PROCEEDINGS

of the

Idaho State Bar

VOLUME XXIII, 1949

TWENTY-THIRD ANNUAL MEETING

SHORE LODGE, (Payette Lakes) McCALL, IDAHO

June 27, 28, 29, 1949

PAST COMMISSIONERS

WESTERN DIVISION

JOHN C. RICE, Caldwell, 1923-25.
FRANK MARTIN, Boise, 1925-27.
JESS HAWLEY, Boise, 1927-30.
WM. HEALY, Boise, 1930-33.
JOHN W. GRAHAM, Twin Falls, 1933-36.
J. L. EBERLE, Boise, 1936-39.
C. W. THOMAS, Burley, 1939-42.
E. B. SMITH, Boise, 1942-48.
CLAUDE V. MARCUS, Boise, 1948-51.

EASTERN DIVISION

N. D. JACKSON, St. Anthony, 1923-25.
A. L. MERRILL, Pocatello, 1925-28.
E. A. OWENS, Idaho Falls, 1928-34.
WALTER H. ANDERSON, Pocatello, 1934-40.
L. E. GLENNON, Pocatello, 1940-43.
PAUL T. PETERSON, Idaho Falls, 1943-46.
R. D. MERRILL, Pocatello, 1946-49.
RALPH LITTON, St. Anthony, 1949-52.

NORTHERN DIVISION

ROBERT D. LEEPER, Lewiston, 1923-26.
C. H. POTTS, Coeur d'Alene, 1926-29.
WARREN TRUITT, Moscow, 1929-32.
JAMES F. AILSHIE, Coeur d'Alene, 1932-35.
A. L. MORGAN, Moscow, 1935-38.
ABE GOFF, Moscow, 1938-41.
PAUL W. HYATT, Lewiston, 1941-44.
E. T. KNUDSON, Coeur d'Alene, 1944-47.
E. E. HUNT, Sandpoint, 1947-49.
ROBERT E. BROWN, Kellogg, 1949-50.

PRESENT COMMISSIONERS AND OFFICERS

CLAUDE V. MARCUS, Boise, President
ROBERT E. BROWN, Kellogg, Vice President
RALPH LITTON, St. Anthony
SAM S. GRIFFIN, Boise, Secretary

LOCAL BAR ASSOCIATIONS

Shoshone County—Paul B. Jessup, President, Wallace; Alden Hull, Secretary, Wallace.

Clearwater (2nd and 10th Judicial Districts)—Tom Madden, President, Lewiston; Russell S. Randall, Secretary, Lewiston.

Third Judicial District—Randall Wallis, President, Boise; Dale Morgan, Secretary, Boise.

Fifth District (5th and 6th Judicial Districts)—Louis Racine, President, Pocatello; Don Bistline, Secretary, Pocatello.

Seventh District—Donald Anderson, President, Caldwell; William Gigray, Secretary, Caldwell.

Eighth District—Clay V. Spear, President; ———————— Secretary, Coeur d'Alene.

Ninth District—W. Kent Naylor, president, Idaho Falls; Louise Keefer, Secretary, Idaho Falls.

Eleventh District (11th and 4th Judicial Districts)—Edward Babcock, President, Twin Falls; Roy E. Smith, Secretary, Twin Falls.

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1949

COMMISSIONERS OF THE IDAHO STATE BAR

R. D. MERRILL, President, Pocatello

E. E. HUNT, Vice President, Sandpoint

CLAUDE V. MARCUS, Boise

SAM S. GRIFFIN, Secretary, Boise

MONDAY, JUNE 27, 1949

2:00 P. M.

PRESIDENT R. D. MERRILL: Gentlemen, if you will come to order, we will begin our meeting.

We are extremely sorry to announce the resignation of Judge Hunt as a member of the Commission. Judge Hunt, as you all know, became seriously ill, and he felt that he should resign. In the place of Judge Hunt, the Commission has appointed Robert E. Brown of Kellogg. (applause) Mr. Brown, of course, will fill out the unexpired term of Judge Hunt.

The first order of business this afternoon is the report of Sam S. Griffin our Secretary.

SAM S. GRIFFIN: Last year, I reported that in 1923 there were, in Idaho, 629 active lawyers; in 1944, the number had declined to 409, but had been on the increase since. The trend continues, for this year the list shows a total of 528 distributed:

	1949	1948	Increase
Northern Division	115	100	15%
Western Division	280	276	1½%
Eastern Division	108	101	7%
Out of State	25	23	8.6%
Total	528	500	5.6%

Since no admissions are permitted in Idaho except upon examination, the increases are reflected in the increase in applicants for examination. In 1947, 26 individuals were examined, 23 passed (some after more than one examination.) In 1948, 40 individuals were examined, of whom 25 passed (some after more than one examination.) So far in 1949, 33 individuals have been examined, of which 32 (some after previous examination) passed; another examination is scheduled for September, 1949. The number to be examined is not now known, but the year will doubtless exceed 1948.

When we remember that the pre-war applicants numbered usually less than 20, or about 50% of present; and that a volunteer system of grading now involves consideration and evaluation of around 2000 answers, each

by at least two, and usually three graders, and several thousand mathematical computations, it is easy to see why the office of Commissioner is a working job. The Board is seaching for better procedures, and closely watching and actively assisting in the national survey of examinations now taking place, and the possibility of a national examination covering at least the standard subjects of law.

During the year past, R. D. Merrill has been President; E. E. Hunt, Vice-President, and Claude V. Marcus, a commissioner, of the Idaho State Bar. The illness of Mr. Hunt and his consequent recent resignation lost to the Bar and the Board a valuable and experienced member. In his stead, the Board, after consulting the local associations in the Northern Division, has appointed Robert E. Brown of Kellogg to serve the remaining year of Mr. Hunt's term.

Since the last annual meeting in July, 1948, the Board has held eight meetings, extending from 2 to 6 days each. In these meeting were considered such varied matters as examination questions, qualifications of applicants, grading examinations, complaints against attorneys, a question in ethics, arranging referendums for recommendations of the Bar to the Governor of appointees to the Supreme Court and District Courts, meeting with the Bar legislative committee and appearing before legislative committees, consulting with the Supreme Court respecting admissions and rules, arranging for the special meeting of the Bar in December, 1948, and arranging a program for this meeting.

Three formal complaints, and a few informal ones, were received. In one, disbarment action has been ordered; in one, an arbitration has been consented to; and the third was received too recently to be disposed of. As has been the practice, the informal complaints have been satisfactorily adjusted through the Secretary's office.

Governor Robins has acted upon appointments to two places on the Supreme Court, and to five District judgeships in accordance with recommendations of the whole Bar with respect to Justices, and of the District Bars with respect to Judges. The Bar should, and I am sure does, appreciate fully this confidence of the Chief Executive of the State of Idaho in the Bar's selection of worthy men to recommend for judicial position. It is the duty of the Bar never to fail the Governor nor the people of Idaho in this, nor in any other respect.

APPROPRIATION FUNDS

July 1, 1948 Balance in Fund		$ 5,636.40
July 1, 1948 to June 1, 1949—License Receipts		4,520.00
	Examination Fees	1,925.00
	Costs	5.00
June 1, 1949 Total Balance & Receipts		$ 12,086.40

EXPENDITURES

July 1, 1948 to June 1, 1949:

Personal Services	$ 2,670.30
Travel	1,104.46
Other Expenses (Express, Tel. & Tel., Postage, Printing 1948 Proceedings, Supplies)	1,599.10
Refunds (Examination Fee)	25.00
Total Expenditures	$ 5,398.86
June 1, 1949 Balance in Fund	$ 6,687.54

Since our last annual meeting, the following deaths have been reported:

Marshall B. Chapman, Twin Falls
E. J. Frawley, Boise
Miles S. Johnston, Lewiston
T. L. Martin, Boise
Franklin P. Pfirman, Wallace
Guy Stevens, Blackfoot
James A. Wayne, Wallace
Jesse B. Hawley, Boise

The voting power of members of local Bar associations in attendance at this meeting in those cases where such vote is required, is:

Shoshone County Bar Assn.	26
Clearwater Bar Assn.	54
Third Judicial Dist. Bar	148
Fifth (and Sixth) Judicial Dist. Bar Assn.	70
Seventh Judicial Dist. Bar	59
Eighth Judicial Dist. Bar	35
Ninth Judicial Dist. Bar	38
Eleventh (& Fourth) Judicial Dist. Bar Assn.	75
Total Vote	503

PRES. MERRILL: I shall appoint members of two committees. The first is the Canvassing Committee for the Eastern Division election; Sidney Smith, Chairman, Edward Bloem and Homer Martin; these gentlemen will report by tomorrow afternoon.

The other committee is the Resolutions Committee; Wm. Hawkins, as Chairman, Don Bistline, Carl Burke, Gilbert St. Clair and Judge Sutton. This committee will be ready to report by Wednesday morning.

(Whereupon J. F. Martin made announcements concerning entertainment at the convention.)

PRES. MERRILL: Gentlemen, It is usual at this time for the outgoing president to give his annual report and to point out a few things which, in his opinion, should be given consideration by members of the profession.

Legislation

We were very successful in getting through the legislature our program which was outlined by you at the convention in December.

A bill providing for the Office of Coordinator was passed. This bill provided that one of the Justices of the Supreme Court shall serve as Coordinator and gave him power

a. To procure data from time to time of the business transacted by the District Courts, the state of our dockets, and the need for assistance.

b. To report to the Supreme Court concerning the need for assistance of various District Courts.

It also gave to the Supreme Court, with the approval of the Governor, power to assign District Judges to other Districts, to help clear calendars, or for a specific purpose.

The Supreme Court has not as yet started to operate under the Coordinator Act, but I understand it will do so as soon as possible. If the Court exercises the power given it under this Act, it will relieve all congestion in the District Court and thus aid in avoiding delays in the trial and disposition of cases.

A bill fixing the retirement of Supreme and District Court Judges at 70 and making other changes in the Retirement Act was passed.

A bill providing for the continuance of Idaho Code Commission was also passed.

Supreme Court and District Court salaries were increased to $7500.00 and $6500.00 respectively. We diligently tried to get greater increases, but this was the best we could do.

Our plan to increase the annual license fee of members of the Bar from $10.00 to $15.00 did not pass. Nor did the plan for the establishment of a permanent judicial council.

One other bill, neither sponsored by the Bar nor submitted to it or the Supreme Court for consideration, passed. It permitted graduates of the University of Idaho Law School, and any graduate of any other accredited law school who had attended the University of Idaho Law School for two terms, to be admitted to practice law without examination. Your commissioners opposed this bill because we felt it would definitely lower the standards which we have built up over a period of more than 25 years, and for the further reason that we felt that the admission of attorneys to practice law was a judicial function and not a legislative one. However, with the aid of two of the attorneys of the Senate, this bill passed both houses and became law without the signature of the Governor. Your commissioners then instituted a test case in the Supreme Court to test the constitutionality of the Act. The Supreme Court declared the Act unconstitutional.

We realize that many members of the Bar were in favor of this bill, but it was impossible to work under two systems, one a legislative act, and the other the rules of the Supreme Court. Furthermore, both the recognized and approved law colleges, and the American Bar Association

were opposed to such admissions. Experience in Idaho and elsewhere has demonstrated that bar examinations have been distinctly helpful to law colleges in maintaining a higher standard of legal education. Similar legislation was introduced in the legislatures of Utah, Nevada, and Washington, but in all of these states the legislation was either defeated or the bill vetoed by the Governor. We, therefore, felt it was time to find out once and for all whether the Supreme Court or the legislature, whose members with few exceptions were laymen, had the power to prescribe rules of admission to the Bar. In the long range view we felt it doubtful if the control of the Bar and Court should be lost through acquiescence to invasion of judicial powers by other departments of government.. Under the present system of admission under Court rules, the matter of changing any and every requirement, educational or otherwise, can, with greater speed and with greater understanding and more intelligent consideration, be presented to the Idaho Bar, its Commission, and the Supreme Court.

Admission to Bar

The American Bar Association, the Association of Law Colleges (of which the University of Idaho is a member), and the Idaho State Bar have diligently tried during the past 25 years to raise the standards of the Bar and to be sure that those who are admitted are well qualified. Now that it is definitely established that the Supreme Court has the inherent power over admission, it might be well to review the rules of admission and to suggest to the Supreme Court needed changes. Our rules now provide for two years of general college training and three years in a law school, or if the applicant cannot furnish evidence of two years of college study, then "applicant must arrange with some person or committee satisfactory, in advance, to the Board for examination and present to the Board a certificate as to whether or not such person or committee, after examination, believes the applicant possesses educational qualifications equivalent to a two-year college course."

This is very unsatisfactory. It is impossible for the Board to determine whether or not the applicant has the equivalent of two years college training. It, therefore, comes down to a guess proposition on the part of the Board. It would seem that if one has the desire to practice law, one could get two years of college training before one began the study of law.

The rules also provide "or four years study of law in the office and under the personal supervision and direction of a practicing attorney at law in good standing." This is also very unsatisfactory. Usually the applicant who seeks admission through study in a law office is also the applicant who has not had two years of college training, so we have one seeking admission who has neither two years of general college nor law school training. More and more of the approved law colleges are, themselves, requiring three or four years pre-law college training with more or less required subjects. The vast increase in the range of necessary knowledge by lawyers and the increase of the complexity of modern business and living has outdistanced the traditional law courses and subjects. Many allied courses, such as accounting, administrative and regulatory bodies, cannot be fitted into the 3 year time allotted for law study and therefore must be assigned to the pre-law study period.

Incidentally, the Bar and certain Foundations are even now engaged

in an intricate, comprehensive survey of the whole field of the legal profession, and this includes admissions. It is gratifying to know that preliminary surveys, so far published, with respect to admission, show Idaho procedure among the higher recommendations.

Your Bar Commission is aiding in this survey and has in mind a re-examination of the whole admission problem in Idaho. I would, therefore, recommend:

1. Three years of general college study before applicant is admitted to the law school.

2. If law office training is recognized, then applicant should have three years general college training before he commences his study in a law office. In other words, that the equivalency rule be abolished.

3. That if one wishes to study in a law office he must register with the Board before his four years of study begins and at the end of his first year of study, he must take and pass an examination on first year subjects. Arrangements could be made with the University of Idaho Law School to give to these applicants the same examination which is given to their first year students upon completion of the first year course of study.

4. I recommend serious consideration be given by the Board and the Supreme Court to ascertain whether or not the rules permitting law office study be abolished entirely. We have an outstanding law school in Idaho and it seems that if one has the serious desire to practice law, one could, without too much expense, go to the University of Idaho Law College for the required time. It is a doubtful boon to any individual these days to permit him to practice law in competition with lawyers, the bulk of whom will have had much better educational training. And it is of doubtful value to the public and the court system to lower education and admission requirements. No matter how we may sympathize with some individual cases, we must not forget that the public interest is by far the most weighty concern. Lower standards are not a real kindness to the individual favored by such lower standards, and can be a distinct menace to the public and profession, just as lowered medical standards might be.

Appointment of Judges

During the administration of the Honorable C. A. Robins as Governor of Idaho, we have had excellent cooperation between the Governor and the Bar, both State and District, in selecting Judges to be appointed to the Supreme Court and various District Courts. The Governor has, without exception, followed the recommendation of the Bar. In recommending candidates, we have submitted to the Governor only one name. It seems to me this is a little unfair to the Governor as it leaves him with no choice. He either follows our recommendation or he doesn't. I, therefore, suggest we reconsider our resolution passed by our last convention to ascertain whether or not it should be changed so that we submit to the Governor at least two names for each appointment.

Annual Fees

There was a bill proposed to the legislature whereby all special funds, including the funds belonging to the Bar, would be thrown into the General Fund. This would necessitate an appropriation every two years. The legislature may or may not appropriate the amount we pay in. It was, therefore, thought inadvisable to urge the legislature to pass our proposed bill increasing our annual license fee from $10.00 to $15.00; so we are still operating under the $10.00 license fee. I do not know of any profession, labor organization, trade or business organization, whose fees are so low. Doctors, dentists, realtors, common laborers, carpenters, brick layers pay far more to their state organization than do lawyers. It is almost impossible for your Board to carry on under present license fees. If our funds are transferred from a special to a general fund by the legislature, it might be well to consider whether or not the Supreme Court has power to fix license fees of attorneys. It has power of admissions and disbarments. If it can pass rules of admission, can't it also provide for a fee to be used in connection with the welfare and discipline of members of the Bar? If, in our investigation, we find that the Supreme Court has this power, then it might be well to consider a method whereby the license fee of lawyers can be fixed by the Supreme Court rather than by the legislature, thus maintaining our funds free from legislative controls.

