice and waiver. The law now provides that certain state and county offices have thirty days from the filing of an inventory within which to file objections thereto. We have been getting waivers only from the head of the inheritance tax division. This bill provided that a waiver from the head of the inheritance tax division was a sufficient waiver.

Another matter that came up for criticism by Mr. Arney in his excellent paper on title examinations, was the question of a deed to a defunct corporation. Most of us have had experiences with such a situation and I think we all feel a necessity for some legislation to validate these transactions.

Other matters were suggested during our different meetings; one was the question of charges for certified copies in the probate court in decedents' estates and guardianships. The way the law was, you had to pay for all certified copies and there was no way of determining with any degree of certainty the amount of the costs. A bill was prepared providing that no charge was to be made for certified copies necessary in closing up an estate, whether decedent or guardianship, and this was passed by the Legislature and is now a law.

Another matter which we prepared was a bill covering use of the designation "trustee" or other similar designations in matters affecting real property. The proposed bill provided that where the powers of the trustee were not disclosed, that the word "trustee" or other similar designations should be ignored and that the grantee should be considered as holding in his own right individually. Several states already have such a law.

Another bill was to add force and effect to affidavits. Several states have passed such laws in certain matters and under certain limitations. This bill was hurriedly prepared, as were, in fact, all the bills, as we did not have time for mature deliberation, and this particular bill should have made matters more definite and certain; however, it did pass both houses. Judge Dana Brinck, of the Federal Land Bank of Spokane, pointed out the defects and asked that we have the measure vetoed which was done, and it did not become a law.

Judge Brinck should assist in a bill for the next Legislature, covering the question.

We must do all we can to strengthen titles and it is my opinion that the objections to titles by many attorneys are absolutely unreasonable and absurd. If the United States government was as critical in selecting men for the army as some of these men are in examination of titles, we would not be able to raise an army large enough to furnish an escort, let alone for national defense. We have carried these things to extremes; to illustrate: in the title to a piece of land down the valley here there was a discrepancy in initials. The man acquired title some sixty or seventy years ago, and in a short time he conveyed a portion of the land to the school district by different initials, and later conveyed the remaining property. There was an affidavit by a man that lived on the adjoining property at the time the purchaser went into possession of the land.

Many of us have for years believed that this affidavit was sufficient to identify this owner as the same person who afterwards conveyed the land. Less than two years ago, an action to quiet title was brought to clear up this very question. No more than completed were the proceedings before another attorney got hold of the Abstract and turned the title down because the former action to quiet title, in his opinion, was incomplete. The second attorney no more than got through with his action to quiet title when a third attorney got hold of the Abstract and he held that both of the actions to quiet title were wrong and he brought a third action to quiet title. Where are we going to stop?

If we don't get a little more common sense in our heads, there will be a change in the law to rectify these matters and there should be. In my opinion, the courts should exercise their right and refuse to grant the relief sought for in many of these proceedings. It behooves all of us to exercise more common sense in connection with the examination of Abstracts of Title.

PRES. EBERLE: Gentlemen, at this time I desire to express appreciation of the Idaho State Bar to Frank Bistline, Willis Sullivan and Hamer Budge, our three members of the House, for the time and the conscientious effort and the cooperation that they gave us. They were one hundred per cent on everything the legislative committee asked them to do.

MR. CALLAHAN: I am very much interested in the suggestion

of Mr. Bistline relative to this legislative reference bureau. I practiced law in Illinois when the legislative reference bureau was established in 1913. I think the idea was borrowed from Wisconsin. The lawyers are interested in the quality of legislation, particularly as to procedure. They are all interested in having such acts well drawn. It is worthy the attention of this Bar to study this matter, and the experience other states have had with organizations of this kind for the purpose of recommending legislation at the next session of the Legislature and getting behind it. But in doing so they should safeguard such a bureau from a political set-up. I well recollect when the Illinois law was passed. I knew personally the gentleman who was first placed at the head of the legislative bureau. He had never had any legislative experience, he was not a lawyer, but was appointed as a political job. That is one thing that should be strictly avoided if this is to have any value at all. The procedure should be set forth and the personnel should be provided for to get the men who are able to do the job. I can heartily endorse what Mr. Bistline said, the procedure of the Legislature and the difficulty in sifting out and weeding out these measures and trying to understand them and having some conception of what the effects would be if they are passed. When I was a member of the Legislature we had in our majority party a few who met every day for a study and consideration of different measures, but that is a matter within the Legislature itself and very often it isn't done and hasn't been done for a great number of years. That is only a stop gap. A permanent organization such as Mr. Bistline suggested based upon the experience of other states, is well worthy of the consideration of this Bar and some steps should be taken.

PRES. EBERLE: The next subject we are particularly interested in, Our Federal Rules. Mr. Casterlin.

E. H. CASTERLIN: Mr. President and Members of the Idaho Bar. Although the new Rules of Civil Procedure for the District Courts of the United States may not be perfect and, for that reason may require amendments, their adoption and the method of adoption mark the most important change and improvement in Federal procedure of the last one hundred years.

The Constitution of the United States vests "all legislative powers" in a Congress; "the executive power" in a President; and "the judicial power" in one Supreme Court and such inferior courts as may be established. The theory was, and still is that these three branches of the government are co-ordinated and have certain specified "checks and balances" one against the other. The right of the judiciary to make and adopt its own rules of procedure is not specified as a check which the Congress has upon the judiciary or the Supreme Court.

The Judiciary Law of 1789, recognized the independence of the judiciary respecting the right of review which was probably the most important question concerning the judiciary debated in the Constitutional Convention and during the adoption of the Constitution. Without going into the history of the matter, it may be safely stated that

the Congress, within its limits, has the vested power to determine the substantive rights of the people and that the judiciary has the same power to fix the procedural rights, that is to say, the rules of pleading, practice, and procedure by which the substantive rights are determined.

Consequently the Act of June 18, 1934, authorizing uniform rules of procedure was an acknowledgment of the power which had long been recognized as existing in the Judiciary, particularly with reference to equity actions. This act places the rule making power where it belongs. There is no more reason for the legislative branch of the government making the rules of procedure for the judicial branch than there is for the Judiciary drafting rules of procedure for the legislative department.

The new rules do not constitute a startling innovation. They are not without a valuable background. It might be encouraging to know that an understanding of common law practice will materially aid in, and familiarity with the old rules of equity practice is essential to, a ready understanding and application of the new rules. Always keep in mind the former equity rules in interpreting the new rules.

Before coming directly to the subject, one more observation should be made. It will do no harm, at least. The purpose of the new rules is to secure, "so far as possible," the just, speedy, and inexpensive determination of every action. The words "so far as possible" were inserted to give the courts discretion in the application of the rules. The word "just" means impartial, fair, equitable, and not subversive of substantial rights. The word "speedy" means the abandonment of technical delays; the abolishment of continuances which do not protect the substantial rights of the parties. By "inexpensive" is meant the uniting in one action of all of the disputes which arise out of the original occurrence, or counter or cross-claims, and the bringing in of all parties affected, to avoid multiplicity of suits.

The new rules should be administered in such a manner that the orderly procedure of litigation will not be hampered; with due regard for the substantial rights of those who seek the aid of our courts; with consideration for the reasonably available time of lawyers who have been selected by the parties because of their ability and the confidence reposed in them; and, with recognition of the facts that in the last analysis our judicial system is not a thing apart unto itself, but is a creation of the people for their use and benefit and the protection of their substantial rights.

All actions are commenced by filing a complaint (Rule 3) which shall set forth a short plain statement of jurisdiction and claim showing right to relief, and a demand for the relief desired. The claim may be set forth in the alternative or it may be of several different types. (Rule 8).

Reference to Form 9, a complaint for negligence, will well illustrate a "short and plain" statement of a claim, viz., that at a certain time and place the defendant negligently drove a motor vehicle against

the plaintiff who was then crossing the street, and as a result certain injuries were caused which damaged the plaintiff in a certain sum of money. Only one short page is required to set up the full cause of action!

The particular acts which constitute the negligence need not be set forth. It is unnecessary to refer to any state law or city ordinance which may have been violated. These are all matters to be discovered or developed in another manner.

In Form 11, a complaint for conversion, is not found any statement for demand of payment before suit. That is a matter of proof at the time of trial.

In these, as in other forms, it is to be noted that all of the technical allegations formerly required to be made in order to stay in court against the objections of a technical practitioner are lacking.

The rules do not require allegations and avoidance of matters of defense. For instance, if a claim is owing and the defense of release of claim is to be made, it is no longer necessary to set forth such release and avoid it by pleading that it was fraudulently obtained, for example. At the time of the trial, the plaintiff can admit in his direct examination that the release was given and explain the circumstances under which it was given without having pleaded the same.

It is not to be inferred that the pleader is no longer required to know his substantive law and to state all of the necessary elements to entitle him to relief. These elements are merely to be stated in a short and plain manner.

Under Rule 18, a complaint may state against the defendant as many claims as exist, whether legal, equitable, or both. Alternate or inconsistent claims may be joined. It is assumed, however, that in respect of each claim there is federal jurisdiction and that the venue is proper.

Practically the only restriction against a joinder of claims is found in the rule on joinder of parties. If a misjoinder should occur, then by Rule 21 the plaintiff may sever and proceed with any claim separately. And so, if one claim is based upon another claim, both may be included in the same action and a judgment entered accordingly.

To illustrate an exceptional case of joinder of claims see Ader v. Blau, 241 N. Y. 7. Plaintiff brought suit against Blau for damages for the death of his son who was injured upon a steel picket fence alleged to be dangerous and attractive to children, and against the doctor for negligence in treating the child. The reasons for permitting such a joinder are set forth in the dissenting opinion of Judge Cardoza, later Justice.

Nor must the pleader be meticulous in his prayer for relief. Rule 54(c) provides that a judgment by default, whether for non-appearance or failure to plead over or defend, shall not be different in kind from or exceed the amount asked in the prayer. But in every other instance

the plaintiff may have all the relief, legal or equitable, to which the proof shows him entitled.

Rule 7(c) abolishes demurrer, pleas and exceptions for insufficiency. This brings us to the very interesting topic—motions.

A motion may raise (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted. Rule 12 (b).

Objections 1-5 must be included in one motion if they are to be available. If these objections, or any of them, are sustained the case is at an end. If they are all overruled or a ruling is postponed until later, then a second motion may be made which must include, if they are to be available, (1) failure to state a claim; (2) motion for more definite statement; (3) motion for bill of particulars; (4) motion to strike for specified reasons.

There is already a dispute as to whether a motion for more definite statement, for bill of particulars, and to strike is waived if the first motion includes the objection that the complaint fails to state a claim. The better reasoning and that generally followed, is that there is no waiver. But caution would direct one to include all of these latter motions in one instrument.

The rules avoid any distinction between a motion for more definite statement and motion for bill of particulars for the reason that a bill of particulars becomes a part of the pleading which it supplements.

Motion for judgment on the pleadings can be made only after the pleadings are closed. The only pleadings allowed are: "a complaint and an answer; there shall be a reply, if the answer contains a counterclaim DENOMINATED AS SUCH; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if leave is given under Rule 14 to summon a person who is not an original party; and there shall be a third party answer if a third party complaint is served." Rule 12(c). Rule 7(a) Motion for judgment on the pleadings should never be made before motion for more definite statement or for bill of particulars.

Motion to dismiss for want of jurisdiction of the subject matter can be made at any time that the fact becomes apparent. Rule 12(h)(2).

Right here it might be well to note that motions are substituted for orders to show cause. Rule 7(b)(1) provides that "an application to the court for an order shall be by motion * * * and shall set forth the relief or order sought." The motion and notice for hearing may be in one instrument.

