PROCEEDINGS

of the

Idaho State Bar

VOLUME XXIV, 1950

Twenty-Fourth Annual Meeting

SUN VALLEY, IDAHO

July 13, 14, 15, 1950

PROCEEDINGS

of the

Idaho State Bar

VOLUME XXIV, 1950

Twenty-Fourth Annual Meeting

SUN VALLEY, IDAHO

July 13, 14, 15, 1950

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, 1949-53.

Present Commissioners and Officers

CLAUDE V. MARCUS, Boise, President
RALPH LITTON, St. Anthony, Vice President
ROBERT E. BROWN, Kellogg
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; Owen Knowlton, Secretary, Lewiston.

Third Judicial District — Carl Burke, President, Boise; Raymond Givens, Secretary, Boise.

Fifth District (5th and 6th Judicial Districts) — Hugh McGuire, President, Pocatello; W. A. Wilkinson, Secretary, Pocatello.

Seventh District — Robt. L. Alexanderson, President, Caldwell; William Gigray, Secretary, Caldwell.

Eighth District — Carl Buell, President, St. Maries; Wm. D. McFarland, Secretary, Coeur d'Alene.

Ninth District — Robt. Holden, 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.

Proceedings

Volume XXIV

TWENTY-FOURTH ANNUAL MEETING

of the

IDAHO STATE BAR

1950

COMMISSIONERS OF THE IDAHO STATE BAR

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

THURSDAY, JULY 13, 1950
2:00 P. M.

PRESIDENT MARCUS: Gentlemen, we will come to order. This opens the Annual Convention of the Idaho State Bar, and it is a real pleasure to welcome you.

At this time I present the Chairman of our Arrangements Committee, Mr. Joe McFadden.

MR. McFADDEN: Gentlemen, it is a pleasure to welcome you here to the County of Blaine. There is a lot to be done here in the next 48 hours, but there is a lot of fun to be had also, and I know you will all participate. Sun Valley offers you unlimited facilities for golf, swimming, tennis, trap shooting—no crap shooting—or what have you. The ski lift will not be running today or tomorrow, but will be running Saturday afternoon so that anyone interested in going can take their wives and families up to the top of Baldy. That is one place you can get high without any ill effects. If you have not already made that trip, you should do so, because you get a view of the State of Idaho that is comparable to none.

Tomorrow there will be a ladies luncheon at Trail Creek Cabin. Be sure to mention that to your wives, who should be at the Challenger Inn promptly at noon. Buses will be there to take them out to Trail Creek Cabin without charge. The other facilities which are available here are all outlined pretty well in your program. Of course, the cocktail hour will be started promptly on time, and will continue until the time or the liquor is gone. I don't know which will happen first (laughter).

You are all familiar with the setup here. Almost all of you are repeaters to Sun Valley, so there is no point in taking time in going over the facilities here. Have a lot of fun and get a lot out of this meeting.

PRES.: Sam Griffin has been making the Secretary's Report for the Bar during the last 100 years, and personally I hope the time will never come when Sam doesn't make that report. At this time the next order of business is the report of our Secretary.

SECRETARY GRIFFIN: I didn't know that this was a centennial until just now (laughter). Because of that, my opening paragraph is apropos, I think.

It is becoming increasingly difficult each year to re-drape and refurbish the Secretary's report so as to make of it a creature of beauty and passion. To do it this year I have decided to follow the methods employed in a Miss America contest, and give first the bust and other intriguing measurements and statistics.

APPROPRIATION FUNDS

June 1, 1949	Balance in Fund	$ 6,687.54
June 1, 1949 to July 1, 1950—		
	License Receipts	6,430.00
	Examination Fees	2,375.00
	Costs	7.33
July 1, 1950	Total Balance and Receipts	$15,499.87

EXPENDITURES

June 1, 1949 to July 1, 1950		
	Personal Services (Secretary, Stenographer, Examination, Readers Reporters, Speakers)	$ 3,614.60
	Travel	1,345.60
	Other Expense (Printing, Postage, Telephone, Supplies, etc.)	1,484.17
	Capital Outlay	174.50
	Refunds (Overpayment Exam. Fee)	50.00
	Total	$ 6,668.87
July 1, 1950	Cash Balance in Fund	$ 8,831.00

Substantially all receipts for 1950 have been received, consequently the above balance constitutes the fund from which the next six months' expenses will be paid. Due to printing proceedings, expenses of this meeting and increased expenses in giving examinations the heavier expense is incurred in the last six months of a calendar year.

The distribution of licensed lawyers in Idaho is as follows:

	1950	1949	Increase
Northern Division	118	115	2.6%
Western Division	288	280	2.8%
Eastern Division	125	108	15.7%
Out of State	22	25	−10.0%
TOTAL	553	528	4.7%

It is interesting to note that last year the divisional increases were respectively, 15%, 1.5% and 7%; that is, heaviest in the North—this year the heaviest is in the East.