A Permanent Judicial Council

Last year President E. B. Smith recommended a permanent judicial council and as Chairman of the Legislative Committee diligently tried to get an act passed by the legislature which would accomplish this purpose. However, largely because of the expense involved, the legislature refused to pass an act to establish a permanent judicial council. Most of the states of the Union have now authorized the establishment of a judicial council by legislative enactment, and I would recommend that we continue our study and our efforts to the end that a permanent judicial council be established in the State of Idaho.

Lay Opinion

It might be well for us, as lawyers, to consider lay opinion or what the public in general thinks of lawyers.

A survey of lay opinion of lawyers was conducted by the Committee on Public Relations of the Iowa State Bar Association. The results are very interesting. Among the findings of the committee were the following:

a. Lawyers are less well known within their communities than doctors and dentists, but more believe lawyers charge too much than these other professions.

b. The 49% who have hired lawyers in the past were satisfied with their services, however, 1 out of 5 of this group feel they were charged too much for the services rendered.

c. Both Iowa Courts and Iowa laws are believed to be about as good as they should be with "delays" mentioned as the principal objection to the courts.

d. Principal way for both lawyers and courts to improve their services is to avoid delay.

e. 40% like something about lawyers; 16% like nothing about lawyers; 39% don't know lawyers; 5% were indefinite.

This survey in Iowa shows that much could be done by lawyers in the field of public relations. Much of the dissatisfaction with lawyers is caused by lawyers themselves. The delays in court could be eliminated almost entirely by proper cooperation between the lawyers and the judges.

Lawyers create bad opinions in lay minds by criticizing the courts and each other.

It seems hard for lawyers to cooperate. Instead of fighting out problems in our convention and then abiding by the vote of the majority, we take them to the legislature composed of members who are practically all laymen. We create an entirely false opinion based upon false conceptions of our problems. Perhaps the remedy would be for us to send more lawyers to the legislature. It used to be that a great number of the legislature were lawyers, but now very few lawyers seek legislative office.

Participation of Lawyers in Bar Activities

More lawyers should participate in bar activities. Theodore Roosevelt said "Every man owes some of his time to the upbuilding of the profession to which he belongs." We find some lawyers always willing to help, but the group is too small. One of the most difficult committee appointments is the examining committee, whose duty it is to prepare questions and correct examination papers for new applicants. With so many applicants seeking admission to the Bar we must have competent men on this committee. In order to avoid a great burden on any one group, we should have three men on this committee to every eight applicants. If we have 32 applicants, then we should have 12 lawyers on the examining committee.

There are many other committee appointments which take a great deal of time of the members, but the cooperation of all members of the Bar is necessary in order to lighten the load and still accomplish the aims and objects of this organization.

In conclusion, permit me to plead for a united bar. We are an integrated body created by the legislature as an arm of the judiciary, but sometimes I feel we are far apart in our thinking and in our acting. I understand the committee appointed at the adjournment of the last legislature for the purpose of making recommendations for the re-organization of our state government has spent considerable time in working out details of re-organization. This re-organization, of course, may affect the judicial branch of our government as well as any other. I would suggest that as soon as the report by this commitee is made public, we study it carefully so as to ascertain just how it affects the judiciary, the number of judicial districts and the lower courts, so as to be sure that any change in our judicial system will be for the best interest of the people of the state, the Bar and the courts. It may be that this lay committee can accomplish a re-organization and unification of our courts, about which we have talked since 1932, but so far have

accomplished nothing, save and except the passage of the law creating a Coordinator of the Courts.

PRES. MERRILL. Gentlemen, the next item on our program is "Meeting Idaho's Newest Lawyers", by Claude V. Marcus, one of your commissioners.

CLAUDE V. MARCUS: Mr. President, ladies and gentlemen and guests. It is a real pleasure to introduce the freshman class of our profession. Incidentally, the three old professors on the Commission darn near lost control of our freshmen during the past year. (laughter). I am sure the entire Bar feels that it is a real problem and a vital requirement that we have our young members who are coming into the profession come into the Idaho State Bar and take an active part in it. It is a pleasure to be able to introduce those that have passed all of the obstacles and who have been admitted to the profession.

I might also say that the Commission is, at the present time, studying programs that we may be able to develop which will be a real financial help to our young men and women coming into the profession. And during the next year we certainly hope to be able to attain some of those objects.

The following persons have been admitted to practice since our last annual convention. We would like those who are present to stand up and be recognized as their names are called.

ALL MEMBERS OF IDAHO STATE BAR ADMITTED SINCE 1948 CONVENTION

September—1948:

Harold Piatt Hull—Wallace
Lewis V. Daniel—Payette
Richard Riordan—Nampa
George E. Redford—Rupert
Charles R. Donaldson—Boise
Warren F. Gardner—Orofino
John Alden Hull—Wallace
James A. Towles—Kellogg
Wm. D. McFarland—Coeur d'Alene
Jack B. Furey—Moscow
Robert Remaklus—Cascade
Dale Morgan—Boise
Robert V. Kidwell—Council
James E. Bruce, Jr.—Boise
Leonard O. Kingsford—Rexburg
Keith Petty—Pocatello
John R. Kemper—Nez Perce

June—1949:

Fay Lee Berger Anderson—Caldwell

Arthur E. Babbel—Twin Falls
Herman Earl Bedke—Oakley
John B. Bell—Boise
Stephen Bistline—Pocatello
Ruby Y. Brown—Pocatello
Alan Donald Cameron—Boise
Wayne Edwin Davis—Caldwell
Elbert Sumner Delana—Boise
James Bush Donart—Weiser
Theodore Holcomb Eberle—Boise
Harold Sandford Forbush—Driggs
Louie Gorrono—Emmett
George Albert Greenfield—Caldwell
John William Gunn—Boise
Francis Hubert Hicks—Twin Falls
Kathryn C. Drong—Lewiston
Samuel Kaufman, Jr.—Boise
Max George Lloyd—Twin Falls
Hardy Clayton Lyons—Bonners Ferry
Leslie Theodore McCarthy—Lewiston
Wesley Fielding Merrill—Pocatello
Dean Edgar Miller—Caldwell
Eugene L. Miller—Coeur d'Alene
Robert Thomas Miller—Boise
Arlie Olin Moore—Boise
Norman Haight Nielson—Burley
Watt Edmund Prather—Bonners Ferry
Donald Alexander Purdy—Boise
Edward L. Scott—Malad
Arthur Lawrence Smith—Moscow
Farrel James Tovey—Boise
Alvin B. Walker—Boise

Gentlemen, I am sure I speak for the entire Bar when I say that we welcome these young men and women into the practice of the profession. I am also speaking for all of us when I assure them that any time they have a difficult problem, there will be some experienced member of the Bar near by who will be glad to assist them over the hurdles, and we wish them all of the success in the world in the practice of our profession, and we hope more of them will be at our convention next year. (applause)

PRES. MERRILL: Gentlemen, since the Federal Rules were published a few years ago, there has been considerable discussion among attorneys about pre-trial procedure. Some attorneys are of the opinion that the pre-trial procedure can be used in our District Courts. Judge Winstead has consented to talk about pre-trial procedure in Idaho Courts. Judge Winstead.

JUDGE CHAS. E. WINSTEAD: Mr. President, ladies and gentlemen of the Bar:

Pursuant to Act of Congress of June 19, 1934, (Chapter 651, 48 Stat 1064; U. S. C. A. Title 28, §723c) the Supreme Court of the United

States adopted Rules of Civil Procedure for the District Courts of the United States, to be effective as of September 1, 1936. Included in these Rules is Rule 16, which reads as follows:

"Rule 16. PRE-TRIAL PROCEDURE: FORMULATING ISSUES. In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions."

Under the influence of the new Federal Rules and the Idaho State Bar, the Idaho Legislature at the 1941 Session (Chap. 90, 1941 Session Laws) by specific enactment recognized the power of the Idaho Supreme Court to prescribe rules of procedure for all the courts of Idaho. Section I of this Act reads:

"That the inherent power of the Supreme Court to make rules governing procedure in all the courts of Idaho is hereby recognized and confirmed."

Pursuant to such Act, the Supreme Court appointed a Rules Committee to assist in the formulation of such rules. This committee met in May, 1941, and prepared a preliminary draft for discussion at the annual meeting of the Idaho State Bar at Sun Valley on July 11 and 12, 1941. The final draft of the proposed rules by this committee was made and presented to the Supreme Court in the fall of 1942. There it rests in peace!

The Idaho Rules Committee adopted without amendment Federal Rule 16. It is with this Rule, or rather a practice and procedure arising out of the purpose and intent of this Rule, with which I am concerned today.

Section 1-1604, Idaho Code, 1947, reads as follows:

> "1-1604. COURTS MAY MAKE RULES—RESTRICTION. Every court of record may make rules not inconsistent with the laws of this state, for its own government and the government of its officers; but such rules must neither impose a tax or charge upon any legal proceeding nor give an allowance to any officer for services."

Just when this statute originated, I do not know. However, it appears as §3863, Revised Statutes of Idaho, 1887, and has appeared without interruption since then in all subsequent codes.

When the right of the District Court to formulate its own rules after the effective date of Chapter 90, 1941 Session Laws, was questioned in the case of Stilwell vs. Weiser Iron Works, 66 Idaho 227, the court said at page 230:

> "Appellant contends that 1941 Session Laws, c. 90, page 164, vested exclusive power in the Supreme Court to make rules for the district courts, hence the rule, having been established by the district court, not the Supreme Court, is without force or effect. It is unnecessary to determine whether the right or power exists independently of the statute, or was so granted or is exclusive, because until the Supreme Court promulgated rules for the district court, and it has not done so, the district courts have power to make their own rules of procedure. 1-1604 I.C.A."

Since the war there has been an unusual increase in cases filed in the Third Judicial District, and particularly in jury cases. This has been due not only to a substantial increase in population, but also to an increase in automobile accident cases and the controversies which logically and inevitably follow a wartime "honeymoon" of high prices, high salaries and wages, loose credits, and the break in easy money conditions.

In order to keep business current, where it has been possible I have tried out pre-trial methods. I have tried to get counsel to use realism in their profession. From my own experience in years of practice and from years of observation of trial methods and procedure, I know that a successful attorney remains successful so long as he develops and keeps a reputation for taking care of his business. A client whose business is worth while wants action and wants results. Few fees in this area are based upon a per diem basis. Under a fixed fee, if counsel can finish a case in two days instead of four, the other two days are his own for other business. If it is a jury case, the county is two days ahead in jury fees, and other litigants have a chance to use the time saved.

The civil practice of attorneys has become a business practice. Neither the valuable client nor the court is interested in time consumed in waste motion, interminable staging, or flowery oratory.

It has been well said that, "The theory and practice of pre-trial procedure is very simple. It consists merely of the investigation or analysis of a pending action in order to insure determination of the precise question or questions at issue, the elimination of unessentials of proof and so shaping the case as to insure that it will be tried in an efficient manner."

At the risk of being considered somewhat unorthodox by some of

my brethren of the Bench and Bar, I have in individual cases adopted an informal pre-trial procedure of my own. I do not want you to understand that I have adopted a rule which follows Rule 16, or that I prepare the orders contemplated by this Rule. What I am doing is to follow informally what I believe is the spirit and intent of the Rule.

In contested divorce cases I have called counsel into my office for a round table conference. There we have discussed property settlements, gone into questions of custody of the children, and accomplished in hours what under the old-fashioned methods of trials would have taken days. Most counsel are fair-minded and interested that justice be done. We have disappointed scandal-loving spectators, avoided the rewashing of dirty linen, and have reached a solution without delays and without the interposition of so-called experts upon various phases of the controversy.

I have had cases where, after listening to a battery of "experts" on one side followed by a similar battery on the other side, I have suggested to counsel that I probably then should have an equal number of counsel on each side sworn and testify, in order to complete the picture!

The observant lawyer, looking back over his experiences in the profession will recall that in the average lawsuit probably not over three or four vital questions are involved. These questions in the initial pleadings are often camouflaged and covered up with scenery and unessential details. Is it not much better from every point of view to separate the wheat from the chaff by a round table discussion which may eliminate the immaterial and unnecessary issues which do not go to the real merits of the case, but only involve a waste of time for all concerned?

We still have with us the litigant who is "set on lawing his neighbor or his spouse until Hell freezes over." He hires an attorney to prepare a field day where he can give vent to his spleen. He may become bitter, especially with a young attorney, if his field day is cut short or interrupted. However, our courts are not maintained at public expense for this class of litigation. Such a litigant does not make a good witness or a good client. He is always dissatisfied, and every time he comes into court he is represented by a new counsel.

It is not every case that is suitable for this procedure. The success of this method depends upon an intelligent selection of cases to be considered and a sympathetic cooperation by counsel. The rights of litigants are given full protection, for in the event no agreement can be reached in conference on a matter involved, the objecting counsel is always permitted at the proper time to make his record for use upon a possible appeal.

Frankly, I do not agree with those members of the Bar who support the entire Federal Rule system for the state courts. We have developed our own pleadings and procedure. Unless a change will bring an improvement, there is no justification for a change. However, I am firmly convinced that our practice and procedure can and should be improved by taking over the pre-trial (Rule 16) and perhaps a few other provisions of the Federal practice.

PRES. MERRILL: Judge Winstead will answer any questions that you desire him to answer. If you want any discussion, we have the time.

JUDGE E. V. BOUGHTON: I was very much impressed with Judge

Winstead's experiences, and I notice that he is a little arbitrary once in a while. But I want to endorse that attitude upon the part of the Court. I have had some experience of that kind myself. I tried a case not long ago, and they wouldn't get together, and there was a substantial part of the evidence which involved valuable property. It was on a contract. I took an adjournment and called counsel to the office and said, "Find out how much the rental value of the property is, and deduct it from a certain amount, and that is it." In about ten minutes I had that fixed up.

I want to suggest one other thing, although it may not be in line with the suggestions by Judge Winstead. In these divorce cases where the husband moves out of the state, and you can't get any action on him for the support of the children, I wish something could be conceived. I had a case recently where the couple had four children, the woman was on relief. She applied for a divorce, and the evidence was satisfactory as far as a cause of action was concerned. I said, "Where is the defendant?"

She said, "He is in Spokane."

"What provision has been made for the support of these children?"

She said, "We can't do anything with him."

I said, "Do you want to get married?"

She said, "No, I don't care anything about it. Nobody would have me anyway with these four children to take care of."

I said, "Who is paying for this divorce?"

"He is. He wants to get married."

"Well," I said, "There will be no divorce granted in this case until that man comes into Court with a contract of some kind to take care of these children."

Within three days we had a contract to take care of them. The case worked, but it was arbitrary.

JUDGE WINSTEAD: I recall a property squabble where the lady got away with the husband's watch. It was about a $40.00 watch. Until it disappeared we had a property settlement. The last time I heard it was worth $200.00.

I think ofttimes the attorneys just need somebody to back them up so that they can talk to their clients. It is a question of forcing the issue. In a lot of cases there is so much waste of time that you could use for other purposes, and if the attorneys could just be brought in to discuss the matters across the table and use a pre-trial method, you would save the time.

CARL BURKE: Have you given any thought to pre-discovery under the Federal Rules?

JUDGE WINSTEAD: That is another rule that could be used very nicely in the state court. There are a number of those rules that could be considered. A number of them were recommended to the Supreme Court on the supposition that maybe the Supreme Court might adopt them. But for some reason or other the Brothers of the Supreme Court started, but never have finished, adopting rules. Consequently, the rules are still on deposit.

MARCUS WARE: I was in one of these cases that the Judge tried last

January at Moscow. We all expected about a three weeks trial. The attorneys on both sides of the case were rather rudely shocked and disturbed when the Judge suggested an informal pre-trial discussion. But I am confident that every attorney was more than satisfied with the shortening of the trial that resulted from it. I don't think any attorney was deprived of any particular legal point or question. The disputed facts were avoided, but all the simple matters or matters which involved merely computations or calculations or things the accountants could agree upon were very readily agreed upon and were readily determined by that procedure. Personally, I hope that the particular rule that Judge Winstead has explained will be adopted.

HOMER MARTIN: As long as we have hundreds of these default divorce cases, would it be arranging in advance for the disposition of the default cases, if the Judge and attorney would sit down for five minutes and discuss the quality of the evidence in a default matter as a pre-trial procedure? It would eliminate a considerable amount of actual Court time.

JUDGE WINSTEAD: It might. I just recall a discussion had this noon at the luncheon table. One of the attorneys told about a case where the attorney went on the stand to pick up the loose ends in order to fill out the testimony in the case.