Previously we have had orders to show cause why alimony pendente lite should not be paid; why custody of children should not be granted; why receiver should not be appointed; why temporary injunction should not be issued. All of these orders were issued upon

proper application and showing which took the time of the court in examining the preliminary papers and fixing a time for the hearing. The new method is to file the motion and serve the same with notice of hearing. The whole matter then comes before the court but once and the relief is granted or denied in order.

Rule 26 has to do with depositions pending the action and should be discussed here as it may be used in aid of answer. By this rule any party may take the deposition of any person after jurisdiction has been acquired over any defendant or any property which is the subject of the litigation, ONLY upon leave of court; the same deposition may be taken WITHOUT leave of court after answer is served. The issues must be first joined on the claim, counter-claim or cross-claim before a deposition can be taken without leave of court.

It is intended that the court will not permit depositions before answer and while any motion on any of the first five grounds mentioned in Rule 12(b) is pending. This is for the reason that the sustaining of a motion on any of the first five grounds terminates the action and the taking of depositions would be an unnecessary expense.

The procedure for taking depositions by leave of court is by a simple notice and not by commission, after leave first obtained. Commissions to take depositions are only granted when the deposition is to be taken in a foreign country, in exceptional cases. Rule 28(b).

The use of a bill for discovery is quite obsolete but can be used, for instance, by a plaintiff to find out whom he should sue. Pressed Steel Car Co. v. Union Pac. R. Co., 240 Fed. 135, 241 Fed. 964.

Rule 33 provides that any party may serve upon any adverse party written interrogatories which shall be answered separately under oath. The rule does not fix the time when interrogatories should be submitted but as this is a method of discovery it would seem that the provisions of Rule 26(a) concerning depositions would apply to Rule 33. If interrogatories are submitted before answer, leave of court should first be obtained.

The use of Rules 26 and 33 may be abused by an attempt to fish for information. However, this is not probable because the scope of the inquiry must be limited to the issues and to refuse to so limit the examination is a contempt. The scope of interrogatories is particularly within control of the court because the same must be submitted to the opposing party who has time to object to the questions and no answers can be required until the objections are passed upon. Rule 33.

Rule 36 governs a demand for admissions of facts and of genuineness of documents after issues have been drawn and may be used with Rules 26 and 33 in preparation of the case for further procedure. Admissions can be requested after issues drawn.

First, defenses to original claims. By Rule 8(b) a party shall state in short and plain terms his defenses to each claim asserted against him, and shall admit or deny the positive averments. If the

party is without knowledge or information sufficient to form a belief, he shall so state and this averment is a sufficient denial.

This rule must be interpreted with Rule 8(e) and (f) which is to the effect that each averment must be simple, concise and direct; that defenses may be set up alternately or hypothetically; that the defenses may or may not be consistent; that the defenses may be legal or equitable; that all pleadings shall be construed so as to do substantial justice.

This Rule 8(b) must also be construed with Rule 9(a) and (c) which is to the effect that the capacity to sue or be sued need not be set up further than to show jurisdiction, and if there is any incapacity it shall be set up by a specific negative averment together with such particulars as are peculiarly within the pleader's knowledge; that a denial of performance must be made with particularity.

The effect of these provisions is to lessen the work of the pleader and to inform the claimant of the defense which will be made respecting capacity and performance. It also saves necessity of proof at trial of matters not in question.

With the answer come counter-claims and cross-claims. Any claim which the defendant has against the plaintiff, either legal or equitable, is a counter-claim. Any claim, legal or equitable, which a party has against a co-party, provided it arisee out of the original occurrence or counter-claim, is a cross-claim.

A cross-claim ie always permissive. Counter-claims are of two kinds—compulsory and permissive. With but few exceptions every counter-claim which arises out of the original claim or occurrence must be set up or the same is waived. A permissive counter-claim does not arise out of the original claim or occurrence and failure to plead is not an abandonment.

The three exceptions to compulsory counter-claims are: (1) the counter-claim must be in existence at the time the answer is filed by the counter-claimant. If the counter-claim comes into existence later, it may be set up by supplemental pleading with leave of court. Rule 13(e) Upon motion, notice and terms a party may file a supplemental pleading setting up subsequent occurrences. Rule 15(d).

(2) The second exception arises when P sues D in a state court. D may later sue P in the Federal court on a claim arising out of the same occurrence and, because there is a suit already pending, P need not replead his original action in the state court.

(3) The third exception arises when the court cannot acquire jurisdiction of indispensable parties.

All that has been said respecting original claims and answers and discovery and depositions and interrogatories and motions applies to counter-claims and cross-claims.

If a party appears by an attorney, the latter must sign each plead-

ing. Unless "otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit." The signature of the attorney constitutes a certificate that the pleading has been read, that there is good ground to support it, and that it is not interposed for delay. For a violation of this rule the attorney may be "subjected to appropriate disciplinary action." Rule 11.

A verification is required when a temporary injunction or a receiver is desired. When injunctive relief is the ultimate object, a verification may not be required but it is safe to have the pleading verified.

Two of the most interesting rules are Number 15 providing for pre-trials and Number 56 providing for summary judgment. When all of the issues are joined and the preliminary motions have been settled, the court MAY, in its discretion, call for a pre-trial for the purpose of (1) simplification of issues, (2) amendment of pleadings, (3) obtaining admissions of fact, (4) limiting the number of expert witnesses, (5) reference to a master when trial is by jury, (6) aiding disposition of the action.

At the conclusion of the conference, the court enters an order stating the agreed matters and limiting the issues for trial to those actually in controversy. To avoid any injustice, this order may be modified at the trial, but otherwise it stands as a part of the record of the case.

Pre-trial may result in the waiver of jury trial which has previously been demanded; it may result in amendment of pleadings thus avoiding unnecessary proof; it may also relieve the parties of the burdens of some of the rules of evidence.

While courts may or may not adopt the pre-trial procedure, the purpose of the rule may be accomplished by a motion for summary judgment which requires the court to act along the same lines.

"The very object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor to the burden of a trial." Richard v. Credit Suisse (N. Y.) 152 N. E. 110. Where facts are set forth in pleadings, affidavits, depositions, interrogatories, or admissions and the same show that there is no real controversy, the court must on motion for judgment examine the issues and if none ore genuine a summary judgment may be entered on the law of the case.

If there is a genuine issue on a material fact, that fact is specified by the court in its order and trial of that fact alone is had. This procedure applies to legal and equitable actions and whether the claim is liquidated or unliquidated. The number of class of cases where the motion is inapplicable is so limited that it is not necessary to qualify the general rule.

A motion for summary judgment in a law action does not violats the Federal Constitution reepecting right to trial by jury. Fidelity

& Deposit Co. of Maryland v. United States, 187 U. S. 315. The rule merely prescribes the means of making an issue and the right of trial by jury exists only where there is a triable issue.

Summary judgment may not be entered as to the amount of damages. Rule 56(c). If it is a default case "the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States." Rule 55(b)(2). If it is not a default case then, in this jurisdiction, the question of the amount of damages should go to a jury. Where a state statute provides a different procedure that practice is sometimes followed by the federal courts under the Conformity Act.

Clerical mistakes in a judgment may be corrected by the court at any time. On motion made within six months after entry and on terms, a party may be relieved from a judgment taken through his mistake, inadvertence, surprise, or excusable neglect. Such a motion does not affect the "finality of a judgment or suspend its operation." Rule 60. This does not limit the right to relief from a judgment provided by any statute.

By Rule 62 no execution may issue on a judgment until after the expiration of ten days from the date of entry, unless it is otherwise ordered by the court.

Rules 64-71 concerning provisional remedies such as injunctions and receivers, do not change the substantive law but merely affect procedure.

Before attempting to apply the new rules to any particular action. Rule 81 should be consulted to see if the same apply.

The effect of the new rules is contained in the following conclusions:

1. Practice in the Federal District Courts is made uniform and more simple.

2. Causes may be terminated with greater dispatch and a lesser amount of trial work.

3. Practitioners will no longer be caught in a maze of technical procedure to the prejudice of their clients.

4. The work of the trial court is lessened, particularly jury trial work.

5. The cost of litigation is lessened.

6. The older lawyer familiar with common law and equity practice is well equipped to use the new rules.

7. The younger lawyer can more easily become familiar with the federal practice.

Should similar rules be adopted in Idaho? We are all familiar with the practice in Idaho. If similar rules will do for Idaho practice what the new rules have done for the federal practice, then the answer is unequivocally, Yes. The reasons for this answer are to be found in the conclusions drawn above, with the additional reason that practice in the State courts would be uniform with the practice in the Federal court. This would enable a lawyer to step immediately from a State to the Federal court without having to stop on the way to pick up a rule book.

Should similar practice be adopted by court ruling? The answer again is unequivocally, Yes. The reason for this conclusion has been given at the beginning of this paper and what was said there with reference to the Federal government applies to the State government. With the rule making power in the judiciary, amendments can be easily and speedily made as experience dictates.

In drawing these conclusions I am not unmindful of the provisions of Article 5, Section 13, Idaho Constitution, which provides that "the legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the supreme court, so far as the same may be done without conflict with this constitution." Neither has the language of Judge Dunn in the dissenting opinion found in Smith-Nieland v. Reed, 39 Idaho 788, 794-795, in which Judge William A. Lee concurred, slipped my attention.

A discussion of this matter would far outrun the proper limits of this paper. Suffice to say that, in my opinion, the door is not yet shut to the adoption of rules of procedure for all district courts by the Supreme Court of Idaho. As a matter of expediency, the Legislature might be asked to pass an act similar to the Congressional Act of June 18, 1934, affirming the principle that the judicary has a right to regulate its procedure to the same extent that the legislature, a co-ordinate branch of the government, enjoys by reason of our state Constitution.

KARL PAINE: In my study of the rules I believed there was no provision against a multiplicity of actions. I have been particularly interested in your definition of the word "inexpensive." I wonder if you had any authority on that or if you get your authority from the explanation?

MR. CASTERLIN: I get my authority from the rules themselves and from the opinions which have been rendered on the rules. The Federal government has been very much interested in collecting opinions respecting interpretations of the rules. They are sent to our office about every two weeks.

MR. PAINE: Supposing I have a contract and I have several breaches of that contract. I found nothing in the rules on that subject. As I understand you now, the word "inexpensive" means that I have several causes of action to be joined in one pleading. The word "inexpensive" requires I join them all in one action?

MR. CASTERLIN: Not only requires but the decisions of the Supreme Court of the United States make you join them provided the cause is in existence at the time you file your action. I gave my interpretation of what they meant when they said "inexpensive." I can supply you with plenty of law by the Supreme Court of the United States. If causes of action exist you have to bring them all at the same time. Under the new rules and old ones, too.

PRES. EBERLE: We have run over the noon hour. I want to give Mr. Worthwine and Mr. Merrill all the time they want. I wish you would get back by 1:45.

FRIDAY, JULY 28, 1939
(Afternoon Session)

PRES. EBERLE: We will continue the discussion on the Federal Rules. It will be led first by Oscar Worthwine of the Boise Bar

O. W. WORTHWINE: Mr. President and Members of the Bar. Mr. Casterlin in his very excellent paper has suggested that the power to make rules of civil procedure should be in the judiciary, and has concluded that if the adoption of similar rules in Idaho will do for Idaho practice what the new rules have done for the Federal practice then such rules should be adopted.

He calls attention to Section 13, Article 5 of our Constitution.

I take it that the Courts of this State have so long acquiesced to the powers exercised by the Legislature in prescribing rules of civil procedure that none of us would advocate any attempt by the Supreme Court to prescribe rules of civil procedure without at least legislative sanction.

In Idaho our civil, probate and criminal practice acts were adopted February 1, 1864, and provided in great detail for procedure governing all of the inferor courts and methods of appeal. Apparently nothing was left for the Supreme Court to provide by rule.