Twelve deaths have been reported, namely:

Samuel I. Adelstein, Pocatello
Evans P. Barnes, Boise
C. W. Beale, Wallace
C. O. Benting, Pocatello
E. S. Delana, Boise
Conroy R. Gillespie, Hailey
Clarence M. Jeffrey, Pocatello
Charles P. McCarthy, Los Angeles
P. W. Mitchell, Nez Perce
Andrew J. Myers, Twin Falls
C. W. Poole, Rexburg
Edward G. Rosenheim, Boise

The net increase in Idaho lawyers reflects the post-war increase in applicants for

examination. In 1947, 26 individuals were examined; in 1948, 40; in 1949, 56; in 1950, 27 to date with 35 pending, or a total probable of 62. In three years applicants have increased over 140%; this also is the pattern nationally.

To handle the increasing examination load the questions are now originally prepared by nine lawyers and then reviewed, modified, and corrected by the Board. The grading is also done by nine lawyers, including the Board. No one person grades any applicant's examination alone; all nine graders grade some part of each applicant's examination. No grade on any one question is a single grader's evaluation of the answer; every grade for every question is the average of the evaluation of at least three separate gradings by at least three graders. Finally, no grader knows whose paper he is grading. It is thus a complete impossibility for any one grader, or any combination of graders, to control any applicant's grades.

Some idea of the size of the job of giving examinations may be known by the facts: that in 1950 to handle 62 applicants will require the preparation of an excess of 100 questions and briefed answers (some proposed questions are always rejected for various reasons) supported by citation of authority; preparation of approximately 80 sets of examinations containing 4,000 questions (and 20 sets with 1,000 questions and 1,000 answers); and a minimum of 12,000 grade figures to be added and averaged; also the detailed examination and checking of 62 educational and residence qualifications; the sending out of at least 360 inquiries as to character and the examination and evaluation of the 360 replies; the issuance of certificates permitting examination, preparation of files and indexes; the sending out of rules and forms; and the inevitable correspondence incident to the whole process.

There have been six meetings of the Board since the last annual meeting of the Bar, under the Presidency of Claude V. Marcus, Boise. The other Commissioners were Robert E. Brown of Kellogg and Ralph Litton of St. Anthony. Meetings were held at McCall, Moscow, Idaho Falls and Boise. The Board also met with the Clearwater Bar Association, the Seventh District Bar Association, the Fifth District Bar and the Eighth District Bar Association.

The Board, and the President and Secretary, have conferred with the Supreme Court on more than one occasion, and with the faculty of the College of Law, University of Idaho.

The business of the Board has encompassed preparation and review of bar examination questions, examination into the qualifications, educational and character of every applicant for admission, supervising and taking part in the grading of two examinations, complete revision of Rules of Admission, now pending the action of approval or disapproval of the Supreme Court; consideration of and assisting in the national survey of all phases of the legal profession now and for months past in course of conduct and preparation; study of practice by non-lawyers before administrative boards; consideration and preparation of the program for this meeting; consideration of a placement system for young attorneys; consideration of a lawyers' group insurance proposal (still in progress); joinder with Western states' bar associations in a conference of such associations; consultations with the Supreme Court with respect to Rules of Procedure; cooperation with the various committees of the American Bar Association; aid in revival of our Judicial Section; institution of an active illegal practice committee and consideration of several complaints against Idaho attorneys.

Seven complaints were considered; one was an arbitration between attorneys and was arbitrated and closed; two were investigated, adjusted and dismissed; two were found not to state causes; in two action was ordered and proceedings are pending. Another investigation has been opened to determine whether complaint should be filed.

The Board directed that the Bar appear amicus curiae in the case of Boughton v. Price involving the constitutionality of the Judges Retirement Act, which the Bar had endorsed, helped draft, and urged upon the Legislature. The constitutionality of the Act was upheld. The Bar was represented, without compensation, by E. B. Smith and Robert H. Copple, both of Boise.

The voting power under Rule 185 of members of local Bar Associations in attendance at this meeting is:

Shoshone Bar Association	25
Clearwater District Association	55
Third District Bar Association	145
Fifth (and Sixth) District Bar Association	78
Seventh District Bar Association	68
Eighth District Bar Association	43
Ninth District Bar Association	42
Eleventh (and Fourth) District Bar Association	75
Total	531

PRES.: At this time I will appoint a committee on Resolutions consisting of George VandeSteeg, Chairman, R. D. Merrill, Judge Henry Martin, J. Morey O'Donnell and Graydon Smith.

The Judicial Section is being revived this year, and at the present time the Judges are holding a meeting over in the lodge, but they will be able to attend future sessions of our convention.

Will local Bars or any individual member who has a resolution or any other business to present to the Resolutions Committee do so before this evening. If it is impossible, of course, present it later, but help the committee all you can.