HOMER MARTIN: For instance, I know of cases where the attorney thought he had a legitimate cause of action, and the Judge finally gave him the benefit of the doubt. A simple matter of two minutes of pre-trial discussion would show that more evidence than the attorney felt was amply sufficient would be required by the Judge. Would that be predetermining the matter, or would that be a legitimate case for pre-trial discussion? Wouldn't that save the Court and the attorneys a considerable amount of time?

JUDGE WINSTEAD: It might be possible, because every once in a while I think the attorney needs evidence, period.

E. B. SMITH: The subject matter that Judge Winstead has touched upon is so important that it should be referred to the Resolutions Committee.

I have had some experience with a novel pre-trial procedure in Idaho inaugurated by George W. Suppiger during his many years as a member of the Industrial Accident Board. We have been able to dispose of the most involved industrial accident cases, which, if tried in the District Courts in line with the procedure which you are trying to get away from and mentioned in your talk, would take at least five or six days; we have been able to dispose of those cases in a matter of hours.

You and I are both exponents of the theory of a permanent Judicial Council for Idaho. What do you think about the desirability of a study by a continuing Judicial Council for Idaho, appointed by the Bar until we do get a permanent Judicial Council. It would be necessary in order to get a pre-trial procedure more or less uniform throughout the satte. In other words, you have to educate other District Judges. Don't you think the program should be followed through by a permanent Judicial Council, if we could ever get one?

JUDGE WINSTEAD: I think so. If the Supreme Court is not going to adopt the rules, the District Courts will have to. Along this line I might say that the Governor is kindly disposed to the idea of again calling the District Judges of the state into session. When we gave up the Judicial Section of the

State Bar at Idaho Falls many years ago it was on the supposition that the Supreme Court would call the District Judges together once every biennium for the purpose of discussing problems of interest to the various District Courts of the state. Like the rules, that resolution has never been endorsed by the Supreme Court. The first time in the history of the state that the District Judges of the state got together was about two years ago when 12 District Judges out of 16 met in Boise. That meeting was in connection with the problems before the State Board of Correction. I am acting secretary of the District Judges' Association, and at this meeting I would be glad to present the matter. I think a recommendation coming from the Bar of the state for the adoption of this rule, or any other rule, would be well received by the District Judges and would be considered. One thing about it, we will at least get action on the matter by the District Judges' Association if a majority favor it.

E. B. SMITH: One more question, Judge Winstead. Do the District Courts have the power to adopt rules of procedure in the absence of the Supreme Court doing so?

JUDGE WINSTEAD: The Supreme Court in one case said that, and they haven't changed their minds as yet.

J. L. EBERLE: This discussion is getting long, but I do think it is one of the most important problems that we have. Judge Winstead has rather humorously referred to the reason why these rules have rested in peace for many years, but there is really nothing funny about it. Idaho, when it comes to discovery and pre-trial, is one of the backward states. There is no reason for it. Seven years ago those rules were submitted under an enabling act, and I think we in the Bar who are active have been discouraged. Now there is a change in the Supreme Court, and there is no reason why we should not take active measures to try and reactivate and get some action. The District Court rules are only temporary. Ultimately we must have the Supreme Court rules for the entire state. I think the Bar now should reactivate the efforts we started seven years ago, particularly with reference to those two rules.

Idaho discovery? We have no discovery except the one statute giving a right to examine written documents. That is the only thing we have. I would like to amend Smith's suggestion to include discovery with pre-trial for the Resolutions Committee. We should have an active committee to try to sell the idea to the Supreme Court and to try to modernize our procedure with reference to those two phases.

DALE MORGAN: A little off the subject and referring to what Judge Boughton referred to, namely, the question of service of process upon husbands who have skipped out of the state. I don't know that a judgment, if you had personal service, in many instances would be very good. But it occurs to me that if we can have legislation in the state whereby a non-resident motorist, traveling over the highways in the State of Idaho, appoints the Secretary of State his agent for the purpose of the service of summons in connection with automobile accidents arising out of the use of the highways of the state, similar legislation might be Constitutional and overcome the rule of venue in these cases. If there was actual cohabitation and living together as husband and wife, they could make the Secretary of State their agent.

DEAN STIMSON: I would like to say that the Commissioners for Uniform

State Laws are now drafting a statute dealing with the problem arising when the husband goes to another state and does not support his family.

PRES. MERRILL: In drafting this program, we intentionally tried to avoid long sessions and too many speeches. We want to call your attention to the announcements that Mr. Martin made a little while ago in regard to the barbeque tonight and the pleasure program during the convention.

Tomorrow morning at 10:00 o'clock we will again have our session here, and we urge that you all be here on time. We assure you we will get through as quickly as possible without crowding the discussion.

EDWARD BLOOM: Mr. President, I just want to note for the record the passing of Jesse B. Hawley. He was a great lawyer, a great humanitarian. All of the middle aged lawyers such as myself, who have been members of the Bar 20 years or more, have come under the influence of Jesse at one time or another. He was an outstanding member of our Bar.

TUESDAY, JUNE 28, 1949, 10:00 A. M.

PRES. MERRILL: Ladies and gentlemen: The first part of our program this morning is "An Underground Water Code" by R. P. Parry. We will turn the time over to Mr. Parry.

R. P. PARRY: I found, during the last session of the legislature, that the underground water code was a highly controversial matter. It was almost unbelievable how many toes we few innocents stepped on, apparently, when we came into the legislature with this proposed code. Many people are against it. Many people think we should not have an underground water code at all. On the other hand, the State Reclamation Association and others have a strong feeling that to really further develop Idaho and protect rights in underground water, we should have such a code.

The State Reclamation Association asked our office to prepare a draft of a code. We attended various meetings and submitted such a draft to the last legislature.

It is my purpose this morning, in a rather rambling way, to outline generally some of the problems and mention some of the questions that have been raised in order that you gentlemen may be thinking about it. Because, surely, I do not propose to know all the answers.

It would be rather hopeless repetition for me to go into any detailed discussion of our Idaho cases on the subject, because last year, before this same program, Mr. Inman of the Boise Bar gave a very definite paper on the state of our case-made law with respect to underground water. The paper, of course, was printed in the annals of this association, and there have been no substantial changes since then.

When you start talking about underground water, you are probably discussing the greatest undeveloped asset or resource of the State of Idaho. As we all know, our surface water is pretty much all developed, where it is within reasonable economic bounds. The only further development that we can have in Idaho in surface water are the one or two large projects—either from Snake River below Bliss, or the trans-mountain diversion of the Payette and Boise Rivers through tunnels, which will run into unnumbered millions of dollars and will have to be accomplished, if at all, by some government agency. But, apparently, underground we have a lot of water.

It is, of course, axiomatic that in every state the limit of development, either from agriculture, industry or population standpoints, is controlled in the last analysis by the amount of water available. In Idaho our water supply, of course, is particularly valuable, since we are an arid region and need it for our agricultural use.

Many of you men know that from the point where the Snake River comes out of the foot hills, north and east of Idaho Falls, in the neighborhood of Ashton, all the way down to the final diversion at Milner Dam near Twin Falls, there is a heavy leakage from Snake River to the west, under the lava. That underground pool is in turn contributed to by Little Lost River and Big Lost River and other disappearing streams. Apparently we have a large flow of water underground there. As an example: In the irrigation season, the Snake River is dry at Milner, where the two canals take out, one on the north side and one on the south side. About 60 miles downstream, at the Bliss bridge, there has never been measured less than 6,000 second feet of water. In that short stretch of river, there is a gain from this underground flow in this amount.

Scattered in other places in Idaho we have similar flows. We have underground water about which we know little. We don't know whether it is a flowing or static body or an artesian basin. Naturally that underground supply has been accumulating for many, many years. In the first instance it has to come from the same source as our surface water. It has to fall from the sky, and at the present time we rather seem to think that this water is inexhaustible.

The development of this water is proceeding with extreme rapidity. According to the Department of Reclamation, since the time they have kept records, there have been about 984 permits granted for the use of underground water covering either supplemental or original water for about 400,000 acres. Their records go back to 1907. In the year 1948, up to November 15th, there were some 424 permits granted out of that 984. Counting both supplemental and new water rights, those 424 permits cover almost 200,000 acres. There have been many other developments of which there is no record in the State Reclamation Department.

We take the water out from under the ground for a variety of purposes. The most obvious is the use for domestic purposes. I believe the thinking of everyone is that so far as individual domestic wells are concerned, there should be no control over them. Anyone who wants to develop domestic water for their own use, or for stock use, should be allowed to do so uncontrolled. The proposal has been made that wells be exempted to the extent of one miner's inch which seems to make a very adequate flow for farm and ranch use.

There are places in Idaho where water is taken out of the ground for drainage purposes, such as the Boise River Valley and other places. we do that some in the Twin Falls country. It has been found that the best way of controlling the underground water so that it does not rise too high is by wells. In some instances the wells are purely for the purpose of getting rid of the water. In many other instances the wells have a dual purpose. The water is pumped from under the ground in one place, and conveyed by canals and ditches for use again in another place.

Industrial use of underground water is beginning to develop in Idaho.

One of the first ones with which we came in contact in drawing this bill was the Westvaco Chemical Corporation near Pocatello. They are going to use there large electric furnaces which will consume, in the ultimate, some 50,000 kilowatts of power. They will need a vast amount of water for cooling purposes. They are drilling wells and expect to use a large amount of subterranean water. The Atomic Energy Commission is now engaged in drilling a 20 inch well out in the Arco flats. It is admittedly an exploratory well. Back of it is the idea that they are going to require a tremendous amount of water.

The Bureau of Reclamation over north of Rupert is planning to develop, I understand, some 20 or 30 thousand acres with a series of wells. There are private individuals in there now with several thousands of acres irrigated from wells.

So you can see that there is a vast development of underground water going on, both from the agricultural point of view and the industrial point of view.

The history in most of the other western states that are more advanced than Idaho in this use of underground water is that they inevitably run into a tremendous amount of trouble. Arizona developed a great part of its marvelous Central Valley area by the use of underground water. Part of it was drainage water they pumped up and reused in their canals, and the other part was original use of underground water. Their situation became critical about 18 months or two years ago. They found that this water supply was not inexhaustible. The net result was that the year before last Arizona had five separate sessions of its legislature trying to agree on some control of underground water, and of wells and their relative priorities. California has had similar trouble for many, many years. New Mexico has had a host of such problems.

It was our thought that possibly we could get at the problem early enough in Idaho so that we could obviate some of the troubles that other states had gotten into. On the general subject of underground water, as you gentlemen know, there are about three basic rules. There is the old English Common Law rule that the man who owns the surface of the ground owns everything under it; the rocks, the dirt and everything to the theoretical center of the earth, and that this includes all underground water. In the states that follow that rule, any man can put down a well on his own land pump just as deep and as hard as he desires, regardless of whom he may injure. That rule is not in much favor in the arid western states.

There is another sort of hybrid form of that rule which has been called the American Common Law doctrine, or the rule of reasonable use, or the doctrine of correlative rights. There are a flock of names for it. In over simplification, it seems to be to the effect that in any given underground water basin, every man owning land over it has the right to use his theoretical proportionate share of water in that basin. They use that rule in California, and it is similar to the rigarian rights doctrine that they follow in surface water. It has resulted in a race to see who can drill the deepest well and put on the heaviest pump. In any given basin they keep going down and down, further and further, and keep putting on stronger and stronger pumps.

There is a third doctrine, the doctrine of appropriation. "The first in time is the first in right." Of course, that it the doctrine we follow in Idaho on surface water; and it has been the thought of those working on the underground water code that for a variety of reasons, uniformity and everything else, that this is the doctrine that should be established in Idaho.

As was pointed out by Mr. Inman, our Supreme Court seems to be pretty well committeed to this rule. We have one case, known as the Natatorium Case, involving the natural hot water near Boise, which was a Public Utility Commission case and not a water appropriation case, in which the Supreme Court of the State of Idaho held that the water involved was percolating water, using "percolating" in the sense of static water, and that therefore it was not subject to appropriation nor was it public water. The general line of cleavage that has been followed by western courts, in deciding what water is subject to appropriation, is to make a distinction between percolating water and flowing water. To me the term "percolating" connotes some movement. But in the one and only case we have had in Idaho, which I said was not an appropriation case, where it was clearly admitted that it was percolating water, in the sense of static water, the Idaho Supreme Court held that the water in question was private water and the doctrine of appropriation did not apply. In all other Idabo cases which have come up, while they have done lots of talking, the actual holding of the Court, as distinguished from the language used, has been that in every case the water there was flowing or moving water, and our Court has said that the doctrine of appropriation applied.

Merely as an item of interest, the initial case of that kind was the case of Bower vs. Moorman in which the majority opinion was written by Judge Budge. In the second case on the subject, Judge Budge dissented and said he didn't mean to say, in the Bower case, that the doctrine of appropriation applied; and that what he was trying to say was that we had the doctrine of correlative use in Idaho. But the other members of the Court said they disagreed with the Judge and he didn't know what he had decided, and that the doctrine of appropriation did apply (laughter).

Now, in every one of those cases—there are four or five in number—our Court has found, as a fact, that it was flowing water or moving water which was involved, and they applied the doctrine of appropriation. They have used language which has used "percolating" water in the sense of moving water. Judge Givens, in one of the cases, said the water was percolating because it was moving, which gets right over to the opposite use of the same word. In two of the cases they have gone so far as to say that subterranean waters are subject to appropriation and that as to all such water the first in time is first in right.

So in drafting the bill, it was our thought that one rule of property should now be established in Idaho, and that at an early date so everyone would know what it was and that was this: That we abolish the distinction of what is flowing and what is percolating water, because after all no one can see below the surface of the ground and see what is happening. If we are going to have a law suit, we get to the narrow point of when does the "flow" stop and when does it start "percolating" again. Do you percolate up and down, or do you percolate sideways? It all would have to be fought out in long and expensive cases. So it was our thought that

it would be best to say that all water that is under the surface of the ground is underground or subterranean water, and abolish the distinction between percolating water and flowing water, or static water and moving water, as the case may be; and announce, as a legislative rule, that all water under the ground is dedicated to the public use of Idaho citizens just the same as the surface streams. It seemed to those who have given it the most thought that this would create the most substantial form of underground water rights, and it would protect those who have gone in and expended a large amount of money developing such underground water.

It is expensive to develop underground water. There are some wells that have actually been drilled in Idaho 20 and 22 inches in diameter down five and six hundred feet. By the time such a well is drilled and equipped with pumps and pipe and that sort of thing, there is a large investment. It would be too bad from any angle if a chap who develops such a water right and has gone to that expense is vulnerable to subsequent attack.

To us this seemed obvious, but again there are some very substantial dissents to such legislation. For instance, Senator Elmer Williams of Blackfoot, who was very much opposed to the underground water bill in the last session of the legislature, is, according to the press dispatches, touring eastern Idaho making speeches at luncheon clubs and so forth saying the old English Common Law doctrine is the rule to follow in Idaho. A number of men who have large areas of land on which they have put wells seem to think their rights will be best protected if that doctrine is adopted. It is quite a bit different than anything that the Courts of Idaho have announced so far.

The next point we thought was fundamental in preparing any underground water bill was that assuredly we should not take any existing rights away from anyone. All presently existing rights should be confirmed and validated. There are many of them in Idaho of which there is no record. We thought a simple and easy procedure should be set up whereby every man claiming underground water rights could go in and make a filing and have the right made a matter of record.

It was next thought we should state specifically the legislative rule that all underground water rights could be acquired by appropriation and appropriation only. Now, there is a divergence of thought there as to whether or not there should be an attempt made to require that all underground water rights be acquired, in the first instance, exclusively by applications to the State Reclamation Engineer. As you gentlemen know, our Constitution says that the use of the water of natural streams in Idaho shall never be denied. Back in 1903, or somewhere along in there, when the legislature attempted, with respect to surface water, to provide that you could get water rights only by making application to the Department of Reclamation, our Supreme Court held that to be unconstitutional. They said that the provision in the Constitution which said the right to use the water of natural streams should never be denied prohibited the legislature from making any particular method exclusive, and that we could still go ahead and get our water rights by diversion and actual use.

Now it isn't clear what parts of the underground water are natural streams within the definition contained in the Constitution. Mr. Inman,

in his very well reasoned paper of a year ago, suggested that he thought that an attempt should be made to pass an underground water bill which would make the administrative method of getting a water right exclusive in so far as it went to that part of the underground water which was not flowing water. However, that would seem to add many complications to the matter rather than clarify it. Unless and until there is an interpretation of whether or not any underground water is a natural stream within the meaning of the Constitution, we will not know whether or not this administrative process can be made exclusive.