Since this is true there is a question as to whether, in order for our Supreme Court to prescribe rules of procedure for all inferior courts, it will be necessary to amend our Constitution.

Section 1, Article 2, of our Constitution, provides:

> "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted."

Section 26, Article 5, of our Constitution, provides:

> "All laws relating to our courts shall be general and of uniform operation throughout the state, and the organized judicial

powers, proceedings and practicee of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments and decrees of such courts, severally, shall be uniform."

In the above Constitutional provision it will be noted that the phrase "so far as regulated by law" is used, the question at once arises as to whether there is a distinction between regulation of practices by the Legislature and the possible regulation thereof by the courts themselves. Did the framers of the Constitution merely intend that the acts of the Legislature should be uniform, or is this an implied power by the Courts to provide general rules of practice?

Prior to November, 1920, Article 5, Sectiou 9, of the Constitution provided:

"The Supreme Court shall have jurisdiction to review, upon appeal, any decson of the district courts, or the judges thereof. The Supreme Court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction."

At the general election in November, 1920, this Act was amended by inserting therein:

"and any order of the public utilities commission; the legislature may provide conditions of appeal, scope of appeal, and procedure on appeal from orders of the public utilities commission."

This Section was again amended at the general election on November 3, 1936, by adding:

"and of the Industrial Accident Board on appeal from awards of the Industrial Accident Board the court shall be limited to a review of questions of law."

and the Legislature was given authority to provide conditions of appeal.

It will thus be seen that within the last twenty years we have amended this Article 5, Section 9, of the Constitution twice, the first amendment making it possible to appeal to the Supreme Court from decisions of the Public Utilities Commission, and the one in 1936 provided for appeal from awards made by the Industrial Accident Board, and on each occasion we have made a provision that the Legislature may provide conditions of appeal, scope of appeal, and procedure on appeal.

This certainly does not indicate any desire on the part of either our lawmakers or of the people to place procedure in the hands of our Supreme Court. On the other hand, it will be noticed that the word used in the Constitution is "may" and not "must" or "shall." As to whether ths word "may" will be construed as mandatory is a question tbat may be considered.

Section 13, Article 5 ,provides:

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

Attention is called to the fact that under this provision of the Constitution it is made the duty of the Legislature to provide a proper system of appeals. This applies to appeals from the justice courts and probate courts as well as from the district courts.

Again we notice that the framers of the Constitution state that the Legislature SHALL provide a proper system of appeals. Does the use of this word make it mandatory upon the Legislature to provide such a system, and if the Legislature attempted to divest itself of this power and confer the same upon the Supreme Court, would act of the Legislature in so doing be constitutional?

We know that the Legislature has regulated the method of taking appeals and we also know that the Supreme Court has adopted various and sundry rules relating to appeals, the preparation of transcripts, and the service and filing thereof, and we know that Rule 26 of our Supreme Court states

"A strict compliance with the requirements of the rules concerning preparation of transcripts will be exacted of the appellant in all cases by the court, whether objection be made by the opposite party or not; and for any violation or neglect in these respects which is found to obstruct the examination of the record, the appeal may be dismissed."

If it be said that these rules merely supplement the acts of the Legislature, and the rules merely relate to the matters pertaining to the internal administration of the courts, we find that the Legislature does, as a matter of facts, invade the province of the court in the handling and disposition of its business.

Chapter 175 of the 1937 Session Laws regulates in detail the manner of taking an appeal from the Industrial Accident Board and although the Constitutional Amendment states that the review of an order of the Industrial Accident Board "shall be limited to a review of the questions of law," the Legislature has said that no order of the Industrial Accident Board shall be set aside on any other or different ground than:

(a) "That the findings of fact are not based on any substantial, competent evidence;

(b) "That the board has acted without jurisdiction or in excess of its powers;

(c) "That the findings, order or award were procured by fraud;

(d) "That the findings of fact by the board do not as a matter of law support the order or award."

The Legislature has certainly tried to fix the "scope of the appeal," and Chapter 175 of the 1937 Session Laws further provides:

"Such appeal shall be heard by the court not later than the 60th day following the date of such filing of the records, proceedings and transcripts."

Does the Legislature have the right to dictate when or how soon the Supreme Court shall hear a case? Suppose the Court has numerous important constitutional questions involving the financial stability of the State, must it lay these aside to hsar a workman's compensation case, merely because the Legislature has so directed?

In Mahoney v. Elliott, 8 Idaho 190, 67 Pac. 317, the Supreme Court had occasion to consider a statute fixing the place of hearing of appeals from certain counties and when a motion was made in the Supreme Court to transfer the case from North Idaho to Boise for hearing, the Court held:

"The legislature, in the statute quoted supra, have properly, and without interfering with the jurisdiction of this court, provided that appeals from the five northern counties should be heard at Lewiston, and from the remaining fifteen counties at Boise City."

The above case was heard in 1902 and in 1920 our Supreme Court, in considering a similar statute and Rule 36, said:

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

"The place where and the time when the supreme court shall hear arguments upon an appeal is purely a matter of procedure. After the supreme court has acquired jurisdiction of a cause on appeal, and after the record upon which the appeal is to be heard has been filed, the court has exclusive control of the case. Any other body or department of government cannot prescribe where and when the court shall proceed in the exercise of its jurisdiction without regulating the methods of proceeding in the supreme court."

Talbot v. Collins, 33 Idaho 169, 191 Pac. 354. And the case of Mahoney v. Elliott was expressly overruled.

It will be noted that our Court limits its decision to the time after it has acquired jursdiction of the case on appeal.

There are numerous decisions relating to the legality of legislative acts conferring the rule making powers upon the Supreme Court, and one of the leading cases is that of State v. Roy, 40 N. M. 397, 60 Pac. (2d) 646, 110 A. L. R. 1, and while New Mexico has the provision identical to Section 1 of Article 3 of our Constitution, I have found no similar provision to Section 13 of Article 5 in the Constitution of New Mexico.

The New Mexico court also bases its decision upon the fact that the Legislature of New Mexico, during territorial days, has recognized the power of the Supreme Court of the territory to make laws governing civil procedure.

Our Supreme Court in the case of Neil v. Public Utilities Commission, 32 Idaho 44, when it refused to review an order made by the Public Utilities Commission, said that the words "certiorari and prohibition" as used in Section 9, Article 5, of our Constitution retained their common law meaning and, therefore, the Court could not review an order of the Public Utilities Commission.

It will be noted that our Constitution, even when it provided for a division of our government into three separate departments, stated that the power properly belonging to one department could not be exercised by anyone in another department 'except as in this constitution expressly directed or permitted."

And Section 13 of Article 5 states that:

"The legislature shall provide a proper system of appeals and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with the constitution."

Certainly under this provision the Legislature is permitted to provide rules of civil procedure when necessary. What is meant by "when necessary?"

Does this mean that it is "necessary" so long as the Courts themselves do not exercise this power?

Is this necessity to be determined by the Legislature or by the Courts?

If it is decided that we shall have our Supreme Court provide rules of practice and procedure for all the inferior courts, it certainly will be well to consider whether if an act of the Legislature attempts to delegate this power to the Supreme Court it can be done constitutionally.

Unquestionably, the great majority of authorities in the United States is to the effect that the making of rules of civil procedure is

a judicial function and not a legislative function, and even though under the Constitution of the states the Legislature does have power to make rules of civil procedure, it is such a power that when delegated to the court that it is not the delegation of legislative power.

The Supreme Court of the State of Washington in this regard said:

> "Assuming the right of the Legislature to make rules for the court, and acknowledging its continued action in that respect, it does not follow that such action is a legislative function. Not all acts performed by the Legislature are strictly legislative in character. A failure to recognize this distinction often gives rise to the belief that one of our lawmaking bodies has abdicated its duty, and attempted to transfer its legislative mantle to the shoulders of another body, not legislative, thereby subverting the purpose of its creation and denying the people of the commonwealth the right to have the laws which govern them enacted by their duly chosen representatives."
>
> State v. Superior Court (Wash.) 267 P. 770.

The Supreme Court of Wisconsin has likewise held that a statute authorizing the Supreme Court to make rules governing pleading, practice, and procedure in all courts is not unconstitutional as attempt to vest authority in Supreme Court which the Constitution has placed in inferior courts. In re: St. 1929, Sec. 251.18, Wisconsin Statutes, 236 N. W. 717.

In view of the historical doctrine that courts do have a right to regulate their procedure and that the Supreme Court is the proper one to promulgate such rules, and in view of the words used in our Constitution such as used in Section 18, Article 5, giving the Legislature power to "regulate by law, when necessary," we are justified in reaching the conclusion that if the Legislature were to pass an act delegating to the Supreme Court the power to make rules of civil procdure for the inferior courts of this state, and such rules were adopted by the Supreme Court, that the then Act and the adoption of the rules would be constitutional.

This subject is treated in a note extending from page 22 to 59 of 110 A. L. R.

See, also, 16 American Bar Association Journal, p. 199, and the other articles referred to on page 23 of 110 A. L. R.

PRES. EBERLE: The dscussion will be continued by Mr. A. L. Merrill of the Pocatello Bar.

MR. MERRILL: Mr. Chairman, Fellow Members of the Bar. I want to approach the subject from a little different angle from that which has been heretofore suggested. It is often easy for all of us immediately to seize upon a new idea and endorse it, making other things that we are interested in conform thereto, and sometimes it is a little bit more difficult for us calmly and dispassionately to analyze

that which we actually have, and then determine whether or not a change is desired and if so, what is the best way of making it. Fundamentally I am in thorough accord with the idea expressed that the rule making power, the power of formulating rules of procedure, should be with the Courts. It is undoubtedly a part of our judicial system. I am, furthermore, in entire accord with the idea that those trained in the administration of law, the judges, and the lawyers, are better qualified to do this work. Yet, I am confronted with this strange coincident. If you analyze accurately and carefully the new federal rules you will see that they are based very largely upon the code practice—upon the code of civil procedure of the respective states. In other words, those who began working this plan did not forget that which legislatures of various states had heretofore done. I will refer to that in just a moment.

Let me call your attention to this further proposition. Consider the federal practice before these rules were adopted. It had grown up in varying conditions and in various places. The manner and method of administration of justice in New York City differs quite decidedly in a practical way from that which we have here in Idaho. We should, furthermore, remember that where speed is essential in some respects and in some places, it is not necessarily so essential in other places. I am impressed with the thought that in the last half century we have been actuated largely by speed. When we analyze this we will see that it is speed in locomotion. From the dawn of history we have not seen the mental acumen of men necessarily speeded up. We don't think any more rapidly today than we did in Baron Park's time. I think you will all agree with me that frequently it is necessary for a lawyer to have time enough to think upon some of the problems which confront him, and unless he is able to do that his chances for mistakes are greater. That might overcome some of the advantages of speeding up the administration of justice. Now let me reiterate this. I fundamentally believe as a cardinal principle that the rule making powers should be with the Courts. I can't admit that it is so yet in Idaho, for the reasons that I will subsequently mention; that as a Bar we should do everything we can consistent with good thinking and with careful procedure, to speed up the disposition of cases and legal matters.

But now let us examine just for a moment these rules in a little different way. Rules 1 to 6 deal generally with the commencement of actions. Notice when you read them again how closely they follow the code of civil procedure in Idaho and in other states. Rules 7 to 15 deal with pleadings. There is not a great deal of variation. Rule 17 to 25 deal with parties, joinder of actions and of parties, cross complaints, counter claims, etc. There is no striking dissimilarity in those rules with our code procedure. Rules 26 to 37 deal largely with discovery and with depositions. Some of these would undoubtedly be helpful in our State practice. Let us consider just a moment rule 35. That deals with the mental and physical examination of an individual when in proper circumstances the Court thinks it right to issue such an order, and when such an examination is made the party who

is examined may demand a written report of the findings of the physician who makes the examination, and if he so demands and receives such a report then the rule of privilege as to all who have theretofore examined him seems to be waived. There is much argument in favor of this particular rule. Rules 37 to 71 deal largely with the trial of the cause, and while there are a few departures from our fundamental system of code procedure, it runs quite closely along with it. The remaining rules deal largely with appeals to the Circuit Court of Appeals and to the Supreme Court. They are not more simple than the appeal from a state district court to the state supreme court in Idaho. I don't see how it can be simplified much. Time might be saved in reducing the number of days in which to appeal from 90 down probably with good effect, but bear in mind we are dealing with a system, not with delays that might occur due to courtesy extended to other counsel and delays due to various incidental matters which might arise.