In the bill that was submitted in the last session of the legislature, it was provided that you could acquire water by appropriation only; but there was no attempt to make the administrative measures absolutely exclusive. The bill did set up a very detailed method of getting underground water rights by administrative procedure. Many of them are now being obtained that way, following the procedure that is set up primarily for surface water rights. As I say, 424 permits were issued last year under the present statutory method.

Then the question came up, and it caused a great deal of debate, as to whether or not there should be any method of determining the adverse effect of one well or a group of wells upon another other than by court action. One of the original drafts of the bill proposed that whenever there were adverse claims that a hearing could be had before the State Reclamation Engineer. A storm of protests arose over this provision from those who were interested in wells. They claimed that they didn't want any one man to have the power to make such a decision. A number of drafts were written. Finally one came out, after discussion with the joint committees of the two houses, providing that wherever adverse claims were filed as to a specific well, that a Local Underground Water Board would be set up to determine that particular controversy alone. The board was to be composed of the State Reclamation Engineer as one party; a trained engineer or geologist appointed by the District Judge of the district which included the well in controversy as the second party; and the two to select a third member. This board, under rather informal rules and procedure, was authorized to make a finding and determination as to the adverse claims of these wells which would be binding and effective but which would be subject to appeal to the District Court. If appealed to the District Court, their findings of fact would not be binding upon the court at all, but there would be a trial de novo.

It seemed to be the consensus of opinion of those who had gone into the matter that that was about as far as we could go in having some preliminary decision of the adverse effect of the wells and still preserve our judicial processes.

The one thing to which everyone seemed to be agreed was that no arbitrary power should be given to any one man. One of the early drafts provided that you couldn't drill a well without a permit from the State Reclamation Engineer. But it was the general thinking of almost everyone that there was so much uncertainty as to the existence, and quantity, and location and so forth of underground water, that the only practical way would be to let any man drill that wants to drill. However, it was agreed that we should have some definite rule of property to protect the

man who is there first with his investment. In other words, under that set-up the gamble would always be taken by the late comer.

It all gets down to this: If you are going to have interference between wells, who is going to take the gamble? The man who is already there with his investment? Or the late comer who comes last onto the scene?

As I have mentioned, the Act exempted from its conditions all domestic wells. It exempted all wells where the water was pumped for drainage purposes only by existing canal companies or irrigation districts, or such organizations, for either drainage of land alone or for both drainage and reuse on the sale project.

There were so many objections raised and so much time taken, that by the time a reasonably acceptable bill was drawn, it was in the late hours of the session. Slot machines and liquor and so forth were so far in the forefront that it seemed rather absurd, on a matter of such great importance, to throw it out into the legislature and try to pass it in any last minute rush. So it was our suggestion that the matter be withheld for further study and circulation, with the thought that possibly by the time the next session of the legislature rolled around there would be some congealing of thought on the matter.

Some other objections occur to me now. For instance, Canyon County folks around Nampa or Caldwell, or both, seemed greatly excited and felt there should be some exemptions so that a municipality would be able to drill a well any time they wanted to and without any restrictions. A thriving city could conceivably, under such a rule, go out and buy land adjoining an existing irrigation well, put a well down as a domestic well and take the water away from the irrigation well. The municipalities already have the power of eminent domain. Any time they want to, by that process, they can get water or wells. The Chamber of Commerce of Caldwell passed some very strong resolutions stating that we were trying to interfere with their domestic water rights. That problem will have to be solved.

The folks at Mud Lake seemed to think it was going to hurt them where they allowed water to run from artesian wells the year around and store it in a lake and use it in their canals later in the season. It was our thinking that this was a right of use, and that the proposed bill in no way interfered with such a right.

What the power of the Federal Government may be in this atomic development and the extent of the use of water they may require, you can guess just as well as I. We have heard stories of the tremendous amount of water being used at the Hanford Plant in Washington. If they propose to tap our underground flow in Idaho for a similar use, they perhaps will have a priority and use large quantities of water.

As a passing side issue, in the pending Columbia Valley Administration Act now before Congress, they give absolute priority to water rights for uses connected with or related to the development of atomic power. They put that even ahead of domestic use. That Act would only apply to future rights, if passed, but undoubtedly the government does have the right of eminent domain now.

It is an intensely interesting subject. I have only hit upon the high points.

To the extent I can, if any of you have question, I will try to answer them.

ASHER B. WILSON: How much water do we take out at Wilner? You said there was 6,000 feet at Bliss?

MR. PARRY: At the peak 6,700 feet.

MR. WILSON: Approximately 100% of the water comes back 50 miles below after we take it all out?

MR. PARRY: Yes.

HOWARD R. STINSON: There is one phase that we, the Bureau of Reclamation, are greatly interested in. In going over one of the early drafts of the Bill it seemed to me that as framed it provided that any late developer would be practically without right. That is, it prevented any further development of wells where there was any possible interference, such as increase in pumping head or any effect at all on existing wells. As we understood it, the Bill prevented the drilling of additional wells unless there was a finding that there could not be any such interference. We took exception to that. We talked about it in the Bureau of Reclamation. We did not have a full chance to review the last draft of the Bill in the late days, and didn't attempt to. But what is the situation now on that score?

MR. PARRY: First I agree with you that that was an objectionable feature, and it is my understanding that that has been completely eliminated from any proposed bill.

MR. STINSON. How would you get at the rule of property? Is this a rule of property to be developed by this local board without standards or guidance and then by the courts, or is there some attempt to get a rule of property?

MR. PARRY: The rule of property must of necessity be laid down in the statute, as I see it.

MR. STINSON: What is it then?

MR. PARRY: At the present time it is still nebulous. It has been our suggestion, as I say, that the doctrine of appropriation apply—first in time, first in right—and that all water underground is public water.

MR. HOWARD R. STINSON: I agree on both counts.

MR. PARRY: Now you come to the question of what is interference, and that is a problem to which I do not know the answer. Is it interference if a man is in any way interfered with in using a pump of his then capacity and a well of his then depth? Or should there be allowed the greatest economic use of water? Are we going to say that if you can make your well deeper or put on a stronger pump and get your water out, you still must do that?

MR. HOWARD R. STINSON: That's right. That is the problem. It is someplace between the two.

MR. PARRY: It is someplace in there, and the legislature or the courts, or both, will have to answer it.

MR. HOWARD R. STINSON: Before your Bill comes up at the next session of the legislature, we will make some sort of a proposal on that count.

MR. PARRY: Yes, the Bureau of Reclamation, of which Mr. Stinson is Regional Counsel, is probably the most vitally interested organization in underground water and in irrigation development.

MR. HOWARD R. STINSON: As a matter of fact, Pat, I might say, just to correct a figure and make it look bigger, that the North Side Pumping Development will reach a maximum of around 60,000 acres. Of course, I am prejudging some facts as to what that underground water supply really is there, but that is the ultimate development now planned.

MR. MORGAN: Mr. Parry, did you encounter the problem of whether or not there should be a standard set up for the type of well or method of diversion? By that I mean, when you come to a question of whether or not there has been interference, if the well has not been properly drilled and cased—the second well—then the mere capping of the top of the well would not restore to the original well, the one interfered with, its water. To go back in and do it would be an expensive proposition. And likewise, some of the older wells, I understand, were not properly cased and not properly drilled, and so it becomes a difficult question of fact as to whether or not there has been interference from another well or whether it is sluffing off or drainage of one into the basin. Did you encounter anything about standards?

MR. PARRY: That was discussed at length, Mr. Morgan. New Mexico, as I now recall, has gone into that at some length and have now put very stringent control regulations on the standards of the casing and of the capping of wells and so forth. We, perhaps in a cowardly way, dodged the issue. We figured we were going to try to get some basic rules first, and then those steps of control would have to come along in the orderly development. There are some existing statutes in Idaho which may apply. One of the legislators, a very bright young fellow, came tearing up to me one day and said that he was getting wires from home. "I have got to go against this Bill. We have got a lot of artesian wells in our country that flow all the time. We can't afford to put caps and valves and so forth on them, and I have got to be against your Bill."

I showed him our present statute. I said, "You are all guilty of a misdemeanor now, because we have a present statute against allowing wells to continue flowing like that. There is also one stating that a well such as you have described is a nuisance. (laughter)

What our present statute really means, I don't know. I don't think it has ever been applied or enforced in Idaho.

MR. MORGAN: I have an auxiliary question. Where did you consider, in your discussion of the problems, the point of diversion? Is it at the top of the ground or where they tap the water supply?

MR. PARRY: Well, the top of the ground seemed to be the answer most generally agreed upon for practical purposes. Of course, that again goes to whether your method of conveying the water from the water supply to the top of the ground is such that you don't have leakage and waste.

MR. JOSEPH McFADDEN: As you well know, up in our country we have a peculiar situation. The situation is that we have the subterranean flow developing into what is known as Silver Creek. What effect would the proposed legislation have on existing water rights down there in the Silver Creek area, which is actually a subterranean flow rising to the surface?

MR. PARRY: This whole problem is a mixture of law and fact. You can only announce the rules and the law, and then you get into the questions of fact. I believe that it is the generally accepted rule everywhere, that any subterranean flow which has direct contact or connection with the flow of a surface stream, such as Silver Creek, is actually a part of the flow of that stream and not subject to an appropriation as underground water. Does that answer your question, Joe?

MR. JOSEPH McFADDEN: I think so.

MR. PARRY: If you can prove it. But you can't pass any law that will change the facts. You still have the question of proof connected with it. I was shown an instance within the last 30 days where a chap had gone along Snake River with a dragline and dug a sump about the size of this room just 90 feet from the shore line of Milner Reservoir. It was just about as far from the Reservoir as this room is from the lake. There was water standing in the sump, and you could see that there was a gravel bar there, and he was gaily pumping the water out of there and irrigating several hundred acres of land. He might just as well have gone to the reservoir and pumped it right out of the lake.

MR. HOWARD R. STINSON: Is he pumping there now, Pat?

MR. PARRY: I think he is. (laughter)

MR. FRANK MARTIN: I notice a tendency lately for a good many well owners to go into the Department, or to the State Engineer, and file applications setting up their priority of appropriation. They make that purely for the purpose of getting a record someplace to show a prior appropriation. Do you think that is an effective record, or is it just an attempt to do something?

MR. PARRY: The latter. I think it is an attempt to do something.

MR. FRANK MARTIN: What I had in mind was: Do you suppose those applications could, at a later date and when the only parties who knew about putting in these wells are gone, could those affidavits and papers that are filed ever be used for the purpose of establishing the date of original appropriation?

MR. PARRY: I would think not. They are self serving.

MR. FRANK MARTIN: Well, for instance, you have the affidavits of the men who did the work—not the owner of the well but of the men who put in the well and saw it in operation.

MR. PARRY: Of course, it is an attempt to perpetuate evidence, I take it. There is no specific statutory regulation to do that.

MR. FRANK MARTIN: How many of these new applications are of that class? Quite a few?

MR. PARRY: I couldn't tell you, Mr. Martin, but there are quite a few. From the time we started talking about this underground water code, along last fall, there has been quite a rush, in different ways, for people to establish their claims on underground water rights, particularly old priorities.

Thank you, Mr. Chairman. (applause)

PRES. MERRILL: The next item of business, gentlemen, is "The Permanent Continuing Code" by Carey Nixon.

CAREY NIXON: Members of the Bar:

On July 17, 1948, at the Idaho State Bar meeting at Sun Valley, Mr. Oscar W. Worthwine of the Code Commission reported on the progress of the new Idaho Code as of that date, and at this time the Commission's report will be confined to its activities since that time.

The new Idaho Code has been completed and by proclamation of the Governor, is the authorized compilation of the general statutes, codes and laws of the State of Idaho.

The new Idaho Code consists of 12 volumes bound in fabrikoid.

Volume 1 embraces the Declaration of Independence, Constitutions of the United States and of the State of Idaho, the Organic Act, Idaho Admission Bill, Federal Laws of particular interest to Idaho, indexes of the same, and parallel reference tables.

Vols. 2, 3 and 4, consisting of Titles 1 to 20, embrace the subjects, Courts, Civil and Criminal Procedure, Estates, Crimes and Prisons.

Vols. 5 to 11, consisting of Titles 20 to 73, embrace statutes, alphabetically arranged, covering the subjects, Aeronautics to Workmen's Compensation and related laws, the Industrial Accident Board and General Court Provisions.

Volume 12 contains special indexes, as well as the general index of the entire set.

The price of the new Idaho Code for sale in Idaho is $80.50.

It is to be hoped that those who have had occasion to handle and use the new Idaho Code will have found it an improvement over the 1932 Code.

The volumes have been kept as nearly uniform as possible and the Titles and Subjects so arranged as to permit the replacement of separate volumes whenever replacement becomes desirable, instead of the publication of an entire new Code.

The new Idaho Code will be kept up to date through biennial pocket-part supplements. The 1949 pocket-part supplements now are or shortly will be available. New supplemental pocket-parts will be issued following each regular session of the Idaho Legislature. Each supplement will cumulate all relevant laws in previous pocket-parts, together with new laws and amendments to existing laws as passed by each Legislature. All

laws adopted by the 1949 and future Legislatures, and embraced in the pocket-part supplements, will be given appropriate section numbers keyed to the new Idaho Code. The price of the 1949 supplement has been fixed at $9.50, while the price of future supplements will be fixed by contract between the publishers of the supplements and the Code Commission.

An Act was adopted by the 1949 Legislature (Chapter 167, Laws of 1949) which created a continuing "Code Commission," having for its purpose the completion of the new Idaho Code and also charging it with the duty of keeping the new Idaho Code up to date by means of biennial supplements, and republication of new volumes or publication of additional volumes, when and as the same may be found necessary.

Obviously one of the most important functions of the continuing Code Commission will be to serve as a clearing house for the receipt of information concerning errors and omissions in the new Code and supplements, as well as constructive suggestions and criticism for their improvement.

Whenever any error or omission is found in the new Idaho Code or in the supplements, or whenever suggestions or criticism is thought desirable, the same should be communicated to the Code Commission by letter so that such matters may be considered and brought to the attention of the publishers. The Code Commission solicits your earnest cooperation in this respect.

Financial condition of the Code Fund is as follows:

All of the Code Acts of 1943, 1947 and 1949 created a Code Fund which levied a charge of $2.50 on each civil complaint filed in the district courts, from which the monthly income is approximately $1,000.

IDAHO CODE FUND AND IDAHO CODE REDEMPTION FUND
STATEMENT OF RECEIPTS AND DISBURSEMENTS
July 1, 1948 to May 31, 1949

	TOTAL	IDAHO CODE FUND	IDAHO CODE REDEMPTION FUND
Balance on Hand, July 1, 1948	$ 72,890.79	$ 35,224.14	$ 37,666.65
Add: Receipts as follows:			
Sale fo 1947 Notes—Nos. 1 to 13 inclusive	52,500.00	52,500.00	
Other receipts	12,703.83		12,703.83
TOTAL AVAILABLE	$138,094.62	$ 87,724.14	$ 50,370.48
Deduct: Disbursements as follows:			
Redemption of Note 1, 1947 issue	40,500.00		40,500.00
Paid to Bobbs-Merrill Co., Idaho Code Books	80,500.00	80,500.00	
Inter-Fund charges	2.59	2.59	
Other expenses	7,078.38	3,803.38	3,275.00
TOTAL DISBURSEMENTS	$128,080.97	$ 84,305.97	$ 43,775.00
BALANCE ON HAND, MAY 31, 1949	$ 10,013.65	$ 3,418.17	$ 6,595.48

The net result of this financial statement is briefly that as at May 31, 1949, there is an outstanding bonded indebtedness of $19,000 against the 1943 Code Bonds, as against an outstanding bonded indebtedness of $12,000 on account of the new 1947 Code, making a total outstanding bonded indebtedness of $31,000 on account of the 1943 and 1947 Code Bonds. All of these bonds will probably be paid off within a period of five years.

Now, one other thing was brought to my attention yesterday, and to be frank, it hadn't occurred to me. Someone asked if the so-called Kitchen annotations should be continued. As I stated in this report, the biennial supplements come out every two years. If you want annotations every six months like Carl Kitchen has been getting out in order to keep abreast of what the Courts are doing, I presume you will have to have them. There is no other way to get them. You would otherwise have to have supplements every six months, and those would be pretty expensive.

Incidentally, we ran into a little difficulty in connection with the supplements in this respect. We had no authority to contract for supplements, but the publisher offered to get out supplements at a price, which as I recall was $8.50 or $7.50, and they did that on the basis that the state would take a thousand of the supplements as they did a thousand of the codes. But the state reneged on that and said they would let each department buy what they wanted. The net result was he thought it only fair to the publisher to increase the price of the supplements, I think, $1.00. As I indicated, the price of future supplements will be a matter of agreement between whoever publishes them and the Code Commission.