In the federal rules there is one other matter that might be highly desirable in certain instances and that is the pre-trial. The pre-trial as I view it, however, is rendered desirable because of the limited allegations required in the original complaint in the federal courts. If that complaint is required to set out with more particularity the allegations of fact upon which the pleader relies or will rely at the trial, obviously there isn't the chance for surprise that there might otherwise be and perhaps the pre-trial is not so necessary. Yet I feel that if we take the pre-trial, if we take the more simplified pleading; if we take the advantages given in the federal rules in the taking of depositions and in the trial of cases before the court, there isn't much left that we need except to have uniformity with our federal and state procedure, and that I admit and consider a desirable thing. But the point I am anxious to make is this: that in adopting the Federal rules much consideration has been given to the Code of Civil Procedure in the code states, and the dissimilarity is not great. Now we intend to adopt them in Idaho. In what manner are we to proceed? We have in the Constitution Article 5, Section 13, which reads: "Power of the Legislature respecting Courts. The Legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a co-ordinate department of the government." But notice this. "But the Legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceedings in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with this constitution.' Does that provision mean that the Legislature shall provide a proper system of appeals when necessary, or does it mean that the Legislature shall in any event provide for a proper system of appeals, and in addition thereto shall provide, when necessary for rules regulating the conduct of the proceedings in the District Courts. I know of no judicial announcement upon that particular point, and it isn't necessary other than merely to call it to your attention now. Nevertheless, we must recognize the fact that here is this constitutional provision. Secondly, there has been, from the commencement, the theory of the state government expressed through its Legislature of adopting procedural methods for the Courts. Both of these points must be considered if we expect to adopt rules similar or identical with the Federal court rules in our State practice.

Remember that these Federal rules have been in effect a little less than two years, yet there have already been more than one hundred cases in which they have been considered and various phases of them discussed. It is not time yet for us to say that they have become crystallized rules of procedure from which we need expect in the future little or no departure. Our system of procedure is provided by legislative enactment under the constitutonal provision that I mentioned, both of which must be considered before we are able to say that we will adopt the rules that will conform to the Federal court practice. Unless they are quite identical, the value of having the same state rule as the federal rule is not so apparent. And so, gentlemen, irrespective of what I might fundamentally think in this matter as to the advisability of adopting rules similar to the Federal rules for our State procedure, and irrespective of whether or not you believe fundamentally, as I think every one of us do, that in our government the rule making power necessarily should be with the judicial department, we are, nevertheless, confronted with these practical matters to which I have just called your attention and which of course we must meet and deal with.

PRES. EBERLE: Any further discussion on this subject? This matter will be referred to the delegates for some action tomorrow morning. We will now proceed with the next subject, Local Bar Associations, discussed by Harry Benoit of the Twin Falls Bar.

MR. BENOIT: The subject assigned to me, "Local Bar Associations—Are They Functioning?", I assume could be briefly presented by making the statement that, since the reorganization of Local Bar Associations into Judicial District Associations, the Local Associations are functioning within the state to a much more satisfactory degree. However, the purpose of the assignment of this subject matter to a member of the Bar is to start a discussion thereon from which it is hoped to obtain useful suggestions and result in action by this assembly that will be of assistance in creating greater interest among all members of the Bar, thereby having Local Associations that will function much more effectively. Hence, it is necessary to consider the purposes for which the Local Associations have been organized and the justification for their existence, their usefulness and their advantage to the members of the legal profession and to the communities and the state. And while it may not be strictly adhering to the subject matter, I believe we should consider the entire Bar set-up of which Local Associations are an integral part and in which they have an important place.

First, of course, is the national organization, the American Bar Association, through which lawyers throughout the entire nation may concentrate their efforts and consider and act upon such questions as all federal procedure and courts, raising the standards of the legal

profession and to the subjects of importance nationally to the members of the Bar, including, which is not the least important, legislation before the Congress affecting the profession. The latter being something to which we should at this time give serious thought and consideraton, and especially is this true when you hear utterances such as were made by a high government official at San Francisco during the meeting of the American Bar Association. I have particular reference to the statement made that unless the legal profession takes steps to render services to those who cannot afford to pay fees, we will have in this country "socialized law." Such statements obviously reflect the trend of mind and thought of many prominent in the administration of the New Deal, and which if carried out, would mean nothing more or less than legislating the legal profession out of business.

Then we have the State Bar Associations. At this time I am impelled to express the opinion that the Idaho State Bar compares favorably with any other. The lawyers in this state who have given so much of their time to make the State Bar actually function are indeed entitled to the gratitude of the lawyers in Idaho. We will not consider at this time the many duties performed and services rendered by the State Bar and its officers during the year but only the annual meetings of the Bar. At these meetings there are discussed and acted upon matters of national importance, as well as questions particularly pertaining to the Bar within the state. Lastly, we have the Local Bar Associations, which, in fact, is the real subject matter before this meeting at this time. Without functioning Local Associations neither State Associations nor the American Bar Association can successfully accomplish those matters and things which are of vital importance to every member of the legal profession within the nation. And without the lawyers in the various communities being interested and active therein, the Local Bar Associations will be only as successful as the interest displayed by the individual members in the Local Bars. It requires somewhat of a campaign of education on the part of the lawyers who have taken no active part therein. It should take no great amount of persuasion or argument to convince them that the Bar Association is their organization, founded and organized for their benefit and in their interest. Being active in Bar Associations is not a waste of time on the part of any lawyer. If he would appreciate the importance of unity of action, cooperation and concentration of effort for the protection of the profession and necessarily for the protection of himself, he would have no hesitancy in giving ample time to the end that Local Bar Associations may properly function.

The meetings of the American Bar Association are attended by a comparatively small number of lawyers from each state and in turn the State Bar meetings are attended by a small percentage of the lawyers from the various local organizations. For this reason it is my own opinion that matters vitally affecting the legal profession orginating in the American Bar Association should not by resolution be made Bar Association law at the meetings of the American Bar and then passed on down to the State and Local Bars for explanation

and discussion. On the contrary, questions of importance, questions affecting the legal profession throughout the nation, should emanate from the Local Associations, which means from the rank and file of the members of the Bar. Matters originating from the meetings of the American Bar and State Bar Associations should first be submitted to the local organizations for consideration. In this connection, may I offer the suggestion that our State Bar annual meetings be held prior to the meetings of the American Bar Association and that delegates to the American Bar meetings be elected at our State conventions. Every lawyer should belong to and be active in Local Bar Associations where all matters pertaining to the profession should be discussed, resolutions adopted and forwarded to the State Bar. Those matters strictly pertaining to the practice within the state should be acted upon and determined at the state meetings and the questions and subjects acted upon at the State Bar meetings, which are of sufficient importance to be considered and acted upon at the American Bar Association meetings, should by resolution be forwarded to the latter for action at its meetings. This is merely a thought as to the procedure in the entire Bar Association set-up, being in the nature of going from the bottom up rather than from the top down.

The Local Bar Association meetings should be made sufficiently interesting to induce the lawyers within its jurisdiction to be in attendance. Such meetings afford a splendid opportunity for the lawyers of a given community not only to discuss problems pertaining to legal business but also to enjoy the association of their fellow lawyers. At the Local Bar meetings there should be considered, discussed and acted upon not only questions submitted to them by the State Bar but also questions brought up by the individual members. The matters of discipline should be promptly and properly handled by local grievance committees. Questions such as admissions to the Bar, procedure in all courts of the state, method of choosing members of the Bench and many others can be intelligently discussed. The qnestion of attorneys fees should, especially in Local Bar Associations, be given due consideration to determine whether there should be adopted reasonable minimum fees and means of enforcing the same. I know that in our part of the state as well as other communities, services have been rendered by attorneys in foreclosing mortgages, probating estates, instituting actions to quiet title, etc., at a ridiculously low fee. A lawyer may be of the opinion that he can in that manner secure more business, but he overlooks the fact that if every attorney charged a reasonable fee, even though he may have fewer clients, his income would increase materially and the people who, because of the attorneys themselves, have been educated to go around bargaining in order to have legal services rendered at the lowest possible fee, would soon discontinue that practice and at the same time would have a higher respect for the legal profession and the members thereof.

Members of the Bar Associations do not have the time, nor do the Associations have sufficient funds to enter upon too many activities that may be considered outside of the scope and purpose for which Bar Associations were instituted. I believe we should confine our-

selves to matters pertaining to the legal profession. I do not mean by that that there are not several things that can be done which would be of benefit to community, state and nation. A fine, high-class, splendid Bar logically follows an active Local Bar Association. Active Local Bar Associations throughout the states will assure worthwhile State Bar Associations and active State Bar Associations will make it possible for the American Bar Association to accomplish the ends for which it is organized. Through such efforts, the lawyers of the country can properly protect their profession, themselves; can perform services of value to the community, state and nation, and last but not least command that respect of the American people for the legal profession to which it is justly entitled. Through such efforts lawyers in every community will be looked up to as leading citizens, desirous of seeing to it that there shall be a proper enforcement of all laws and that justice shall be meted out to all.

PRES. EBERLE: This matter is open for discussion. Mr. Benoit has given us some very good suggestions and I hope the delegates tomorrow will consider them. The Bar Commissioners have been directing the Secretary to submit questions and propositions to local Bar Associations, but Mr. Benoit has suggested that we should more and more, as the Bar Commissioners run into problems or questions that might posibly come up at the annual meeting, submit them to every local Bar Association so that the lawyers can be thinking about them, and anyone interested can investigate them, and that the fellows will be prepared when they arrive here; and the questions that will be discussed will not be matters of first impression at the annual meeting.

FRANK MARTIN, JR.: How well is the state organized into local Bar Associations at the present time?

PRES. EBERLE: Blackfoot and Gooding are the only ones not organized. All the rest of the state is organized. The Creation and Organization of the Local Bar Section will be discussed by S. T. Lowe of the Burley Bar.

MR. LOWE: Mr. President, Members of the Idaho State Bar. The subject assigned to me for consideration pertains to the question whether there should or should not be organized as a part of the State Bar a Local Bar Section, which meets at the time of, immediately preceding, or succeeding the meeting of the State Bar, with power to decide matters of policy and adopt all resolutions for the Idaho State Bar.

The State Bar is a statutory organization, the membership of which is, by law, composed of all persons who have been heretofore or shall hereafter be, duly admitted to practice law before the Supreme Court of this state and who have not been disbarred or suspended therefrom and who shall have paid the license fee, and all judges of the district and supreme courts of this state and of the district court of the United States for Idaho.

It is governed and controlled by a State Bar Commission composed

of three members, each of whom holds office for a period of three years, and one of whom is elected annually from the statutory district in which he resides.

Section 3-408 Idaho Codes Annotated in part provides:

> "The Board of Commissioners shall also have power to make rules and by-laws, subject to the approval of the Supreme Court, not in conflict with any of the terms of this Act, concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the board AND OF THE IDAHO STATE BAR."

It is proposed that the Local Bar Section be composed of delegates selected by the Local Bar Associations on the basis of membership in the Local Associations. That its meetings be presided over by the President of the State Bar and that the Secretary of the State Bar shall act as Secretary of the Local Bar Section.