SAM S. GRIFFIN: Mr. Nixon, what about the printed session laws? What value are they going to be. Has the Code Commission given any thought to that?

CAREY NIXON: Yes, but I will have to call on Randall Wallace on that.

RANDALL WALLACE: My recollection is that the Act itself only provided for the permanent laws to be compiled. Of course, there are a number of temporary matters that come in your session laws—your appropriations and things that just carry over for a biennium which normally wouldn't be put in what you call a continuing code. You don't find those in any one of your codes, the temporary things that come up each biennium in the legislature, so there will be some temporary things appearing in the session laws one might want to use that wouldn't appear in the pocket parts.

MR. GRIFFIN: What about the rapidity of getting out the supplements? Can they get those out in the same length of time they can the sessions laws so that there won't be a long delay in getting the new laws?

MR. WALLACE: They haven't been able to as yet. The supplements have not come through as yet.

MARCUS WARE: Mr. Nixon, the average attorney would still want the session laws in order to have the title to the chapters and bills in order to know whether or not they might be constitutional. Some question might arise as to their sufficiency. I know our experience in the north with the use of the Washington Code has been that we need them. We find we also need the session laws to a certain extent in order to have a full picture of the situation.

MR. NIXON: I should think that would be true here. I know I would want them.

DONALD ANDERSON: Mr. Nixon, will the supplements cover the decisions or just the laws passed by the legislature?

MR. NIXON: No, they cover the annotations up to that time, but that will only be over a two year period. You will have to wait the two year period, and these Kitchen notes you stick on the edge of your code, I believe, come out every three or six months.

V. K. JEPPESSEN: Which one is going to be the official one—the pocket parts or the session laws.

MR. NIXON: Well, the pocket parts will be promulgated in the same manner as the code, as I understand it. Is that right, Randall?

MR. WALLACE: There are provisions in the new Continuing Code Act for the issuance of a proclamation in the same manner as was done for the original code. It requires a certificate by the Commission that it has been completed and it is a proper record of the laws, and that is certified to the governor. He issues his proclamation, and, as I understand it, that would make any new matter in the pocket part citable as part of the code. It becomes an official compilation. The publisher intends to tie the new enactments right in with the code, and it will be cited that way.

MR. NIXON: If there was any difference, I presume you would have to go back to the original bill as you now do.

PRES. MERRILL: Our next speaker is a lawyer who has gone into the title insurance business. Mr. Seda practiced in Illinois for some time and now is District Manager of the Idaho Title Insurance Company and is located in Pocatello. He will talk to us on "The Lawyer's Place in Title Insurance." Mr. Seda.

MR. CHARLES SEDA: Mr. President, Commissioners and members of the Bar. I am much in the same position as little Johnny who had to take a written examination in grade school on early American history. After the examination, the teacher called on Johnny to stay after school. She said, "Johnny, do you remember that question where I asked you what the early pioneers went to the woods for?"

"Yes, teacher."

"Well, Johnny, I enjoyed reading your theories of sanitation, but that was the wrong answer!"

I am in much the same position as Johnny was. I am in the woods.

Speaking to this assembly of attorneys, there is no necessity of making a comparison of the legal effect of an abstract and that of title insurance. You know the difference.

You know, that in preparing your opinions, your comments thereon are predicated upon "only what is disclosed by the abstract."—You carefully note that the record is apparently clear of defects and conclude the title is marketable—a marketability only as disclosed by the Abstract. Yet, you know that defects might exist which the apparent record does not show—do you inform your client of that?

You know that forged and fraudulent instruments; instruments executed by incompetents are not apparent of record; yet, a latent vital defect may exist which can result in a substantial loss to your client or possibly a complete divesture. A policy of Title Insurance insures your client against such forgeries.

You know, that after a careful examination of the record title and your client's reliance thereon that some subsequent purchaser's attorney may reject your client's title as unmarketable. Your client then has some misgivings about your competency—he may not voice that opinion to you; but he sure as Hell does to others. Listen in for a day at my office to the Voice of your public about some abstract opinions.

You know, that often your examination of an abstract discloses a title so defective that a carefully prepared quiet title proceedings is necessary—so you carefully set out the nature of the defects in your opinion and dispatch same to the seller or his agent, who, after giving vent to their usual opinion as to your knowledge and competency as a realty lawyer, have another attorney initiate the necessary proceedings; and seldom is he the one who examined that title when the seller acquired it.

You know that upon your examination your client is going to undoubtedly make one of his major investments during his life time; yet, you cannot assure this client that all the signatures affixed to the instruments making up the chain of title are genuine . . . . a policy of Title Insurance insures against forgeries.

You cannot assure your client that the consorts of all grantors in the chain of title joined in, or that they are the proper person relinquishing all their community interests . . . .. a policy of Title Insurance insures against outstanding community interest whether or not disclosed by the record.

You cannot assure your client that no unknown heir of a former owner will appear to defeat his title.

You know that the majority of abstracts have been prepared by Abstractors no longer in existence and no legal responsibility can be imputed to anyone; thus, how can you rely on an old abstract assuring your client that none of the testators disclosed in the chain of title left a child born after the execution of the will and not provided for therein . . . a policy of Title Insurance insures against loss by reason of pretermitted children.

You know that in many cases realty transactions are not consummated because of a multiplicity of conflicting attorney opinion resulting in a complete loss of faith and confidence in the real parties of interest.

And we all know, that none of us can assure our clients that, in event he should ever suffer loss by reason of a mistake on our parts, that you or I will be alive and able to pay him no matter how large the loss may be—Title Insurance Company is required by law to maintain legal reserves and adequate deposits with the State Department for the payment of losses.

We all know and are aware of the growth of title insurance throughout the country and its general acceptance and adoption by the members of the bar; because

The estate or interest of the policy holder in this exceedingly complicated

thing, title to real estate, is not only stated to him but **is insured** to him in the policy;

The policy of title insurance is a binding contract between a responsible financial organization and its assured, in which, in consideration of one premium, paid when the policy is issued, the owner or holder of the estate or interest is protected as long as he holds the title or interest;

There are many questions in connection with the title which are susceptible of different interpretations. Such as the situation as I have already mentioned, where a title examined by one attorney, is held marketable and is thereafter examined by another who disagrees with the first. This results in great inconvenience and Title Insurance tends to a reasonable standardization of title opinion. My attention has often been directed to the work of the Board of Commissioners of the Idaho State Bar, to a standardization of Abstract examination. Surprising how few member of the bar follow that excellent criterion;

The title offices come into possession of innumerable affidavits, unrecorded wills and other instruments and thus become the depositories as time passes of great wealth of title information and facts. A great deal of this information is not available to the examining attorney. Moreover, he is not in a position to make the extensive detailed investigations as to such matters as original boundaries, family heirships and other matters which the title insurance office can afford to make.

What I do not know—why despite the lack of complete assurance we still advise and direct our clients to accept an Abstract as a sufficient muniment of title?

Where and what is the interloping premise that causes us to vary from what should be a logical procedure with the availability of title insurance in this state? Are we diligent in our responsibilities and in the performance of our duty when we fail to consider or procure for our clients the safest, soundest form of title protection known to man?

Can it be:

You do not know that Title Insurance is available in your County—policies of Title Insurance are available now for your clients throughout the State of Idaho;

That you are prompted to advise and direct your client to insist on an Abstract due to existing professional animosity between the lawyers in the abstract business with those in the title business. I know of no better medium of losing my good will and revenue and enhancing that of my competitors than by criticizing and deriding my competitor's form of title evidence and its legal purport;

Can it be that: the revenue of your office is going to be curtailed in adopting title insurance—I believe you have done a pretty good job reducing your income already without the stimuli of Title Insurance. Can you imagine calling a medical specialist to your home for a diagnosis and expect to pay him a fee commensurate with the one you now accept for your abstract examination? In every community where Abstracts are in general use and numerous attorneys are vieing for the lucrative business, the examination

charges get so low that I do not wonder why so many of our brethren go into other fields of endeavor. There is a place in every community for a title or realty expert; but, you are not going to attain that distinction by bargaining for the Abstract examinations and create in the minds of the layman that apparently there is nothing to that examination if so and so only charges $15.00 dollars and some even less.

Could it then be that you are lulled into a sense of security because no loss ever occurred to any client by virtue of your examination? It is human to err and your opinion may be defective and yet, no loss result to your client —no financial loss to him; but a material one to you, especially when a subsequent opinion will show up your errors; and bear in mind; your friendly competing attorney may even set out that "Navel objections" which you as a reasonable attorney have waived.

Dr. Ollie Jorgenson, an eminent doctor visiting the Mayo Clinic in Rochester, Minn., was asked this question. "What small part of the body do you feel is the most practical to you?" Dr. Ollie without a moments hesitancy answered, "Why, the belly-button," to the stilled astonishment of his listeners and subsequent laughs. One listener said, "Surely you're jesting, Doctor?" The Doctor: "Gentlemen—there is nothing I like better than to read one of your Western novels in bed with several stalks of celery to chew on and I have found it a most convenient place to hold the salt."

When our diagnosis should concern itself with those obvious, or malignant latent defects, which can completely destroy the fee title, there are too many attorneys still interested in dead scar tissue, or navel exceptions.

Speaking of being lulled into a sense of security; how many persons do you actually know who have incurred any major fire loss; the number would be relatively few, even among this assembly; yet, we all know the large number of fire and title losses incurred throughout the country every day. The apparent is at times even difficult to acknowledge. The converse is more often also true.

Despite every precaution taken in constructing a fire proof building, would you advise a client not to have fire protection- Absolutely not, because the mind of man has yet to be developed to foresee every contingency; likewise in the examining of a title, can you assure your client that no latent defects will make their presence known at some later date? This similarity of protection against the unknown made it quite natural that some logical development in title insurance should take place, which would result in a person incurring a title loss to have such a loss distributed among a great many, instead of trying to impute gross negligence against and restrieve a loss from either the Abstractor or the Attorney.

Is your aversion to title insurance predicated on the belief that a title office in your community is detrimental to your revenue? First, let me admonish you that unless you are the only attorney, or that there are relatively few in your community—with the continued abstract-opinion procedure in title evidence there will be the inevitable competition for such business, and because you all are members of an honorable profession and do not advertise your capabilities, your success or downfall in that line of endeavor will be determined on how you can successfully counteract those subtle innuendoes about your capabilities.

Let us examine your modus operandi—your opinions often contain some technical defects; some possible adverse interest or cloud upon the title, and then in the normal procedure you devolve the abstract and opinion back to the seller's or buyer's agent, who very often is a very energetic shrewd realtor and you bless him with the responsibility of procuring the necessary affidavits, deeds, transcribes of proceedings, etc., which you so ably pointed out. Who perfects the Title? Who is practicing Law? The perfecting of the title which is solely in your province is impliedly delegated to a certain class of professional men against whom the bar has vehemently complained for practicing law. The perfecting of title is not in the province of the real estate broker, the abstractor, nor the title office. One attorney told me, "What the hell do you expect for $15.00." Another attorney, "Hell, I don't have time to make out a deed of conveyance for $3.00."

You still wonder why some have a decrease in revenue in realty matters? Stir the cup well, brother—the sugar may all be on the bottom!

There is a place for the lawyer in Title Insurance procedure—an immediate need. The client about to purchase a tract of land comes to you seeking advice and guidance; your assurance, that his acquisition will not be in jeopardy at some future date, because of some defect in the chain of title. Are you adhering to your code of ethics when you advise him to have an abstract furnished and examined by you when in all good conscience you know that there is available a superior muniment of title?

Is it not incumbent upon you to advise him about Title Insurance and its features—to examine the preliminary report on title; to explain the technical legal phrases, their connotations and affect on your client's title. To guide him through the closing phases of his sale or purchase?

Majority of title losses arise during that interval of time after the sellers Abstract is certified and examined by you and the subsequent recording of the Grantee's deed. How many of you inform and instruct your client not to disburse all of the consideration until the Abstract is again certified, showing the Grantee's interest of record as paramount. What is the Broker's liability and obligation?

Under Title Insurance the Policy is not issued until the Grantee's deed, or the lender's mortgage is filed of record and such instrument is not filed of record until a re-examination has been made to cover that interval of time between the date the title has been examined on the title report, to the minute the instrument is filed of record.

Frankly, gentlemen, from my observations, and facts substantiating this my humble opinion, I have yet to hear of title insurance being detrimental to the welfare of the public, or to the revenue interest of any attorney; except where the personal interest of the attorney is paramount to the interest of his client.

PRES. MERRILL. If there are any questions, gentlemen, Mr. Seda will answer those questions.

KARL PAINE: I haven't any questions. But I want to say to the gentleman that the trouble with your title insurance is that it costs too much and is not available. In Boise, up until a few months ago, we had a man there who was willing to take a chance. He is gone. His successor, I suppose, has to be broken in before he feels that it would be safe to recommend any insurance until there is a perfect title.

When title insurance was introduced in Boise, I was consulted by Mr. Gamble, and I told him it would only pay if the title insurance companies would give effect to our statute which provides for title by adverse possession. That was taken up with the Seattle office, and an opinion was written by an attorney, which I saw, to the effect that your insurance companies were going to insure titles, the record title of which was defective, if they had reason to believe that titles based upon adverse possession were good.

Well, title insurance has not suffered in Boise by reason of anything I have done, because I have turned over a lot of business to it rather than to quiet title. But I would say that about a year ago an abstract came through my hands in which a woman certified that at the time she made this affidavit she owned certain real estate, that she acquired it with her own separate money. Admittedly she had been married. She didn't say what her marital status was. I accepted that, because she conveyed it in 1922. Several mortgages had been made and had been certified, and yet the other day our title company refused to insure that title until I found a maker of an affidavit who would state what her marital status was in 1922 and 1927. Fortunately, with the help of the bank, I found a man at Fruitland who said he would make an affidavit that her husband was dead at the time she made the statement that that property was her separate property. If he was dead then, I suppose he is still dead. So if I get that affidavit, I will get title insurance.

The trouble with your arguments is that you talk about the lawyers charging too little. That is no fault of your company. They charge plenty. But if they have got to have a perfect title as did the first company we had, the one connected with the Security Abstract Company in Boise—why, if a "t" wasn't crossed or an "i" dotted, they required the title to be quieted before they would insure. That was nonsense, of course, so they never did any business in Boise. You should take that into consideration and make title insurance available.

The risk that you speak of is potential in Idaho rather than actual. I have examined abstracts of title for over 50 years, and nobody ever got hurt.

Once upon a time I found something that the Security Abstract Company had overlooked, and I went down and told them about it. They didn't want to pay it. I sued them, and they paid it when I got a judgment.

There is no risk in Idaho. When you get into the big cities these fraudulent titles may exist, but I have never known of but one or two fraudulent title signatures in Idaho, and I have never heard of anyone getting hurt with them so far as the abstract is concerned.

MR. SEDA: That statement is true. You don't come up against losses frequently. And the losses that are incurred in another part of the state are not apparent to you. I have carried a fire insurance policy on my home for 26 years. I have never had a loss. I am careful about the wiring. When I buy a second hand home, I go down in the basement and see what type of conduit work is in there, and when I get a fire insurance policy, I call the fire underwriter to come and examine my home. I don't just go to a broker and say that I would like to have a fire insurance policy on my home. I have that agent request the underwriter to come and look at my home and look at the wiring. Still, I might have a loss.

In the small communities, where the abstractor knows everybody in the

community, and you are examining a title, and it is disclosed to you that there is a judgment against a man by the name of Meyer, you call the abstractor and tell him that he shows a judgment against Meyer. The abstractor says, "Oh, yes, the girl put it in there, but that is not the Meyer that is in the chain of title." There the abstractor knows all the people. But with the growth in Idaho that we all anticipate and expect and hope for, these problems are going to be complex. There is going to be a similarity of names. There will be affidavits of identity that will be needed. There are going to be questions, as we have in Pocatello now, where two attorneys representing a client have procured an abstract on some property, and they have subdivided the whole tract. It is 128 feet off line. All those lots in that particular subdivision are in error. Fourteen abstracts were issued out of that subdivision, and all 14 of them had to be perfected as to land description. There never has been an examination of the original boundaries.

That is what we are coming up against. That is what we are trying to prepare for. That is what we are trying to get the attorneys interested in. It is not so much the condition that exists today. It is the condition which we, as reasonable and practical men, must look to to forsee the problems that are going to come up.