Under the provisions of Section 3-408 I. C. A., above quoted, it would appear that all power in connection with the State Bar is vested in the Bar Commssion, and that neither the State Bar nor the Local Bar Section has any power to act, except in an advisory capacity.

If the Local Bar Section be organized, as proposed, it will strip from the State Bar all power to act, even in an advisory capacity. All that the State Bar can then do is to recommend to the Local Bar Secton that it request the Bar Commission to take or refrain from taking some proposed action. The annual meetings of the State Bar will be reduced to the status of a social event, with no greater power or dignity than a debating society. If we were to undertake to pass resolutions, recommending certain action be taken by the Bar Commsson, the President should declare the resoluton or resolutions out of order, for the reason that such power has been delegated to the Local Bar Section and such action could only be taken by such section.

The Local Bar Section would have the right and power to veto any action of the State Bar. It is clearly another instance of the tail controlling the dog.

When the legislature created the State Bar, by the statutory enactment, the Bar was stripped of the power to make rules and regulations for its own government, and that power was placed in the Bar Commission. It is now sought to deprive the Bar of the power to pass resolutions or make recommendations to the Commission.

An effort has been made to justify the creation of the Local Bar Section and to grant to it the power to decide matters of policy and adopt all resolutions for the Idaho State Bar on three theories. (1) That the delegates to the Local Bar Section are selected by the Local Bar Associations on the basis of membership in each local association and are therefore representative. (2) That the meetings of the State Bar are more or less dominated by the members of the Bar in the community where the meeting is held, because the number in attendance from that

community is proportionately larger than from the more distant communities. (3) Expediency.

These theories require separate consideration and will be considered in the order stated.

As heretofore pointed out, under the law, members of the Local Bar Associations are members of the State Bar. If all the members of the Local Bar Associations were to attend the state meeting, then the Local Associations would have substantially the same representation in the state meeting as they would have in the local Section. If members are not sufficiently interested to attend the state meeting and do not attend, then they voluntarily surrender their right to be present and participate, and are not being deprived of that right or privilege by some dictatorial rule or edict. If the members of the Local Bar Association are not sufficiently interested to attend the meeting of the State Bar, why should they be more interested in the meeting of the Local Bar Section, if the Local Bar Section had no more power than the State Bar? If there is any magic, persuasive power, or coercion in the word "Delegate," then the Local Bar Association could elect delegates to the meetings of the State Bar on the same basis as it is proposed to elect delegates to the Local Bar Section. It is not my thought that the voting power in the meetings of the State Bar should be confined to selected delegates only, but that by the selection of delegates each Local Association might be more certain of representation at the state meetings.

Turning now to the consideration of Theory No. 2. If all the members of the Bar in the community where the meeting is held were to vote as a unit, or were to confederate together for the purpose of procuring some personal advantage for members of that particular community or to the disadvantage of the lawyers from other communities that were not so largely represented, there might be some merit to this proposition. I am not one who believes that there is danger of such a contingncy. The interests of the lawyers in one section of the State—in the main—are no different than the interests of the lawyers of the other sections. The views of the lawyers on questions of importance to the State Bar are probably as divergent in the community where the annual meeting is held as they are over the State at large. If the members of the Bar of any locality or community are so selfish and inconsiderate that they would confederate together to procure some rule or regulation favorable or advantageous to them, without considering the effect on members from other localities, then the State Bar should be abolished; and not stripped only of its right to pass resolutions or determine matters of policy.

There still remains for consideration the question of expediency. No doubt the plan for the creation of a Local Bar Secton originated from the so-called House of Delegates of the American Bar Association. The plan may or may not be desirable and expedient for the American Bar Association. It seems to me that it is a serious question with reference to that Association. But much more can be said

for it, when applied to the American Bar Association than when applied to the State Bar. The American Bar Association is large, the attendance at its meetings is large and, if an attempt were made to transact all of the business at one general meeting, it would require too much time and the dispatch of business would become cumbersome.

The American Bar Association has a membership which represents forty-eight states, each having a judicial system of its own, differing in some degree from the system of the other states. The interests of the lawyers from different states are so divergent and their problems so distinct and separate that each system should be represented and have an opportunity to be heard.

None of these considerations apply to the State Bar. Its membership is not large. The meetings are not crowded or cumbersome and different systems of laws are not represented. The interests of the lawyers are not so divergent and no good reason exists why the State Bar cannot consider, act upon and dispose of all of its own problems, give to them as much consideration and handle them as efficiently and promptly as a Local Bar Section.

I am not of those who believes in delegating power to a House of Delegates, or a Local Bar Association, if and when the power can better be exercised by the State Bar itself.

It should be and I believe it is the function, pnrpose and duty of the Bar and the Courts to preserve and protect the liberties and rights of the citizens of this country, of which we have heretofore so vociferously boasted. It is a fundamental concept of Americans that they desire to have a voice in their own affairs, are entitled to and desire to be heard. We have sat supinely by and watched our personal rights and private liberties and privileges be absorbed and delegated until it is high time that we wake up, realize what is going on and provide the "stop signal."

The Local Bar Section is a barnacle that is being grafted on to the corpus of the State Bar that will either suck the life blood of the State Bar or, eventually, shrivel and die from its own uselessness. The two will not grow and thrive together. If the Local Bar Section is to decide matters of policy and adopt all resolutions for the State Bar, then there is no reason for anyone attending the State Bar meetings who is not a delegate to the Local Bar Section. The meetings of the State Bar will become a meeting of the delegates to the Local Bar Section. The delegates will eventually conclude that the two meetngs are duplications and not essential. The Local Bar Section, in my opinion, can serve no useful puprose and should be abolished. If not abolished, and if it exercises the power to determine matters of policy and adopt resolutions for the State Bar, it will ultimately abolish the State Bar.

PRES. EBERLE: The discussion will be led by John W. Graham of the Twin Falls Bar.

MR. GRAHAM: I partially agree wth what Mr. Lowe said and disagree with the balance. I agree with him and am opposed to the Local Bar Section meeting at the same time as the State Bar by reason of the fact that you have two bodies functioning at the same time, dividing your shots and losing your power. On the other hand, I think Mr. Lowe is absolutely wrong in regard to the Local Bar Associations. He wants to disband them; dispense with them. Let me go back a short distance in the history of the State Bar and give you some idea of how the thing originated. I attended the Bar meeting in Boise some ten or fifteen years ago, and we had about twenty members present. We seem to be making some progress in developing our State Bar, at least the attendance at our meetings. When I was on the Commission I gave some thought to the idea of strengthening the representation that would meet annually. With that end in view the Commission suggested organizing the judicial section and encouraging the supreme judges and the district judges to meet just before the State Bar, with the idea that they certainly must have some ideas on reformation or improvement of the judicial situation, and I think our judgment was justified by the action of the judges in the last three or four years. They have rendered great assistance to us in discussing judicial matters and they have honored us by their presence, which in turn has been beneficial to the members of the Bar. Also was organized the prosecuting attorneys' section. We suggested organizing that because the prosecuting attorneys have trials and tribulations of their own, and every year they appeared at the Bar meeting with some resolution unsupported except by one or two of the prosecuting attorneys, with no force behind it. I suggested to them that if they wanted to make any improvements relative to prosecution and prosecuting attorneys, it was their duty to organize their section and come as a body before the State Bar and make some impression. Out of that grew the prosecuting attorneys' section. I think we were justified in that; the first year they were organized they had five members present; this year I understand this section has thirty-one, and naturally this has also increased the attendance at the Bar meeting.

One object in suggesting these things was to increase the attendance at our State Bar meeting, and increasing its power. If we can get two hundred and fifty or three hundred members of the Bar to attend annually out of a membership of five hundred and fifty we have a power behind us, and we won't have the difficulty that arose in the Legislature last session by attorneys in the Senate opposing the action of the Bar because they felt that the power of the Bar wasn't behind it. At the present time you hear that the State Bar doesn't represent anything except a few fellows who get together and pass resolutions. Let's get away from that idea and get the idea that the Bar is a power unto itself, and when we make recommendations some consideration is due.

Another idea originated when I was on the Commission was that the locals send delegates to the State Bar to meet the day before the State Bar where they could harmonize the desires of the different local

Bar Associations and then present resolutions to the State Bar for consideration and action. However, we have gone one step farther. We now have a delegate section which meets the last day, representatives from the different locals, and they legislate. I don't know whether that is a good thing or not. We are going to meet with this difficulty. You are delegating the power possibly to a fewer number to legislate for you when the same subject might be considered and passed upon by the State Bar meeting, and you will have the same objection made that the section doesn't represent the sentiments of the Bar in its entirety.

The idea I had first was to get suffcient delegates from the locals to meet the day before, make their recommendations to the Bar and then have the Bar consider and pass resolutions upon them. The object was to get the expreseion of opinion of a larger body than the delegates themselves.

I am rather surprised at Mr. Lowe's position since he has been president of our local Bar Association for the past year—

MR. LOWE: You evidently misunderstood or else I didn't say what I intended to say. I never said anything about abolishing the local Bar Associations. I say abolish the Local Bar Section.

MR. GRAHAM: I thought you were speaking of the Local Bar Associations being dispensed with. I heartily agree with you on the Local Bar Section. The Local Bar Association, in my judgment, is an absolute necessity for the purpose of building up a stronger State Bar Association. The idea is that when a proposition comes up it is certified down to the Local Bar Association for discussion. We have some sixty members in our Local Bar Association meeting. A lot of them are not interested, but if by any hook or crook we can get them into a Local Bar Association to take part in the discussion of these problems which the State Bar is confronted with, we are getting that much closer to our own members and thereby strengthening the power and force of the State Bar.

C. W. POOLE: Is it proposed that the action of the Local Bar Section, the resolutions that they may adopt tomorrow, will bind this body?

PRES. EBERLE: That will be the business section of this meeting.

MR. POOLE: I think that is a point Mr. Lowe disagreed with. I am inclined to agree with Mr. Lowe. Do they transact business here and adopt resolutions that might bind this body without having an opportunity to know what they are?

PRES. EBERLE: Perhaps I can clarify that for you. It is called a section, and as I said yesterday, that may be a misnomer. It is still a part of this meeting. The meeting continues and every member of the Bar is entitled to sit in and discuss whatever problems come up. But when it comes to voting, the voting is on a representative basis. Every local Bar has representation numerically. As I said yesterday, perhaps it is unwise. Here is what we are confronted with. As John Graham told you, at first it was thought that local Bar As-

sociations would discuss their problems; they would have delegates who would first meet and take action. At Coeur d'Alene we tried that. Then when the general Bar met the lawyers present simply overruled the action of the local Bar Associations. In other words, the group that attended the annual meeting at Coeur d'Alene, which represented about twenty per cent of the Bar, overruled the action of the delegates. That was the situation with which we were confronted. It so happened that there were only a few from the eastern part of the state. There were some from this part of the state. There were practically no members from the Twin Falls and Burley bar. As a result, the lawyers who were there from Northern Idaho and Boise overruled the action of the representatives of the local Bar Associations representing some 555 members, although there were only a hundred members at Coeur d'Alene. Perhaps the action of this body is only advisory. Under the statutes it may be that your executive officers have the authority to do what they please. However, it has always been the practice of the Commissioners to carry out the wishes of this organization evidenced and expressed at its annual meeting. When you went on record in favor of the retirement bill we prepared the bill and offered it to the Legislature. When you went in favor of the rule making bill we did the same thing. The executive officers of this organization endeavored to carry out the policies as expressed at the annual meeting. Of course, you say we haven't the rule making power, it is in the Board of Commissioners, but the Board has adopted a rule which provides that the power of expressing the policy of the lawyers of this state lies in this organization, and that the Board will follow the resolutions adopted by this organization, so whether legalistically correct or incorrect, as a practical matter the Commissioners, through your executive officers and the power may lie with them, are going to follow the expression of the members of the Bar at this annual meeting and any other annual meeting.