You are absolutely right. I would say that in any small community that the abstract, as you have it now, is a perfectly good muniment of title. What I am trying to do, however, is to tell the members of the Bar that in addition to that abstract, in cases of doubt, in cases where your client is making a major investment in a particular piece of property, that you want to instill in him, through your knowledge of title insurance and your knowledge of the legal effects of abstracts, that you are going to give him the best advice and the most complete assurance as to his muniment of title.

J. H. FELTON: You talk as though a title insurance policy is insurance against all defects of title irregardless—like fire insurance on a building. But when I examine your policies, I find a whole bunch of exceptions. You have those exceptions, and then you have no provision for an increase in value. Those exceptions are what bother me. It is the difference between a straight life policy, to me, and a health and accident policy. In some of these health and accident policies, if I die from being hit by a railroad train on a crossing when the train is going 50 miles an hour, then I get paid through that policy. Otherwise I don't. That is the way I read your policies. That is what I have against them.

MR. SEDA: Your point is well taken.

MR. FELTON: And frankly it is more difficult for me to examine one of your policies than to examine the abstract.

MR. SEDA: There are some merits to your point. You are referring to the printed exceptions. I am going to put you in the place of a purchaser of a piece of property. You are going out to buy a piece of property. It is solely you that is going out and examine that particular tract that you are interested in. Is that true?

MR. FELTON: Well, when one of my clients goes out to buy a piece of property, the first thing I look at is to see whether he takes any chances.

MR. SEDA: You don't advise him to go out and look at the property?

MR. FELTON: He does. I don't.

MR. SEDA: Then at the time he goes out, do you ask him to look at that property to see what it discloses at the time he examines that particular piece of property?

MR. FELTON: The business end of it is his, and the law end of it is mine.

MR. SEDA: That is what I mean. That is where you are wrong as an attorney. I think it is incumbent upon you, as an attorney, when a client comes into your office to rely upon your guidance, to advise him of those factors that you referred to that are in the printed exceptions of the policy. Those are factors that we, as insurers, cannot ascertain, but the man that is buying the property can. The law of caveat emptor expects every purchaser who is buying a piece of property to go out on the land to see what apparent easements are on the land that are not disclosed of record.

MR. FELTON: Just a moment. When I get through examining the title, and he gets through examining the place, where do you come in with title insurance?

MR. SEDA: We come in the same position as you do in your opinion except for those defects that might appear in the chain of title that are not apparent of record.

MR. FELTON: How do you give assurance of a lack of loss?

MR. SEDA: Well, we do give complete assurance. We do completely insure as to any defect that might not be disclosed or doesn't appear of record.

MR. FELTON: With exceptions.

HUGH CALDWELL: Awhile ago you spoke of an incompetent grantor. Suppose a child was born after the will was made and no provision made for him. Those things are not apparent of record, and yet you lead us to believe . . .

MR. SEDA: . . . that we insured against them. Absolutely.

MR. FELTON: You insure them? Not with your exceptions.

MR. SEDA: We do.

MR. FELTON: You say exceptions that are not apparent of record. They are not apparent of record. You don't do any better than we do.

CARL H. SWANSTROM: I have had this experience in asking about title insurance on a certain tract of land. The insurance company comes out with a typewritten list of exceptions—not the printed ones. They found an unreleased mortgage or insufficient probate or what have you. They would insure the title subject to these exceptions as well as the printed ones. I tell my client that with these typewritten exceptions he has no real assurance. The title insurance agent, a friend of mine, says, "I have done my work, and we are insuring the title as we found it, and we want our money."

My client says, "I want the title quieted."

So I pay your bill for title insurance and then go ahead with what I had to do in the first place. I had to quiet title and show it up in the abstract.

MR. SEDA: If it had been disclosed to you in the abstract, you would have paid the abstract fee for showing it in the abstract, and you would have had to examine the abstract to find it. The title company will insure any

title, bad, good or indifferent, but they will show, under the exceptions, the condition and the status of the title and disclose that status of the title under their preliminary report. It is then up to the attorney to perfect that title. We are putting you and your client on notice as to the condition of that title. I don't see anything wrong with that as a logical procedure.

J. L. EBERLE: Mr. Seda, when you say you do not insure matters not of record, you mean the physical matters. You mean whether the improvements are on the lot. Isn't that what you mean?

MR. SEDA: That is right.

MR. EBERLE: I think Mr. Felton misunderstood you. For example, a fraudulent deed . . .

MR. SEDA: Well, if it is of record but it is not apparent.

MR. EBERLE: You insure that. But you do not insure the physical things like pipe-lines and things like that—the improvements not on the lot. However, you do insure those with a special application, do you not?

MR. SEDA: We do.

MR. EBERLE: Then you make the inspection instead of the client?

MR. SEDA: That is right.

MR. EBERLE: Karl, I don't know whether you noticed it or not, but in the last nine months three suits were filed in Ada County based upon fraudulent signatures, and the losses were paid.

MR. PAINE: I didn't notice that.

PRES. MERRILL: We will adjourn until 1:30.

TUESDAY, JUNE 28, 1949, 1:30 P. M.

PRES: MERRILL: Gentlemen, the first item on this afternoon's program is a report by E. B. Smith, who is Chairman of the Legislative Committee.

MR. SMITH: Mr. President, members of the Commission, and members of the profession: I might tell you how the Bar Legislative Committee works. The Commission generally appoints a Chairman who lives in Boise, and the members of the Legislative Committee are the Ada County Lawyers who are appointed by the Chairman. The work is distributed among the various attorneys of the Ada County Bar. We generally meet at noon luncheons about the time that the legislature meets to discuss the various problems with reference to legislation. Then comes the drudgery of drafting the proposed legislation and the further drudgery of trying to translate the proposals into law through the legislature. That, briefly, is the way we work.

The resolutions of the Idaho State Bar, during the year 1948, covered proposed constitutional amendments relating to justices of the peace and probate courts, relegating those into a category of so-called legislative courts; a permanent Judicial Council; increase in bar license fees; salaries of Judges; Court Coordinator; improvements in the Judicial Retirement Act and the continuing code. There are, of course, many subject matters proposed to the Bar Legislative Committee, which are sifted through the various committees, and generally screened through not less than 10 or 12 lawyers. If

proposals, in addition to those proposed by the Bar meetings, appear to have merit, then they are drafted into the form of proposed legislation and submitted to the legislature. The subject matters that I shall review will include not only matters which were authorized by the Bar but the additional matters which were proposed through the screening method.

Proposed legislation which failed: The increase in bar license fees from $10.00 to $15.00 was passed by the House of Representatives and transmitted to the Senate, and was held in the Judicial Commitee of the Senate, where the bill died.

A Permanent Judicial Council was recommended by the 1930-1932 and by the 1948 Judicial Council Committees, as a proposed body to make and carry on studies and to make recommendations relating to improvements in the administration of justice and the science or jurisprudence in our state with special regard to improvements in our judicial system. The bill which we proposed was drafted by Judge Winstead and was approved by the 1948 Idaho State Bar meeting. It provided that the Permanent Judicial Council consist of a Justice of the Supreme Court, three District Judges, one from each of the divisions of the Idaho State Bar, and eleven lawyers, one to be appointed from each of the Judicial Districts in the state. The bill passed by the House of Representatives and transmitted to the Senate; it was held in the Judiciary Committee of the Senate, where it died.

Proposed constitutional amendments: The Bar, at its 1948 meeting, voted in favor of a proposed constitutional amendment to provide that probate and justice courts be classified as legislative courts, similar to other courts included in the phrase "and such other courts as may be established by law." The suggestion required two resolutions, both of which were drafted by Howard Stimson. One was designed to delete justice courts from the Constitution as it now stands, and the other to delete probate courts. Both proposals were presented to the House, and they failed to pass.

Courts in general and Judges: We come now to matters which became law. My references will be to the 1949 laws by Chapters.

Chapter 93 establishes the office of Coordinator of the Courts, the coordinator to be a member of the Supreme Court. It provides for assignment of District Judges to districts where the work may be required to be caught up, and proposes additional duties to be performed by the Clerk of the Supreme Court and by the Clerks of the District Courts.

Chapter 130 relates to the retirement of Judges at the age of 70 on one-half the pay of the office if a Judge serves continuously or otherwise for 10 years; if he resigns by reason of disability, or if his service is less than 10 years he shall receive proportionate retirement pay. It provides that if a Judge now serving and who shall hereafter serve for an aggregate period of 15 years, shall retire for any cause before attaining the age of 70 years, he shall, upon attaining that age, be entitled to one-half of the pay of the office. Those are improvements in the Act as enacted by the 1947 legislature.

Chapter 170 provides actual expenses of the Clerk of the Supreme Court on the same basis as the Judges.

Chapter 218—incidentally, this was not a Bar bill—increases the salary of the Clerk of the Supreme Court to $4,500.00 and the bailiff to $2,500.00 for

the biennium ending June 31, 1951. We had our bill drafted, but that bill was a fair substitute.

Chapter 59 relates to justice courts. It provides that civil actions in justice courts in which no action has been taken for one year may be dismissed by the court without prejudice.

Chapter 167 provides for a Continuing Code Commission and its financing, and it is designed and intended to maintain the Idaho Code continuously in an up-to-date form.

The miscellaneous matters which the Bar was instrumental in having enacted into law: Chapter 7 relates to posting of notice in one place in regard to hearings on determination of the probate court of separate nature of real property belonging to surviving spouse.

Chapter 6 provides for the appointment and pertains to duties of deputy clerks of the probate court.

Chapter 61 provides for the appointment of a deputy clerk of the probate court while the judge is on leave of absence.

Chapter 69 prescribes the time and notice of hearing in proceedings to determine heirship.

Chapter 184 provides that a probation officer may serve as deputy clerk of the probate court.

Bills relating to probate court were deemed necessary since the proposed constitutional amendments were killed.

Chapter 84 relates to supersedeas, money deposited in lieu of undertaking. It provides that an undertaking on supersedeas may be cash, which may be deposited in lieu of the undertaking required.

Chapter 146 is in reference to judgment dockets and provides that the clerk must make an endorsement of the judgment in the judgment docket immediately upon the deposit of any judgment in the clerk's office, and the judgment thereupon and immediately becomes a lien upon the judgment debtor's real property.

Chapter 164 relates to the numbering of instruments in the clerk's office in one series of numbers.

That is all of the Bar legislation.

However, of general interest, and as mentioned by your President, Mr. Merrill, Chapter 247 provided for the appointment of an interim committee consisting of four members of the House and four members of the Senate and the Speaker of the House and the President of the Senate, the latter two being ex-officio members, making a total membership of ten "for the purpose of developing and recommending a program of improvement in the economy which will promote efficiency in the operation of the state government" and provides, among other things, "for the conduct of state finances, affairs and policies in more uniform, orderly, economical and businesslike manner." That is the bill which may result in the consolidation of the Bar Commission fund with the funds of the other departments, and in it being turned over to the state's general fund. Your warning signal, of course, with reference to that bill, was given to you yesterday by Mr. Merrill.

PRES. MERRILL: The report on the prosecuting attorneys meeting will be given by Mr. Kimble.

FRANK F. KIMBLE: Mr. President and members of the commission and members of the profession: I am taking the place of Earl Morgan of Lewiston who was unable to get to our meeting.

We met yesterday in semi-annual meeting. A number of papers were given. Mr. Blaine of Ada County and Mr. Kerr and Mr. Phil Evans were unable to get here and give us their topics.

An interesting discussion was given by Joe McFadden on the new check law, with the idea that we get uniform action throughout the various counties.

Mr. Kemper from Nezperce in Lewis County gave a report on the indeterminate sentence and parole officers.

I reported on change of venue, particularly in criminal actions, in both the District Courts and inferior courts.

There was quite a discussion, which has always been before the prosecutors, in regard to juvenile delinquency. You fellows who have not served as a prosecutor probably do not understand or realize the confusion and lack of clarity in some of those laws. We have been trying to get them straightened out for several years. That was informal, and no paper was given.

The same officers were re-elected: Earl Morgan of Lewiston, Chairman, T. M. McDonald of Idaho City, Vice Chairman, Howard Adkins of Shoshone, Secretary, and Joe McFadden of Hailey, Treasurer.

E. B. SMITH: Mr. President, I failed to mention one Bar sponsored bill about which you all know, of course, the bill which increased the salaries of the Justices of the Supreme Court to $7,500.00 and of District Court Judges to $6,500,00.

PRES. MERRILL: Sidney Smith will now give the report of the Canvassing Committee of the election of the Eastern Division.

MR. SMITH: Mr. President: The Canvassing Committee report having certified to the Secretary that the ballots have been examined and that John Ralph Litton of St. Anthony has been elected a member of the Bar Commission from the Eastern Division. This report has been filed with the Secretary, and it is signed by Mr. Bloem of Wallace, Mr. Homer Martin of Boise, and myself, Sidney Smith of Coeur d'Alene.

PRES. MERRILL: Thank you. Gentlemen, would the Resolutions Committee meet immediately after the group discussions this afternoon in this room. If any of you have resolutions to be presented, will you kindly give them to Mr. Hawkins or leave them with Mr. Griffin.

We will now break up into group discussions. There will be three sections; Incorporating a Business, Trial Techniques and Probating an Estate. You may join any group you wish, and tomorrow morning we will meet at 10:00 o'clock in this room.

Note: The discussions were not reported. J. F. Martin presented the subject of Trial Techniques and led the discussion. William Hawkins and Robert Troxell presented and led discussion of Incorporating. Donald Anderson presented and led discussion of Probating Estates. All groups were well attended

and discussion lively and this experimental program was exceptionally well received, not only by younger, but by the older, lawyers. The Commission was requested to continue this type of practical, educational, sessions at future meetings.

WEDNESDAY, JUNE 28, 1949, 10:00 A. M.

PRES. MERRILL: The first thing on our program this morning is "Bar Examination Procedure" by Marcus Ware, a member of the Examining Committee for a number of years.

MR. WARE: I remember a story told in the early 1920's, when the college of law had a pretty good percentage of athletes attending for various reasons that he need not discuss particularly. One of the examination questions was, "Give a maxim of equity." One of the football players answered, "Let justice be done though the heavens fall."

Perhaps some of the lawyers and some people in the state think that is the motto of the bar examiners.

The purpose of my talk is to give the attorneys of this state some conception of the work of the Bar Commission and of the Bar Examination Committee assisting them in conducting bar examinations in this state in behalf of the Supreme Court. I am not here to try to defend the method of admission. I realize it has been under attack in this state, and, in fact, throughout the northwest. In the Washington legislature they went so far as to have a bill introduced—maybe it didn't get further than the committee— to prevent the professors of the law school from having any requirements as to the grades a student would have to have in order to stay in law school. I don't think that got anywhere. In Oregon they had a similar bill. In Idaho a bill was passed, and the Supreme Court held, in May, as you all know, that the admission of applicants to the Bar was a judicial and not a legislative function.

Now the thing we are concerned with is the process of admission to the Bar and what it comprehends, namely the fixing of reasonable standards as to mental and scholastic qualifications and the determination in some fair way whether or not the applicant meets those requirements.

In this state, of course, the bar examination method is the means of evaluating the mental and scholastic qualifications of the applicants. I am not considering the character investigation which is gone into previous to the issuance of permission to take the examination.

At the outset we should understand that as far as the examination is concerned, the Board has no quota system. There is no fixed percentage that must fail or must pass. If all of the applicants pass the examination, they are going to be admitted. By the same token, if all the applicants fail, the Bar Commission would reluctantly have to report to the Supreme Court that they had no one to recommend for admission. It has never been quite that bad, although in some examinations perhaps as much as 50 per cent have failed, and I think in the last examination, 32 out of 33 passed and were recommended.

It has been suggested in some quarters that even an attorney could not pass the examination. But all of you did at one time or another in one fashion or another. I don't know whether any are now living who were admitted

under that antique procedure of the Supreme Court—perhaps that was back in the territorial days—when they asked the applicant how he took his liquor, and if he took it straight, he was admitted forthwith.

The record shows that foreign attorneys, with but one or two exceptions, have all passed on the first examination. I don't know whether our Bar could do as well, but I think it could.

Let's look at the system and see if it is fair to the applicants. We have got to remember that the commission has a responsibility to the Court, to the Bar, to the applicant and to the public.

Examination time is set to try to be fair to the students. There is an examination, of course, in the spring and again one in the fall. If an applicant fails in the spring, he will have an opportunity to refresh himself and take the examination again in the fall.