Perhaps we should increase the number of delegates, but the thought in formulating this rule was that the delegates participating in these meetings, after two days of discussing problems and hearing the various members of the Bar, at the business section tomorrow, would be in a better position to determine the policies of the Bar. Not on a purely democratic basis but on a representative basis, so that even though members of the Bar in north Idaho or eastern Idaho are unable to come, they are here through their delegates. I know it has often been said that there is no reason why we shouldn't have at least half the members of the Bar here. As you know, we are very fortunate here in having about 25 per cent, probably the largest attendance of lawyers in Idaho in the history of the Idaho State Bar.

You will be amazed at the number of lawyers who say they simply cannot afford to go to these meetings. If the meeting happens to be in their vicinity they come; that is why we rotate the meetings. Their criticism has been that the action of this body in the past hasn't been truly representative. It may not be a just criticism but it is sufficiently widespread to try out this system now of representation,

and no matter where a lawyer may reside or the reason he may have for not coming, if he will attend his local Bar meetings and take part in the discussion of these things that are going to come up here, and elect delegates who will sit in this discussion for two days, he can't have a just complaint. Tomorrow everyone is welcome to attend the meeting. It is only the voting that will be based on representation and not individual attendance.

MR. KERR: Mr. President, I understand the local Bar section by-laws sent out to the various organizations have been adopted?

PRES. EBERLE: Yes.

ROBERT M. KERR: I wonder if the majority of the members of this association have come in contact with the recommendations made by the Shoshone County Bar?

PRES. EBERLE: That is the one I had reference to a few moments ago.

MR. KERR: As secretary of the Ninth District Bar I just received a copy of that about an hour ago. I was quite impressed by some of the recommendations they made. Was it understood that it was a possibility that those recommendations be incorporated by some sort of action tomorrow?

PRES. EBERLE: What I had in mind doing was taking them up at the meeting in the morning so that the delegates could adopt some of them in the formulation of their rules. Some of these objections seem to have quite a little merit. The first is the one I mentioned yesterday—that instead of speaking of it as a section it should be the legislative section or house of delegates; the voting is simply on a representative basis and not by those who are present. They also raise the question of the Bar Commission having a vote. Now the language perhaps is somewhat ambiguous. The intention is, if there is a tie vote that the Bar Commission cast the deciding vote. I imagine that can be corrected tomorrow. Then there is also the question of the function of that section between annual meetings. In other words, they feel that there should be some continuity of policy, something that is being carried on between annual meetings. The thought has been among the Bar Commissioners that local Bars which elect the delegates should carry on a discussion of these problems as they arise, and if anything come up of particular interest they should be forwarded to the Bar Commissioners and they would send them around to the other local Bar Association, and when the delegates are elected and come to the next annual meeting they will be ready for discussion.

MR. GRAHAM: I am glad you explained the delegate meeting. A number of the Bar gained the impression that this meeting tomorrow was confined to the delegates. I find now that it is a meeting of the Bar with the power of voting left with the delegates only.

PRES. EBERLE: Anyone can discuss anything that comes up. When it comes to voting it will be representative and every part of the state will be represented.

FRANK D. RYAN: I am present from the Seventh Judicial Bar Association, and it has been my experience in trying to carry that through the pioneering, that we have had almost the same trouble in getting attendance at the local Bar meetings that the State Bar has had in getting attendance at its meetings. It seems to me that before these Local Bar Associations are going to be of value we will have to devise some way of getting better attendance. We have tried to work it out in a social way and that has had some effect, but I believe taking one meeting with another that we haven't averaged 30% of the members of the Bar, maybe 40%, except on one occasion when we recommended to the Governor whom to appoint as District Judge I think we had almost a full attendance.

It would be well for the Commissioners to study out some plan of working up interest in these local associations. If you are going to have a meeting there ought to be a purpose behind that meeting or naturally your attendance is going to fall off. You just can't call a meeting, talk a little bit and leave. You have to have something behind each one of these meetings; have to have something concrete to work on and men of ability to discuss and bring these things up. I believe a great deal more attention should be devoted by the Commissioners to arouse interest and work up questions for the consideration of local associations.

PRES. EBERLE: I think that was behind Harry Benoit's suggestion that the Bar Commissioners' problems and questions arising be circulated around to all local Bar Associations so they could be discussed. We will adjourn.

LOCAL BARS SECTION

SATURDAY, JULY 29, 1939
(Morning Session)

PRES. EBERLE: The meeting will come to order. I have appointed a credentials committee of Mr. Kerr and Mr. Tway, and they have just checked over the credentials that were sent down from the various local Bar Associations and I will have the Secretary read the roll of delegates. Will you please answer? (The Secretary called the roll.)

As you know, this is the first time that we have operated under this plan since the committee on by-laws drafted, and the local Bars approved them, and during the discussion the past two days there have been a number of constructive suggestions made with the view of bettering the machinery and operation of this new plan. Undoubtedly we could spend the whole morning talking about the wisdom of changes. Rather than spend the time now it might be better if we were to appoint a committee to study these suggestion and report to us at the next annual meeting, and before we again operate under this plan discuss it fully and make the changes at that time before we go to the next meeting. If you gentlemen agree with me, I'd like authority to appoint a committee to study this plan, see how it operates this time, and then make its suggestions in writing to be submitted to every local organization, so that each can discuss them and all be familiar with them before we meet again.

MR. LOUFFBOURROW: I move that the chair appoint such a committee.

A VOICE: I second the motion.

PRES. EBERLE: All in favor of the motion signify by saying Aye. Opposed, No. The motion is carried.

I will appoint Oscar Worthwine, Boise; John Graham, Twin Falls; and Phil Evans, Preston. They will get into the work and their drafts will be sent to every local Bar Association to be discussed. The Shoshone County Bar has made some fine suggestions and they will be turned over to the committee.

Now as to how the vote will be counted. We will proceed upon the theory that each local Bar can vote its full number of votes, and if all the delegates are not here those who are present may vote the full number of votes; also that any local Bar desiring to split its vote may do so. Any objection to that? The committee should also study that particular phase of the voting to determine if that should continue to be the rule.

I know you are all rather anxious to get away this noon ,and without desiring to hurry anyone, I hope that we can snap this thing along. We have heard discussion the last two days and I think probably most of us have our minds pretty well made up. The chair will now entertain motions and resolutions on matters that have been discussed or any other matter the Bar desires to bring up.

FRANK MARTIN, JR.: I have here a resolution in regard to the creation of a Board of Bar Examiners which I will read and then file with the Secretary.

BE IT RESOLVED BY THE IDAHO STATE BAR:

(1) That the standards adopted by the American Bar Association for admission to the Bar are hereby approved by the Idaho State Bar and shall govern the admission to practice in this State, and no person not previously admitted to practice law in another State shall be admitted to practice in this State without first taking the Bar examination as now contemplated by the rules of the Supreme Court of this State.

(2) That the Supreme Court be requested to amend its rules relative to the admission to practice law, by providing for the creation of a Board of Bar Examiners, the members of which shall be appointed by the Commissioners of the Idaho State Bar.

(3) That the rules of the Board of Commissioners of the Idaho State Bar shall provide for the appointment of a cooperating com-

mittee to be appointed by said Board for the purpose of promoting cooperation and closer affiliation between the Law School of the University of Idaho, the Board of Bar Examiners ,and the Idaho State Bar.

MR. MARTIN: Mr. President, I move the adoption of that resolution. As I understand it, all this body can do is to make recommendations to the Board of Commissioners. We recommend that we want a certain thing done and the machinery and the method is left with the Board to work out with the Supreme Court of the State.

O. W. WORTHWINE: Mr. Hawley, a former member of the Commission, requested that he be permitted to make some remarks concerning this matter.

MR. MARTIN: I am perfectly willing that this motion be held until Mr. Hawley gets here.

O. W. WORTHWINE: Mr. President, a committee should further investigate the method or manner of transferring or re-delegating the rule making power to the Supreme Court. There are constitutional points involved; differences of opinion arose yesterday; and before we can get anywhere on that subject it should be investigated. I move the President appoint a committee to investigate the constitutionality and all related points of an act delegating rule making powers to the Supreme Court.

FRANK MARTIN, JR.: I second the motion.

PRES. EBERLE: Under these present by-laws the retiring President apparently continue through this meeting. Any discussion? All in favor signify by saying Aye. Opposed, No.

MR. MARTIN: May I make a suggestion that the Committee be instructed to make their report and findings at least three months before the meeting of this Bar next summer, so that the local Bar organizations will have an opportunity to go over their report before they send delegates to this meeting.

DEAN DRISCOLL: This is only a motion to investigate and report?

PRES. EBERLE: I think you are right about it. We will recommend to the committee that the report be out six months before the next meeting. I declare the motion carried.

FABER TWAY: There is a need in Idaho for some official organ of the Idaho State Bar. There is a lack of legal articles written on Idaho law, and I believe that the State Bar should, now that we have the increased fee which was passed at the last session of the Legislature, investigate the possibility of cooperating with the University of Idaho or some other organization, and putting out at least two or three times a year a journal on Idaho law. In some states the Bar prints the advance sheets of the Supreme Court, and I think there is one individual in Boise who is distributing advance sheets at the cost of $12.00 a year to the members of the Bar. I move that a committee

of three members be appointed by the President to investigate the feasibility, and ways and means, of printing a law review or case comment on Idaho law, and report back at the next meeting.

A VOICE: I second the motion.

PRES. EBERLE: All in favor signify by saying Aye. Opposed, No. The motion is carried.

O. O. HAGA: I want to offer this resolution:

BE IT RESOLVED BY THE IDAHO STATE BAR:

That, for the purpose of assisting the members of the Legislature and State officials in the preparation of bills, the Board of Commissioners of the Idaho State Bar shall prepare and report to the next annual meeting of the Idaho State Bar a bill for the establishment of a Legislative Drafting Bureau in this State, the director of which shall:

(a) Examine all bills before being passed by either House and consider and correct, if necessary, the draftmanship and title thereof, and consider the extent to which such bill will amend or change the existing law of this State.

(b) Prepare for the Secretary of State the index of all session laws with annotations or reference to similar legislation in other States.

(c) During the interim between the sessions of the Legislature, prepare such Acts as the Governor or other State officers may deem appropriate for introduction at the next session of the Legislature and render like service for newly elected State officers, and for members of the Legislature.

MR. HAGA: This resolution is merely to bring the matter before the next annual meeting. The resolution perhaps covers more than you want to act on or include in the proposed bill, but I made it broad purposely so that the committee or the Bar Commission may consider it from every angle. The plan is that you would do away with the political appointees of the Senate and House. You would have an expert draftsman whose business it is to acquaint himself with the laws of the various States on the subjects on which the Legislature desires to enact legislation.

RALPH NELSON: This is for the benefit of the members of the Legislature and the public.

PRES. EBERLE: The thought is to render a service ont only to the Legislature but to the public.

B. W. OPPENHEIM: There is one paragraph that relates to the furnishing of annotations. As compared to the legislative drafting and legislative reference service that is expensive. This whole program is going to be expensive if it is adequately conducted. In fact, that is the worst part of it, in attempting to do something it would be

starved. I suggest to the author of the resolution the elimination of that paragraph as not being closely enough related to the main object.

PRES. EBERLE: Your thought is that the four or five thousand dollars we are spending now would be less than would be spent under the new system?

MR. OPPENHEIM: We spend seventy thousand dollars or more every legislative session for legislative drafting and reference and considerable of it is wasted. If that had been spent beforehand in preparation you would get more for your money.

MR. HAGA: The cost of annotating the statutes is a very large item, but this director would keep the statutes annotated so that when you re-publish or re-print the statutes you do not have to pay a publishing house the large sum for annotating. Take that into consideration. I think it saves money to the State. It is substantially the same as they have in Wisconsin, and one man and his stenographer except during the Legislature, do the work.

JOHN W. GRAHAM: The purport of the resolution is an ideal situation, no question about that, but it embodies the expenditure of a whole lot of money. I agree with Mr. Oppenheim that the resolution should be divided into two features.

MR. LOUFFBOURROW: It seems this is a matter for study and report at the next annual meeting.

PRES. EBERLE: You have heard the resolution. All in favor signify by saying Aye. Contrary, No. The motion is carried unanimously and the resolution adopted.

I am going to appoint on the committee pursuant to the resolution with reference to the rule making power, Edwin Snow of Boise, E. H. Casterlin, and A. L. Merrill of Pocatello. On the other committee with respect to a law journal, Dean Driscoll, Faber Tway, and Earl Smith.

O. O. HAGA: You are all acquainted with the fact that the American Bar Association has for the last three or four years been working on a bill to permit judicial review of administrative proceedings. It is a very important bill. The committee has been one of the most important and strongest committees of the American Bar Associaton. It has been approved by the Amercan Bar Association. The bill was introduced in both Houses. It passed the Senate unanimously the other day, and on motion to reconsider it is being held in the Senate. A similar bill is pending in the House and I have before me the report of the comttmiee of the House Judiciary Committee. In the conclusion of this report, it says:

> "It has not been possible to draft an administrative bill which would be entirely satisfactory to everyone, but it is doubtful if there has been legislation proposed in a century which has had more extended and careful study than that given to this bill. It was under careful consideration for more than three years by the American Bar Association and the principles thereof have been approved by the board of governors and the house of delegates of that association and by the State Bar Associations of California, Colorado, Illinois, Nebraska, Ohio and Oregon, as well as by the City Bar Associations of Boston, Chicago, Cleveland, Dallas, and St. Louis. Doubtless other Bar Associations will approve the bill as they meet from time to time during the coming months. A number of business organizations have approved the bill and it is understood to be acceptable to a large labor organization.
>
> "The object of all those supporting the bill has been to leave the administrative agencies as free as possible to function consistent with the supremacy of the law and consistent with such judicial review on both the law and the facts as is necessary to insure both the supremacy of the law and substantial justice in controversies between the United States and individuals. Much of the success of the reform will depend upon the able and wise use made by the administrative agencies of the power conferred upon them by this bill as well as upon the wise and able use by the courts of their reviewing jurisdiction. However, it is believed that we may safely trust this matter to the wisdom of all concerned to the end that there may be developed in this country a body of administrative law in accordance with the received common law traditions."

I now have this resolution to offer:

BE IT RESOLVED BY THE IDAHO STATE BAR:

> "That we approve and urge the passage by Congress of the Administrative Law Bill prepared by or under the direction of the American Bar Association and known as S-915 and HR-6324, and that the Secretary be directed to report this Resolution to our Senators and Representatives in Congress."

I move the adoption of this resolution.

A VOICE: I second the motion.

PRES. EBERLE: It has been moved and seconded that the resolution offered by Mr. Haga be adopted. Those in favor signify by saying Aye. Opposed, No. The resolution is adopted unanimously.

Several members have asked whether we pass any resolutions with reference to our deceased members. It has always been the practice to let that matter go until the memorial service that we hold annually in the Supreme Court. Unless you want to change that practice, I assume you will not pass any resolution here, but join the service held in the Supreme Court.

There is one more matter to be called to our attention. There was a bill introduced in the last Legislature to provide for the guarantying of titles. A number of local Bar Associations wrote the Commissioners asking that something be done. The Legislative Com-

mittee did some work with reference to it. At that time it appeared that the Grange had the Torrens System on the program as one of its objects. The committee, and Mr. McKaig and Mr. Taylor of the Grange had several conferences. The Grange said that a substantial number of their membership objected both to the abstracts and examination of titles, and it was suggested that a committee of the Bar be appointed to confer with the abstract companies and with the Grange, because apparently the Grange will again have that on its program for the Legislature two years hence, and they were very anxious that the abstract companies, the Bar, and the Grange get together and work out something in connection with the lessening of the cost of transfer of title. Do you desire to have such a committee to work with the Grange and the abstract companies?

KARL PAINE: I move such a committee be appointed, to be composed of three members.

A VOICE: I second the motion.

MR. HOLLAND: I don't know how many of you gentlemen have had experience with the Torrens System. They have tried the Torrens System in California; in the State of Washington, and in the State of Oregon, and in those three States I am somewhat familiar with the manner in which this system has worked. A long in 1925, King County, Washington, which is the largest and most populous County in the State, in their fund had the sum of $84.00 to guarantee against any lawsuit which they might sustain by reason of insuring titles.

JOHN W. GRAHAM: As I understand it, this committee is to work with the Grange and abstractors with reference to the cost of abstracting titles.

PRES. EBERLE: All in favor signify by saying Aye, Opposed, No. The motion is carried unanimously.

One more thing has been called to my attention. As most of you know, during C. Ben Ross' administration and also through Barzilla Clark's administration, before an appointment was made to fill a vacancy on the Bench, reference was had to the action nf the Bar. If it happened in a District Court, for example, Governor Clark deferred to the local Bar Association in that district and appointed the man chosen by that local Bar Association. It was suggested yesterday, inasmuch as there are no vacancies now, it might be well for us to pass a resolution that this policy be continued by the present administration.

MR. TWAY: I move such a resolution be adopted.

A VOICE: I second the motion.

PRES. EBERLE: You have heard the question, gentlemen, all in favor signify by saying Aye. Contrary, No. The resolution is carried.

Mr. Hawley, prior to your arrival there was a motion made and someone suggested you might like to make some remarks in connection with it.

JESS HAWLEY: Gentlemen, I want to talk a little bit about the second phase of the resolution which will place the examination of applicants to the Bar in the care of a special committee. By this motion the Bar Commission seeks to hand that very important work over to a committee to be selected by it. I do not know whether that is a good policy. I am not prepared to say that it is. I feel that this is such an important matter that it should not be adopted at this meeting. It should be deferred for serious consideration by the various District Bars of the State. My reasons are these:

The Bar Commission consists of three men, each of whom in selected by vote. He is a good man, above the average, I think, in his district, a seasoned man, a man of ability, tried and true; he is an important man. No higher honor can come to him as a lawyer than to be entrusted with the most sacred thing that we have in a professional way—our right and privilege of practicing law. We thereby entrust him with the honor of our profession, with its dignity and with its preservation, and with the proper conception of the best interests of the profession and, of course, due consideration to the welfare of the State. When you consider, therefore, the character of the office and the character of the men we have selected to fill the office over the various years, you must agree with me that those men are capable; they are honorable and they are fit custodians and trustees of this profession. Now, that brings me to this:

The Commission as our trustees has no more important duty than the guarding of the gates to this profession. We know that there are many men who like the honor and the profit of being attorneys. We know that they are knocking at the gates; we know that to keep our profession a dignified profession and a worthy profession, we must have due compensation for our attorneys. I don't mean by that to say that we should make it a closed union, but I do say some consideration must always be given to those of us who are in the profession that the profession be not overcrowded. I do believe that the Bar Commission, therefore, has the duty and it should be continued as its duty, of passing upon the admission of candidates, both from the standpoint of their moral qualifications and of their educational qualifications. I have been on the Commission and I know one of the most arduous lying on the back of the Commissioners is the examination of the papers. I know that it takes thirty days at least of a man's time out of every year he serves as Commissioner, but if we are willing to accept the position of Commissioner then we should perform the full duties of such Commissioner. We should not transfer any of those responsibilities to any committee. I feel very keenly that a Commissioner should not avoid his duty; should not shunt this performance on to a committee of professional examiners or those who soon will become professional examiners, because once you appoint this committee it is going to continue for years and years.

The objection is raised that it is too much work for the Commis-

sioners. Well, they must do that work. They are honored and they have the responsibility of doing the things which merit further honor to them. They cannot avoid a certain amount of amateurish work; the first year, that is, a Commissioner can't, but you have two seasoned Commissioners with your junior Commissioner. You also have a man of real qualifications and ability as Secretary. I know that. I have known Sam S. Griffin for many years; in fact, as a boy he came into my office and I trust that I have had something to do with his education as a lawyer. In any event, Sam is a very able man, and the Commission always has his advice and his services.

It seems to me that there is too much tendency on the part of all of us to turn over the work that we have to do to someone else. I am selected as a Commissioner; I have the honor, I want that, and then I turn over the most important, the most arduous work I have to somebody else. That isn't right. The lawyers have a right to the best services and the best ability that a Commissioner has, and he shouldn't avoid that even though it be ever so arduous.

Turning this over to a bureau, and this would be a bureau for examinations, is in my opinion erroneous and the wrong theory, and I believe, gentlemen, that this is such an important matter that it goes to the very heart of our organization; it goes to the very fundamentals, and it goes to the question of whether or not we are going to hold these Commissioners absolutely responsible for the honor and the good work. I think we shouldn't let down the bars in any instance. They must accept that responsibility along with the high honor we have given them. It may be that I am a little sentimental about it. I don't say that I am right at all, but I do say that I would like to consider it further and I would like to have the Bar consider it. I don't like the principle we are adopting, and for that reason I will ask you gentlemen to vote against the resolution now. Let us consider it for another year. It isn't going to hurt these Commissioners to work another year, and then at the end of a year of thought and discussion, we will then know better whether we want to begin to give the powers of the Commissioners to anyone else.

Gentlemen, I most respectfully ask you to vote against it and let the matter come up again a year from now. I thank you for listening to me patiently.

WALTER H. ANDERSON: I want to correct my good friend, Mr. Hawley. The Commissioners are not trying to get out of anything. The Commissioners are perfectly willing to do this grading, however hard it may be. I have never heard any man since I have been on the Commission, which has been five years, make any effort to get out from under this grading or avoid any of the work. If there is any effort to create a separate committee it is outside of the Commission and not within the Commission.

MR. JENSEN: It seems to me that all you have done so far is to appoint committees to report at the next meeting, and I think it has been done at about every Bar meeting. We never seem to get at a

thing and vote on it. This proposition of Bar examinations has been before every meeting that I can remember of. There has been a general dissatisfaction with the way the examinations are given. Seems to me that it would do no good at all to postpone the consideration for another year. Seems to me it is time to act on it now.

KARL PAINE: I assume that behind Mr. Hawley's remarks is the implication that this resolution has been inspired by someone who does not trust fully the Commissioners. If I knew that that was true I would agree with Mr. Hawley. I think we should all be loyal to the Commissioners. A year ago I attended the meeting of the Bar at Coeur d'Alene when we had a near riot, and Mr. Eberle and Mr. Griffin will here testify that I went to the front for them. I have always been and I am for them now, but I have been inclined to support this resolution on the grounds that we are asking too much of our Commissioners.

Mr. Hawley speaks of it as an honor. It may be in his philosophy. I think the honor part of it is all bunk. These gentlemen are performing an arduous duty and all the satisfaction they have is that when we promote them to these positions and keep them there as we have Mr. Griffin, it is an acknowledgment of our respect for their ability. That is the only honor there is. I don't distrust these men. I am perfectly willing they go on and perform these duties, but I think it is time to relieve them of it. I dont' waot to let the bars down; I don't want to lower any standard, but I do want to do my duty toward these men who are serving us and will serve us in the future. And these coordinated committees ought to bring about a harmonious system as contemplated by this resolution, and it seems to me you are going to mutilate it; you are going to garble it; you are going to destroy it if you strike out paragraph two. I am with these young men and ready to vote. I am in favor of that resolution for the reasons stated.