There is a great variety in the method of question preparation. There is at least one state that I know of where the law professors throughout the country may submit proposed questions, and if they are accepted, the professor is paid $50.00 for that question. Of course, that could not be the case in this state. That would have to be done in a state where there were a high number of applicants each year and where you had a larger Bar and perhaps where your Bar fees were quite high. In our state the questions are prepared by the members of the Bar Commission and of the Examining Committee. The subjects are divided up. Questions are prepared and submitted in advance of a Board meeting sometime prior to the examination. The Board goes over the questions and select and revise, add or change them as it sees fit.

The bulk of the questions are of the essay or problem type. They are much like the questions I remember and have since seen, for that matter, in law school at the University of Idaho. The student is confronted with a set of facts, and the problem is to select the important and vital or pertinent facts and apply the proper legal principle to those facts and reach a logical conclusion with respect to them. The questions submitted to the Commission have the suggested or recommended answer coupled with citations of authority. You can see that the drafting of questions is necessarily one of the most important things in connection with the Bar examination.

Of course, the consideration of the answers is important. The answer that has been prepared is just a guide to the graders. I might say it isn't even always accepted by the examiners when it is in accord with the decisions of our Supreme Court.

The grading is not based on being absolutely correct or being absolutely in error. There are some "yes or no" questions, and, of course, you would be either right or you would be wrong. But the examiners are interested in how a man thinks or reasons in relation to the question submitted to him where they are of the essay type of questions, which are the bulk of the questions.

The questions are simplified as to the statement of facts. Involved names are avoided. In other words, you wouldn't use, if one of the parties or persons concerned in the suit was The Big Creek Mining, Milling and Smeltering Company, such a name. You would say either the B Mining Company or the Big Creek Mining Company. You would simplify it. If one party's name was

William James Smith, you would boil it down to Smith or S. or maybe plaintiff or defendant. We don't use complicated figures. If you had $1,059.63, you would just say $1,000.00 or $1,050.00 when referring to an item of that kind. Abbreviations, unless they are in general acceptance like COD or FOB, are not used. Reference to Latin terms are avoided unless they are so generally accepted in the Bar that there couldn't be error in them—like res adjudicata, res ipsa loquitur, habeas corpus and so forth.

The examination consists of 50 questions. It is divided into six parts and covers three days time. Part One is covered the first morning, Part Two the first afternoon, Part Three the second morning and so on.

I would like to convey to you how anonymous the grading is conducted. Each man has his certificate with a number on it which is presented to the person in charge of the examination where the examination is taken. I might say that those examinations are held very largely for the accommodation of the applicant—usually at Lewiston in the north and Boise and Pocatello in the south and perhaps Idaho Falls or Moscow or Coeur d'Alene, as may seem fair. In the lower right hand corner of the Part cover is a detachable portion which has a space for the applicant to write the number of his certificate and the date of the examination—the spring of 1949 or the fall of 1949 or whatever it may be. There is another space for a grading number which is left blank. On the top of the sheet for Part One is another space which is for a grading number. The detachable portion with the man's certificate number on it appears on each of the six parts. When those parts get to the secretary's office in Boise, his secretary will arbitrarily assign a grading number to each of those papers. Grading number one would, of course, be put on the detachable portion, and then up at the top, where there is a space for the grading number. The detachable portion with the certificate number on it is removed and put in sealed envelopes. So there is not a member of the Bar Commission, there isn't an examiner and there isn't a reader or grader of the paper who knows whose paper is being graded.

We are grading by arbitrary grading numbers. Until the examination is completed, the averages made and the determination of whether one, two, three and up to thirty-three, as in the case of the last examination, passed or failed, no one knows whose paper is being graded. Only after the determination is made as to whether a particular number has passed or failed all through the entire group of applicants, only when that has finally been determined by the Board of Examiners, then and then only is the envelope opened and the identity of the applicant determined by comparing the grading number with his certificate number and then going to his name on the certificate. The Board then makes its recommendatory report to the Supreme Court as to what applicants have passed and are recommended to be admitted to the Bar.

Personally I do not know what fairer method could be followed on that score.

Going back to the actual grading for a moment. Each person participating in the grading—and I imagine some of you have, at various times, graded the questions—grades the questions on the basis of his idea of its relative merit and grades from one to ten. Occasionally an applicant might so absoultely fail to answer a question that he might get a zero,

but in most cases some credit is given. One question is graded through completely in the case of all applicants, and then they proceed to the next question. When a section or a part is completed, then the average grade of each applicant is determined by averaging the grades that each grader has given him. Should there he considerable variation in the grades of a particular question, the examiners go back and review that particular question to make sure that no one has made a mistake as to its merits. But once the grade has been completed or once the determination of what number have passed or failed has been made, and once the identity or names of the applicants are known, neither the Bar Examining Committee nor the Bar Commissioners can go back of their figures, because once you know the identity or standing of a particular applicant, it certainly would be unfair to reconsider the grading, if you are trying to grade on an anonymous basis.

I would like to discuss briefly the evaluation of answers and credit given. There are certain standards and guide posts set up for the examiners for their independent grading. We try to keep in mind that the purpose of the examination is to test the powers of analysis and reasoning and the knowledge of the applicant and his ability to apply legal principles to the facts. While the correct answer is important, a correct or incorrect conclusion has less weight or importance than the process of reasoning by which that applicant arrives at his conclusion. If the conclusion is correct and unsupported by good reasoning, it doesn't give the examiner any idea of what that student or applicant knows. If the conclusion is correct but is accompanied by the erroneous or faulty application of a principle or an irrelevant principle, again it doesn't carry too much weight. On the other hand, where the conclusion is at variance with the correct answer but the applicant's answer displays good reasoning and an appreciation of the facts and an understanding of the problems involved, and if his answer is based upon sound legal principles, the fact that the applicant has come to an erroneous conclusion doesn't mean that he won't get a pretty good grade on that answer. Sometimes an applicant will develop a theory at variance with the committee's answer. But he may apply logic to it. He may reach an erroneous conclusion, but if he shows that his theory is one that might justify a practicing attorney pursuing and briefing the problem further along the line of that theory, certainly due credit should be and is given to that applicant's answer. A correct conclusion without good reasoning is of less value than a wrong conclusion with good reasoning. And, of course, a correct conclusion with good reasoning is entitled to more credit than any of the others.

Once in awhile, through some defect in the preparation of the question, there is some error in punctuation and a situation is created where the applicant may interpret the facts different from that intended by the framers of the question. At least it makes it possible for the applicant to misunderstand what is meant. In that event the examiners accept the fault as theirs, accept the question to be as interpreted by the applicant and follow a grading system that would be absolutely fair to the applieant and based on his interpretation. Occasionally that happens but not often. Another thing: there are absolutely never any "trick" questions.

I would like to contrast our situation, just a little bit, with the other

states and acquaint you generally with the problems involved. Our Secretary is in possession of a survey made by the law profession of the United States with reference to Bar examinations. In twenty years, it is estimated that some 280,000 applicants have taken Bar examinations. Approximately 50% passed. That is an average of 14,000 applicants a year, with 7,000 passing each year. The five states with the largest group of applicants have an average of 46% passing. The five states with the lowest group of applicants have an average of 52% passing. Going to the western states, based upon this survey, Idaho's passing average was 68.8% contrasted with Arizona 64.6%, California 43.2%, Colorado 65.2%, Nevada 52.2%, New Mexico 61.1%, Oregon 62.3%, Utah 57.8%, Washington 75.9% and Wyoming 87.4%.

I might say that in addition to that survey I wrote for and received statistics from the State of California for their examinations from April '46 through October '48, and it runs from 27% passing in April '46 to 63% passing in October '48. The Oregon group runs from 59% to 76% from '42 to '48, with one examination in '44, when 16 applicants took the examination, and 16 passed for 100%. The Washington figures vary from 72% up to 80% or 84%.

Our method of preparation conforms to that of some 21 states. That is, they are prepared by the examiners and submitted to the Board for review and revision. In some 17 states, including Oregon, the sole responsibility is with the examiners preparing the questions. I have a letter from a friend of mine who has been on the Oregon Examining Committee for many years. He states that each examiner prepares four questions of the thirty-two given. It is a two day examination, and the examiner individually grades his own questions. I think, personally, that we do better where we have the full Committee or Board doing the grading and taking the average grade of all graders.

Predominantly, throughout the country, the questions are of the essay or problem type, except New York where it is largely a "yes or no" answer test.

The standard of passing in 21 states is 70% and in 16 states it is 75%. Ours is based upon 70% as the passing mark. The applicant has to get 60% or better in at least two-thirds of the sections. In other words, if he failed in more than two sections with grades of less than 60%, even if he got 70% on the whole, he wouldn't pass. That is done to be reasonably certain that the student or applicant has an overall understanding of the law.

I might say that Idaho conforms to the recommended rule of not arbitrarily relying on the stock answer. We give weight to the reasoning and logic used by the applicant in answering the questions. In Idaho the old questions are not available to the applicants. In California, for that matter, you can get printed copies of the old questions but not the suggested answers.

Our main emphasis, of course, is on substantive law. We do necessarily consider our local practice to some extent. Anyone taking the examination can very properly expect that there will be some questions on practice and code pleading, some questions on community property, some questions, perhaps, on mining law and water rights or both. Those three

subjects, of course, are vital to the practice in Idaho, and every lawyer should have some knowledge of them, and the Commission has thought it only proper that questions should be submitted on those subjects.

We do not label the questions. We expect the applicant to determine what subject or subjects of law are involved. I think that should be a test of the applicant. It makes us more certain of his knowledge of the law, of his ability to reason and his capacity for discrimination, and it confronts him with the same situation that will confront him when a client walks into his office. The client is not going to come in and say that he has a problem in contracts or community property.

We do not use optional questions. Some states do that.

I have tried, gentlemen, to show you the general mechanics of the Idaho examination. I might specifically go to some of our statistics for the years 1942 to 1948 for some 120 applicants. 64 passed the first examination, and 38 failed. On the second examination 15 of those passed. This is not quite accurate, because since the figures were compiled a group that had applications pending, some 14, took the examination again, and all but one of them passed. So the overall picture, going through the second examination and considering the third examination, in the three instances, about 95% of the applicants, in the final analysis, passed the Bar examination after, of course, further study. While it has not in every instance been true, yet in the large number of cases where a check was made with the colleges, the good students passed and the poor students failed.

I don't know whether I can answer all or any of your questions, but if you have any, I will try to. If I can't answer them, I have Sam here and the other members of the Commission, and I am sure they would be glad to help me in the pinches.

MR. KEMPER: A thought just came to my mind. Students taking that examination are under quite a strain, as you can well imagine, I know I was, and by the time you get to that third afternoon, you are just going on your nerves from then on. The particular examination I took was last fall, and the last afternoon was the longest part, and being tired, it made it very difficult. I wonder if it wouldn't be possible to add an additional question earlier in the examination and eliminate a question or two in the last afternoon.

MR. WARE: Make that your shortest part of the examination?

MR. KEMPER: That would be my suggestion.

MR. WARE: I would like to have Sam answer that.

SAM S. GRIFFIN: There is a reason why it is done the other way. I don't think Marcus mentioned it. The first morning is the shortest part of the examination. Over the years of grading, the Board has found that the applicants seemed to be so nervous the first morning they were falling down badly on the first section. Accordingly, they shortened the first section and broadened it out later. You would be rather surprised, Mr. Kemper, but you probably did better on the last afternoon. It has been our experience that the fellow who starts out as though he was going to fail, gets hold of himself, apparently, and he may be awful tired,

but his brain has started working. The first day is purposely the shortest day. That is to let the applicants get their feet under the table and get started, and when they do get started, you would be surprised at their grades. Sometimes the graders will say to themselves, "That guy is so rotten he will never get through. If he is as bad on the rest of the sections as he is on this first one, he will never make it." By the third set he is beginning to hit the ball, and by the time he gets through he is all right. That has happened lots and lots of times.

DEAN STIMSON: I have just one thought I would like to add. Of course, we don't have any three day examinations in law school, but in preparing my own questions for a four hour examination, I make it a habit of having the first question an easy one and the last question an easy one. In other words, the heavy ones come in the middle. That eases him into the examination and also eases him out. (laughter)

FROM THE FLOOR: How far out? (laughter)

MR. GRIFFIN: You use the phrase "easy questions". I have heard lawyers say that the questions are too hard and that the lawyers couldn't answer them themselves if they wanted to. You can't always tell what is an easy question. Lots of times the Board will review questions that some member of the Examining Committee has turned in, and they will say, "That's too easy to give." Then the Board will say, "We will give them the easy one to sort of make up for some of them that may be a little tough." They give them what they think is an easy question and a tough question, and invariably they hit the tough question right in the eye, and they seem to figure there is something wrong with the easy question. They get the idea it is a trick of some sort. Of course, there is no idea of making a trick out of it, but that seems to be the way their minds work.

DEAN STIMSON: I should amend my statement by saying that I put the one in the front and the one at the end as having the shortest statement of facts. When the student is starting the examination, he is nervous, and to marshal a set of facts which are rather complicated is the thing that is apt to floor him. As you well know, the one with the shortest statement of facts may be a difficult question, but it gives him a feeling of confidence when he reads that question of about four or five lines. He has it all there right before him, and he starts thinking about it right away.

MR. WARE: Dean Stimson and Mr. Kemper, I will never forget that last afternoon at Lewiston in 1927. The questions given us was a briefing question, and, of course, each briefing question was different. I got the shock of my life. We were permitted to use the library to build up our case, and many of them could find a leading case. I couldn't find a dam thing the whole afternoon. I don't know what I finally did, but I am sure the only thing that saved me was that the examiners wrote off that afternoon and didn't pay any attention to it for any of us.

J. T. EVANS: You have had several blind applicants. I was wondering how you handle them and whether you can identify whose paper you are correcting.

MR. WARE: Some of the papers are typewritten. Some of them are handwritten. Of course, in the case of a blind applicant, up in the end of the state where I have conducted the examination, they have someone read the question to them, and they write or typewrite the answer as the case may be. We can provide them with a room of their own where they can have someone read the questions to them, and aside from the natural limitations that they have on that score, they get along perhaps as well as anyone else.

MR. GRIFFIN: We have had occasion to do as he said. We usually try to accommodate the individual. Some of them can't type too well. I can think of one case where they let the boy bring a stenographer in, and he dictated his answers. We put him away from the rest of them, of course, and the girl would read the question to him, and he would think it over and dictate the answer, and she would type it. We didn't formerly let them type the answers, but it got too tough to read some of the rotten writing we were getting, so now we are glad to have them type answers. As to the identity of the handwriting, that is taken care of, because under our system we hire what we call readers. Incidentally, I heard that some of the boys at the university mentioned that we hired junior college students to grade the questions. (laughter) They were hired as readers. The graders sit around a table. There are three on a grading team. Over to one side sits a fellow who reads the question and the answer. The Board never sees the paper or handwriting. We hire this reader, and that saves the Board a lot of time and trouble, and the reader finally becomes acquainted with the handwriting, so he can read them pretty well. He reads number one's answer. Then each of the members of the grading team puts down on his grading sheet what he thinks the answer is worth. I might think it is worth seven, and you put down eight and somebody else puts down eight. We go down through a section of perhaps eight questions. Then we average each grader's totals for the section, so if I am a tough guy, the fellow that is a little easier on the boys makes up for my toughness. In other words, every fellow is graded by three different graders, so he has all the chances that we think we can give him. But so far as the junior college students grading, they just don't do it.

MR. WARE: It is rather surprising, at least it has been in my experience, that while one grader may grade a particular question of a particular applicant lower than the others, yet the pattern on the section as a whole averages out pretty well, surprisingly so in many instances.

MR. GRIFFIN. As Marcus told you awhile ago, suppose I give the applicant 56, which is just passing on eight questions. Suppose Marcus gives him 76. Well, then we figure something is wrong. Either I have gone to sleep when the answer was read or Marcus has. So we go back, and we compare our individual grades, and if Marcus has given a fellow 2 and I have given him 10, we know dam well something is wrong. Then we review it, as he said, to see which one of us was asleep when that answer was given, and we correct the grading. As Marcus said, in the vast majority of instances there won't be over 3 or 4 points between the graders when they finally add their totals.

PRES. MERRILL: Gentlemen, we were in hopes that we would have a discussion by a member of the Supreme Court on the Coordinator Act that was recently passed by the legislature. However, there is no member of the Supreme Court present, and we are sorry we can't have this discussion. I might say, though, that in my mind this Coordinator Act is a step in the right direction. It may be that the Commission and the Bar

will have to urge the Supreme Court to act under it. The Act is no good unless it is put into force. If the Act is actually put into force by the Supreme Court, if they actually appoint a Coordinator, he can do a lot of good in avoiding delays in trials and overwork by some of the District Judges.