A. L. MERRILL: I am agreed with Mr. Hawley. I, too, have served as a member of this Bar Commission and I think I have an appreciation of the work that devolves upon the Commission in the grading of these papers, but that responsibility is the responsibility of the Commission and it should be assumed and discharged, and if I were a member of the Commission I would want to go over those papers myself and not sign the report that someone else might have made to me, because I feel that it is the most responsible thing that the Commission has to deal with. Having that responsibility, it must be discharged by doing the work and not by appointing someone else to do it. It isn't the system that we are complaining about but it is the way it has been done, perhaps. I don't know whether it has been done right or wrong, because I haven't advised myself on that point. I do think there has been an error made in the past where the right of review seemingly has been taken by the Supreme Court as not their responsibility, leaving it finally with the Bar Commission. The right of appeal should always be from the Bar Commission to the Supreme Court by an applicant. But that is not before us now. The partic-

ular point is that the Bar Commission that has been selected by the members of the Bar has devolving upon them this duty and they should discharge it, and by taking their work seriously, as they always do, there are not so many errors committed as sometimes we might otherwise think.

I don't see why paragraph three should not also be eliminated from that resolution. It seems to me that the elimination of paragraph two leaves it quite difficult to be thoroughly free of conflict, because paragraph three, as I read it, likewise has something to do with the thought in paragraph two, and unless that likewise be eliminated I should be inclined to vote against the entire resolution.

RALPH R. BRESHEARS: I do not understand that this resolution will take from the Bar Commission any power that is now vested in them. It merely empowers them to appoint a committee to give the examination. It has been constantly our aim to select the best possible men to conduct the affairs of this Bar. We always want the men who are busy lawyers and men of high type. The men who are selected as Commissioners of the Idaho State Bar receive no compensation for the great amount of time that they are required to put in upon it. Many times busy lawyers of ability shrink from the responsibility that will be placed upon them because of the large amount of time that is required. It is a policy determining body; it is a body that controls the Bar of Idaho. We want the best men that we can get and it seems that we are taking advantage of the good men of the Bar to elect them to this high office, and then ask them to take all of the detail work upon their own shoulders. Now, if the men of the Commission are empowered to determine who shall take the examination and are empowered to appoint their own Bar Examining Committee, they have complete control over the examinations. We have lowered no standards and we have made it more possible to get good men to accept the office of Bar Commissioner in this State, and I agree with Mr. Paine that if we are going to adopt this resolution we should not emasculate it by taking from it one of the features which makes it a well coordinated resolution.

FRANK MARTIN, JR.: In order to get the question before the house, I move provision two be eliminated from the resolution.

A VOICE: I second the motion.

PRES. EBERLE: In order that you may vote, the question is whether the Board of Commissioners should appoint a separate Board of Bar Examiners for the purpose of preparing questions and grading papers.

JOHN W. GRAHAM: What has invoked all this discussion? It isn't that the members of the Bar Commission are trying to shirk a damn bit of their responsibility; none whatever. The members of the Bar Commission are willing to perform their duties. Why are we considering this today? The power of the Bar Commission to make rules doesn't exist. The Bar Commission recommends to the Supreme Court the adoption of certain rules. I understand that gossip has it, I am not responsible for it, that the Supreme Court stands three to two for the purpose of adopting the rule admitting members of the Law School to practice upon diploma.

PRES. EBERLE: That is not before us. The question is whether the Bar Commissioners shall appoint a Board of Bar Examiners and recommend the same to the Supreme Court, the rule to be made accordingly.

MR. GRAHAM: The Supreme Court can adopt any rule they please. They can follow the recommendations of this Bar or they can ignore them.

PRES. EBERLE: So far they have not ignored the recommendations of this body.

MR. GRAHAM: We want to impress upon the Supreme Court that paragraph one is a reaffirmation of what the practice is.

MR. MOORE: I'd like to know just what the purpose is of having the Bar Examining Committee? I thought it was to have somebody on the Bar Examination Board that would be there five, six, or eight years. Is that the purpose of it?

PRES. EBERLE: Yes. A vote in favor of this motion is to eliminate the appointment of the Bar Examiners. A vote against it is a vote in favor of Bar Examiners.

PRES. EBERLE: The Secretary will please call the roll. (Secretary calls roll). Gentlemen, the motion is lost.

We now take up the entire resolution which contains paragraphs one, two and three. In order to answer an inquiry made to me a few moments ago, number one, you must realize if adopted will provide a recommendation to the Supreme Court that there be no change in the present control of admission; that there be no admission by diploma with reference to any school or any group. All in favor signify by saying Aye. Opposed, No. The motion is carried.

Anything else, gentlemen? Any other motions or resolutions to be presented? Then, gentlemen, if there is nothing further to come before the meeting, and before introducing the new president, I want to thank each and every one of you for the loyalty and for the assistance that you have given us, and particularly myself, in the humble and conscientious work that we have tried to carry on in performing the functions that have been bestowed upon us during the past three years. I expressed myself fully and the purpose of our work in my opening statement. I only want to add that I have been, and always am, happiest when I am working and playing with those with whom I practice law.

RALPH R. BRESHEARS: I offer a motion that it be the sense of this meeting that we appreciate the manner in which the Commission has devoted its time to its duties during the past year, and wish to

express our appreciation and thanks to the Commission for the valuable service that it has rendered to the Bar as a whole, and our special thanks to the retiring president, Mr. Eberle.

A VOICE: Motion seconded.

SECRETARY GRIFFIN: You have heard the motion. All in favor signify by saying Aye. The motion is carried.

FRANK F. KIBLER: I offer a motion that we express our thanks to the members of the Third District Association for the splendid entertainment that we have had in Boise during this meeting.

A VOICE: I second the motion.

PRES. EBERLE: You have heard the motion. All in favor signify by saying Aye. The motion is carried. After the introduction our new President had last night I assume it would be futile for me to say anything more. I want to introduce to you again, Walter H. Anderson from Pocatello.

MR. ANDERSON: I am going to make a speech that I know you will all be glad to hear. It is going to be very brief. I have told some of the members here how I felt after the gridiron at last night's banquet. I feel sort of like a little dog that was jumped on by a big old dog that didn't have any teeth. I am not hurt, but gee! how I have been slobbered over!

We are adjourned.

ATTENDANCE REGISTER

Ailshie, James F.	Boise
Ailshie, Robert	Boise
Ambrose, George L.	Mackay
Anderson, Donald	Caldwell
Axelsen, Milo	Murphy
Anderson, Walter H.	Pocatello
Anderson, Eugene H.	Boise
Buckner, Thomas E.	Caldwell
Butler, James F.	Boise
Bistline, R. Don	Pocatello
Baker, H. A.	Rupert
Bell, Walter G.	Boise
Bogart, James	Boise
Burke, Carl A.	Boise
Brinck, Dana E.	Spokane
Budge, Hamer H.	Boise
Blaine, James W.	Boise
Bowler, W. B.	Boise
Brodhead, W. A.	Boise
Breshears, Ralph R.	Boise
Boyd, Paul S.	Buhl
Baird, Laurence E.	Boise
Benson, Frank L.	American Falls
Bistline, F. M.	Pocatello
Benoit, Harry	Twin Falls
Beckwith, R. W.	Boise
Baum, O. R.	Pocatello
Barnes, E. P.	Boise
Boughton, E. V.	Coeur d'Alene
Babcock, Fred J.	Boise
Christensen, A. H.	Boise
Casterlin, E. H.	Boise
Carver, John	Boise
Clemons, Dale	Boise
Carter, P. B.	Boise
Cupp, Walter R.	Caldwell
Clark, Jno. W.	Malad
Campbell, Wilbur L.	Grangeville
Clements, Verner R.	Lewiston
Callahan, Donald A.	Wallace
Darling, Chas. H.	Boise
Carver, Parker	Boise
Driscoll, Edwin U.	Boise
Dunbar, Wm. C.	Boise
Delana, Elbert S.	Boise
Davison, Frank H.	Boise
Davison, W. H.	Boise
Driscoll, Dean	Boise

Dunlap, Robert B. ..... Caldwell
Dunlap, S. Ben ..... Caldwell
Elmers, Paul G. ..... Grangeville
Estes, Murray ..... Moscow
Estabrook, Frank ..... Nampa
Evans, P. J. ..... Preston
Eberle, J. L. ..... Boise
Freehafer, A. L. ..... Council
Frawley, E. J. ..... Boise
Galloway, Jim ..... Boise
Gwilliam, Thos. J. ..... Emmett
Givens, R. L. ..... Boise
Goff, Abe ..... Moscow
Graham, John W. ..... Twin Falls
Griffin, Sam S. ..... Boise
Galloway, Wm. J. ..... Boise
Hanley, Harry J. ..... Grangeville
Howard, Pendleton ..... Moscow
Huebener, Geo. C. ..... Emmett
Haga, O. O. ..... Boise
Huff, Lawrence E. ..... Moscow
Inman, Arthur C. ..... Boise
Johnson, Ben B. ..... Preston
Jarvis, F. W. ..... Caldwell
Johnston, W. A. ..... Boise
Jeppesen, V. K. ..... Nampa
Jeppesen, Karl ..... Boise
Johnson, Edward T. ..... Orofino
Kerby, F. M. ..... Cascade
Kessler, Harry S. ..... Boise
Koelsch, Chas. F. ..... Boise
Kibler, Frank F. ..... Nampa
Kenward, John T. ..... Payette
Koelsch, M. Oliver ..... Boise
Kerr, Robert M. Jr. ..... Rexburg
Keane, F. C. ..... Wallace
Lowe, S. T. ..... Burley
Langroise, W. H. ..... Boise
Martin, J. F. ..... Boise
Merrill, A. L. ..... Pocatello
Maxey, Stewart S. ..... Caldwell
Morgan, A. L. ..... Moscow
Moore, Latham D. ..... Moscow
Mullin, Creed W. ..... Nampa
Marcus, Claude V. ..... Idaho City
Martin, Frank, Jr. ..... Boise
McFarland, W. B. ..... Coeur d'Alene
Martin, Paris, Jr. ..... Boise
Martin, Homer E. ..... Boise
Morgan, Wm. M. ..... Boise
Madden, Thomas A. ..... Lewiston

Nelson, Ralph S. ..... Coeur d'Alene
Nielson, A. H. ..... Burley
Nixon, Carey H. ..... Boise
Poole, C. W. ..... Rexburg
Peterson, Robert W. ..... Moscow
Paine, Karl ..... Boise
Peacock, John J. ..... Weiser
Pfirman, Franklin ..... Wallace
Reddock, Charles F. ..... Boise
Rosenheim, Edward G. ..... Boise
Ryan, Frank D. ..... Weiser
Stout, Charles ..... Glenns Ferry
Sutton, A. O. ..... Weiser
Snook, Fred H. ..... Salmon
Sullivan, Willis E. ..... Boise
Smith, E. B. ..... Boise
Sathre, Andrew G. ..... Boise
Scoggin, Charles ..... Fairfield
Skiles, C. Stanley ..... Boise
Stout, Charles S. ..... Boise
Snow, Edwin ..... Boise
Sutphen, D. H. ..... Gooding
Sheneberger, F. C. ..... Twin Falls
Rettig, Frank M. ..... Jerome
Scatterday, Geo. H. ..... Caldwell
Van de Steeg, Geo. H. ..... Nampa
St. Clair, Clency ..... Idaho Falls
Scatterday, R. B. ..... Caldwell
Tway, Faber F. ..... Idaho Falls
Thomas, C. W. ..... Burley
Taylor, Fred M. ..... Boise
Thomas, Darwin W. ..... Boise
Taylor, J. W. ..... Boise
Worthwine, Oscar W. ..... Boise
Winstead, C. E. ..... Boise
Wallis, Randall ..... Cascade
Weston, E. A. ..... Boise
Ware, Marcus J. ..... Lewiston
Zapp, Carroll ..... Boise

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