As you gentlemen remember, the Act provides that with the advice of the Coordinator, the Supreme Court can shift District Judges in one district to another in order to help relieve the load in any particular district. Of course they can't do that unless the Coordinator knows where there is a crowded calendar. And it is his duty to find out the condition of the calendars in the various districts. We hope that the Supreme Court will actually act under this Coordinator Act. But, as I said before, it may be that the Bar and Commission will have to urge the Supreme Court to do something under this Coordinator Act.

We are also disappointed in the next item, "Office Management and Accounting" by Mr. Anderson of Boise. He was supposed to give this but telephoned last night that he was delayed in Boise and couldn't be here this morning.

We now come to the report of the Resolutions Committee. We will ask Mr. Hawkins to give that report.

WILLIAM HAWKINS: Mr. St. Clair will read it.

GILBERT ST. CLAIR: Mr. President, Bar Commissioners and members of the Bar: This was delegated to me, because Judge Hawkins said that he has said plenty at this convention already.

This being an off legislative year, no resolutions have been submitted that are controversial. They are quite short.

(Whereupon Resolutions 1, 2, 3, 4 and 5 were read, and each was duly seconded from the floor, put to a vote and carried unanimously.)

NO. I

Whereas, the success of this, the 1949 State bar convention is a tribute to the several excellent addresses and discussions by the members of the Bar and to the excellent services and entertainment provided by the Management of Shore Lodge,

Now therefore, be it resolved, that the Idaho State Bar says "thanks" to all those who have contributed to the success of this convention, and especially commends the attendance by the Judges present.

NO. II

Be it resolved, that this association expresses its appreciation to R. D. Merrill for his untiring and able services as a commissioner and President of the Idaho State Bar, and to E. E. Hunt, who has recently resigned because of ill health, for his services as a commissioner.

NO. III

Be it resolved: That District Judges make every effort to avoid setting or hearing any matters that would interfere in any way with the attendance to the Idaho State Bar convention by themselves or lawyers.

NO. IV

Be it resolved: That the Bar Commission appoint a committee to examine the Corporate Statutes with the view of modernizing the same to meet present day needs and report back to the next convention with its recommendations.

NO. V

Be it Resolved, that we again endorse, and urge the passage of, legislation creating a permanent Judicial Council conforming to the recommendation of President Merrill and resolutions of previous Bar conventions.

(Resolution No. 6 relating to three years of prelegal college study was read.)

DEAN STIMSON: I might just say what the attitude of the law school is on this. This same question has come up several times at The Association of American Law Schools. It has come up twice recently, and maybe before that it had come up. We have opposed it, not because we don't believe that three years are better than two years for prelegal preparation, but we thought that to require it would be undesirable from the point of view that it would add to the expense and the struggle of the student who is not well financed, who didn't have independent means. That was one reason.

The other reason was that we are, in a sense, in competition with a law school in Spokane which requires only two years of prelegal training. It is not an approved school, but we felt that if we first went to three years that that might have the effect of encouraging students to attend that law school instead of ours and then coming back to Idaho to take the Bar examination.

MARCUS WARE: Mr. President, I am, personally, very much opposed to a three year requirement. Some of us are products of only one year of prelegal training. Personally I think that three years are highly desirable, but I don't think it should be a requisite. Two years are enough to require. The average means of the average person in Idaho is such that we should maintain a reasonably low minimum in that respect, and I think two years are entirely adequate as a requirement in a free country. We don't want to make the law profession a rich man's profession. We don't want to get in the shape, as far as I am concerned, that the medical profession is in that respect.

SAM S. GRIFFIN: Mr. President: Perhaps I can give you some idea of why Mr. Merrill recommended that in his address yesterday. The American Bar Association, a number of years ago, set up a goal of standards to be reached, among which was four years of college before law. A great many schools now require that—Stanford, Harvard, Chicago and probably others. I believe Michigan does. But that isn't the point with the Idaho Commission—whether some other schools do it or not. The point is that the practice of law is becoming too big for the old traditional law college to handle under the old traditional subjects. Minnesota, I believe, now has a four year law course. In that course, among other things, they give them accounting and taxation and things of that character, which, in this day and age, seem to be almost essential to the practicing lawyer.

Now, it is not Marcus' fault that he is not educated. (laughter) When

he took the Bar examination, he got through just as easily as he could, just like I did. I took a year of prelaw and then three years of law. But he has had time to grow up as time went by. We have to remember that after this GI bunch is out, and they probably will be in the next three years—is that right?

DEAN STIMSON: I can't figure it very well. I have 128 students in school, and all but eight are veterans.

MR. GRIFFIN: But some day that is coming to an end, and when it comes to an end we are going to drop back to 18 years olds going to college. If they take two years, they will be twenty when they start law. There is a serious question in the Board's mind as to whether we had not ought to anticipate what is going to happen and what we can see is going to happen. This requirement is not to take effect tomorrow, of course. We have got to give those fellows a chance that have already started, but perhaps we should build the recommendation up so that in the course of three or four or five years the college up here will be in a position to adopt that standard. I think that was pretty much what your idea was, Mr. Merrill.

PRESIDENT MERRILL: Yes it was, Sam.

MR. GRIFFIN: It is a thing to think about. I have a boy who wants to take law. He is the only one of my sons foolish enough to think he can make a living in law; but I want him to take with it some accounting and economics. I think he will be a better lawyer for it. Although we are concerned with the individual, we must not let the individual's situation blind us to the fact that the requirements for practicing nowdays are tougher than they were when Abe Lincoln started to practice. It may make it hard on individuals, but on the other hand, the fellow who isn't in a position to compete with the fellows who do take three years, is going to be your weak lawyer all during his career. He is likely to be the fellow you are going to have the most trouble with.

GEORGE DONART: Mr. President, it seems to me that if the idea is to produce better lawyers, maybe we are going at it backwards. I believe two years, in many instances, is enough for prelaw. However, in view of the development of law over recent years, I believe that a four year course in prelaw school would be advisable rather than a three year pre-legal course. Frankly, I think in most instances where a young fellow goes to college the fall he is 17, if nothing is going to interrupt his college course, on account of his age if for no other reason, he should take four years. He should have a degree before going into a law school. Looking back over a period of about 34 or 35 years, I don't believe that our own observations will justify the conclusion that a large number of men with only a high school course are not prepared to study law. I don't believe an investigation will bear that out.

It was a long while ago that I went to law school. I was the only member of the graduating class, as far as I know, at that time who had a B. A. degree. So I am not speaking from any selfish motive. I felt that I needed a B. A. degree before starting the practice of law. But I saw a lot of others who didn't feel that way who were very successful in the practice of law, and they were younger than I was. I know a good many men who are good lawyers today, some of them members of the judiciary, who

entered the Idaho Law School directly from high school. I remember one man, I guess he was one of the few men we ever placed on the Supreme Court, and I will tell you his name, it was Dwight Leeper, and I don't think that anyone ever urged that Leeper wasn't an able lawyer nor that he was not an outstanding member of the Supreme Court. Dwight Leeper entered the university when he was barely 18 years of age. He was younger than most of us at that time. It wasn't a question of age. Leeper took one year of prelaw, and he made a mighty good lawyer.

I could mention a lot of others that didn't even have the one year. There are men that I see right here today who are outstanding lawyers in this state, and the lack of a college education didn't seem to be any handicap to them.

Frankly, I would recommend three full years to any young fellow who is starting out at 17 and who can go on through. But suppose we take the young fellow who has to work his way. He goes two years and is probably out a year. If you tell him he has got to have six full years, you are setting up a pretty hard proposition for him.

Now, there are a lot of things that qualify a man for practicing law that he doesn't learn in books in getting an academic education. He may have experience in other ways that would be worth more to him. Suppose he works a year or two in a bank or something of that kind. I taught school for one year after graduating from college. I found that one year was worth more to me as preparation for the practice of law than three or four years in college. I think a lot of other people will find the same thing true.

While I will recommend the resolution to individuals, I don't believe that at this time we should go on record as favoring that as a requirement, because it won't fit in all circumstances, and I believe it would probably be more damaging than beneficial.

J. H. FELTON: I lived under the eaves of a law school for a long time. I have always lived up shoulder to shoulder with the university. A lot of you have forgotten your days. There is a direct break in a university between what we know as a professional course and what we know as an academic course. The social life of a university and the people that go there for fun and the people that go there easily are in those academic courses. If you extend the time that a student is in those academic courses, it is my opinion from observation, it does him no good. I entered law school when I was 17 with one year out, and although it didn't make me a lawyer, I had no trouble, as the grades of the law school will show, competing with the fellows who had degrees.

The four year course is a professional course, and that fits you for what you are going to do. But after you get out, then there should be certain requirements to teach a fellow to practice law to put to use the training that he has. Don't put it onto the wrong end of education.

Now, I have watched those kids. I have sat up against them for 20 years or better. Those first two years are "sluff" years. They are just getting ready to do something they want to do, and the fellow who is battling his way through up there doesn't like it very much. But put it on the other end where he is learning what he wants to do, you will find that he will study like hell from that end.

I don't care whether Harvard or Yale or any other school requires four years prelegal training. I don't think that the years of academic study should be extended, but I do think we should do something with the other end—that is the apprentice end. Make him practice with someone else until he gets going. That end is O. K. But I think the academic end is "sluff". I think it is a waiting period.

ADONIS H. NIELSON: Mr. President, there is one thing we are forgetting here in this discussion. It is that an attorney should be a member of the society he enters. He shouldn't just attempt to make a living. He should attempt to at least contribute some of his ability to the community. In order to do that he should have some ideas, it appears to me, from his training, before he goes into the law school.

I am like Mr. Donart. I taught school for awhile, and perhaps I got some training from that. But at least before I went to law school I had four years of training, and to me that has been an aid, or at least I assume so. I wouldn't recommend that these young men should have three years, but certainly they should have some training that would help them to become members of a society and to enable them to take their part with others in contributing to, say, the literary ends of life or to some of the community enterprises.

FRANK MARTIN: Mr. President, I want to ask a question. Is this aimed for immediate use, or does it set up a goal which we want to arrive at at a time when we are ready for it?

PRES. MERRILL: It is setting up a goal, gentlemen, that we can arrive at in the future. It may be that it won't be effective for three or four years, particularly until after all of the GI's have finished their education. But the idea is to set up a goal that we may work for in the future so that those who intend to study law three, four, five or six years from now will know they must have three years of college education prior to going into law school.

FRANK MARTIN: Shouldn't the resolution be made to show that. As the resolution stands, it seems to me, we are recommending it right now. I think that was brought out in part of the argument we had.

PRES. MERRILL: I presume the Board would have to take it up with the Supreme Court. If the Supreme Court says, "No," no matter what we do, there is nothing we can do about it. I presume we would leave it to the Board to determine when in the future this would take effect.

FRANK MARTIN: May we have the resolution read again.

(Whereupon Resolution No. 6 was again read)

DEAN STIMSON: I hadn't quite appreciated that. In other words, you are saying it should be required at the University of Idaho, and you are not saying it should be required for admission to practice in Idaho. Is that it? You really would be putting us on the spot the way it is, because they don't require it at the school in Spokane. If you want to do this, I would think that you would make one of the requirements for admission to practice law in Idaho three years of college education. That would mean that wherever they came from, they would have to have three years of college education.

PRES. MERRILL: Does anyone want to offer an amendment to that to conform with that suggestion?

MR. J. H. FELTON: Let's take it up next year.

Question!

(Whereupon Resolution No. 6 was put to a vote and lost.)

FRANK MARTIN: I presume it is not out of order to offer a resolution from the floor. I move you, Mr. President, that it be the consensus of this meeting that the Board of Commissioners convey to the Supreme Court a request from the members of the Bar that they attend the meetings of the Bar. (laughter) (applause)

PRES. MERRILL: Do I hear a second?

(Whereupon the motion was duly seconded, was put to a vote and carried unanimously.)

C. J. HAMILTON: Mr. President, I suggest that the applause be inserted in the record. (laughter)

PRES. MERRILL: Gentlemen, as you all know, heretofore, during the last two or three years anyhow, we have held the convention at Sun Valley. This year we held it up here, and the Commission would like to know from you ladies and gentlemen which place you prefer to hold a convention. Your thoughts do not have to be in the form of a resolution necessarily, but just a general idea of what you want to do in regard to the place to hold the convention for next year. We would be glad to have any suggestions on this. We don't need a resolution but any suggestions you might have.

MARCUS WARE: Why not alternate?

SAM S. GRIFFIN: You can't get your dates.

PRES. MERRILL: Of course, you all understand that we can't hold a convention at any time and any place we desire. If we hold it at Sun Valley or if we hold it at the Lodge here, we must take dates that will conform with their general set-up. This year's dates were not the dates we wanted. It was not the date we selected for the convention this year, but it was the only one we could get, and we had to take it, so you gentlemen will have to keep that in mind. It is not always the Commission's fault that the convention starts on Monday instead of Friday or that we hold it at a certain time in June instead of July or August when it will be warmer. If anybody has any suggestions, the Commission would like to hear from you.

J. F. MARTIN: Can we hear from Judge Hawkins?

JUDGE HAWKINS: I don't very often turn down challenges like that. (laughter) I am selfish. It is a shorter distance from Coeur d'Alene to McCall than it is from Coeur d'Alene to Sun Valley. I assume the lawyers north of here appreciate the privilege of holding a meeting at this place because of the travel involved or lack of it. I think that if it is held here again next year, there should be definite arrangements made with the management whereby the entire lodge facilities, or practically the entire lodge facilities, will be made available to the Bar rather than

partial accommodations, because it is a little more convenient if we can get all under the same roof. You have quite a number of lawyers from the Boise area that have summer homes up here, and it is convenient for them. From a travel standpoint, it is not much further from Pocatello here than it is from Coeur d'Alene. We appreciate it, and we would like to have it held here again. However, we don't want to be selfish about it. If there is some real reason why it should go back to Sun Valley, we are willing to accede as long as we get it here at least every other year.

F. H. SNOOK: Do you have a record there that would indicate the comparative attendance between Sun Valley, the last few years we held it there, and here ?

MR. GRIFFIN: Last year there were 86 registrations at Sun Valley. There are about 75 registered here. Of course, that doesn't always indicate why they are here or why they are someplace else. For instance, at Sun Valley, some of the younger fellows complained of the charges which are higher than they are here. On the other hand, some of them may feel a little poorer this year than they were last year. In the war years lots of the fellows felt they could take a fling like this when they may not want to now. There are a lot of conditions that make a difference. For instance, the first of the week or the last of the week may make a difference. We have always preferred the last of the week on the theory that the lawyers liked it better, but I don't know whether that makes enough difference or not. This is the first year the courts have jumped the gun on us for quite awhile, but in some districts they have set down cases, which I think they should not do. In fact the Judges ought to be over here themselves if only to show appreciation for our raising their pay $2500.00 a year. The raise ought to be enough to pay part of their expenses.

ROBT. BROWN: I think the time of the week affected the attendance here. That was unavoidable.

MR. GRIFFIN: Do most of you think the end of the week is better than the beginning of the week, or does it make any difference?

J. H. FELTON: It makes a difference, yes.

FROM THE FLOOR: It makes a difference whether it is an election year or not.

MR. GRIFFIN: You mean it makes a difference to the Judges.

PRES. MERRILL: Might I say that if any of you have any suggestions on this or any other subject during the year, I am sure the Secretary and the Commission would be glad to have you write them. The Commissioners only attempt to serve you gentlemen and serve the Bar, and they want to carry out your ideas and not necessarily their own ideas.

And now, ladies and gentlemen, I want to thank you very much for the courtesies you have extended to me and the Commission during the past year.

It is with great pleasure that I now introduce Claude V. Marcus, of Boise, our new President. (applause)

PRES. MARCUS: I do thank you sincerely. It is a real privilege to

be able to serve the Bar of Idaho. As a matter of fact, I think I would rather represent this organization than any other client in all the world, and I can assure you that during the coming year we will do the best we can to make the Bar a real working tool for the profession. We are going to have a lot of work to do this year, and in many ways I feel very inadequate to the job. But we are going to call on many of you fellows to help us, and I know that you will give us your cooperation.

I do not want to dismiss this meeting without again emphasizing my personal regards for the retiring president, Mr. Merrill. The past year we had some rather rough spots, and we who worked with him from day to day realize what a good, strong, steady leadership he provided. From a personal viewpoint I certainly wish to extend my great appreciation to him for his work, and we aren't going to let him retire. He is still going to assist us with his counsel.

Gentlemen, we certainly hope that you will all have a prosperous and successful year.

If there is no further business to come before this meeting, we will stand adjourned.

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