Voting for the Northern Division Commissioner ended at noon today. I will appoint a Canvassing Committee to determine that election: Sam Kaufman, Chairman, Dean Miller and Dick Riordan. The Canvassing Committee should report tomorrow morning.

PRES. CLAUDE V. MARCUS: At this time it is proper to give you a summary of Bar work for the past year, and at the same time give some thought to future objectives.

At the outset of these remarks, may I say a word of praise for the many lawyers throughout the state who have willingly and generously helped with Bar work during the past year. For example, the number of applicants for examination has greatly increased, requiring a re-organization and increase in our examining committee. Accordingly that committee has been increased from three members to six. Willis Sullivan, Tim Robertson, Kent Naylor, Louis Racine, Clay Spear and Russell Randall comprise the committee, and all have given able and conscientious help throughout the year. Other attorneys have also assisted with examinations.

During the year the Supreme Court passed upon the constitutionality of the Judges Retirement Act. The Bar Commission was permitted to appear as amicus curiae, and Robert Copple and E. B. Smith gave us splendid representation in that case. They are but a few who have given their time and effort, and by mentioning their names, I do not mean to ignore the many others who have helped so much. It has been an inspiration to observe your willingness to contribute to our common objectives.

It also seems appropriate at this time to remember with gratitude the pioneering work by those many able men who have preceded us. Undoubtedly most of the work we do at this Convention will only be a continuation of their efforts.

This past year we have concentrated largely upon the following program:

First: The carrying on of our routine work such as giving examinations, investigating illegal practice and handling complaints.

Second: Establishing a closer cooperation and relationship with local Bars and their officers.

Third: Cooperation with the American Bar to integrate its program and work with our own.

Fourth: Continued effort toward the establishment of court rules of procedure.

EXAMINATIONS AND ADMISSIONS

With respect to examination and admission, we have endeavored to improve the quality of our examination questions and also to better integrate them with the course of study at the University of Idaho Law School. For that purpose we met with the faculty of the law school, and also had the pleasure of meeting the student body. I might say that the Commission was very favorably impressed with the work of Dean Stimson and his faculty.

During the year we also made a study of the rules for admission and made recommendations for revision to the Supreme Court. Among our recommendations was one to abolish law office study as qualifying to take examinations. This rule has been abused, and it is doubtful if there is a systematic supervised study of law in any law office in the state. It is the considered opinion of able scholars in this field that a formal academic training is becoming imperative to the modern practice of law.

During the year we also adopted as a matter of policy an effort to help the new attorneys all we could in getting located, and especially in obtaining some publicity about them upon opening of their offices. Should time and money allow, we could do much more along that line.

Our rules follow the applicant for admission no farther than his license to practice, except for disciplinary proceedings. As soon as he has passed the examination, so far as our rules are concerned, he is qualified to practice law. As a practical matter, we all know that may be subject to question. The medical profession requires a strict internship, and although our problems are not identical, we should give careful consideration to the possibility of having at least some kind of restricted clerkship either before or after examination. A voluntary working agreement with twenty-five or thirty law offices throughout the state would allow our newly admitted lawyers to have at least a short period of practical observation of the practice. This should be without obligation on the part of either the firm or the applicant. It would provide some knowledge of such practical aspects of law practice, as fixing fees, office procedure and administration, preparation of pleadings, etc. Certainly this practical aid, should materially add to the success of the individual after he opens his own office.

COOPERATION WITH LOCAL BARS

During the past year, we had the pleasure of meeting with most of the local Bars and trading ideas with them. A close working relationship between the state and local Bars will certainly allow a more effective handling of our common problems. I am thinking particularly of such matters as Bar legislation, and illegal

practice problems. Our success in getting Bar legislation enacted into law should be materially enhanced if we have more initial contact and consultation with legislators through members of local Bars who know the individual, his likes and dislikes. We can then follow this work up with the State Legislative Committee during the legislative session.

Local Bar's suggestions for legislation should be in office of the Secretary by Dec. 1, and a brief submitted in support of it. It should show that its effect upon other statutory law has been carefully considered. This time limit is essential as it is completely impossible to draft well considered legislation during the session.

Illegal practice is becoming more prevalent and will be a continuing problem to us. In discussing this with the different local Bars, the concensus of opinion is that the best solution to the problem is establishment of local Illegal Practice Committees to obtain and furnish evidence of violation to the State Committee for appropriate action. Frank Meek has been the chairman of our Illegal Practice Committee during the past year, and we will have the benefit of his report during the Convention.

As Justice Morgan stated in a talk to the Bar in 1937:

> "The life and the very vitals of the Idaho Bar repose in your local Bars in your respective communities."

The strengthening of local Bars can only result in a stronger state organization.

INTEGRATING AMERICAN BAR AND STATE BAR WORK

The American Bar Association has been very active during the past year, and under its supervision numerous surveys and studies have been and are being made. At the request of the American Bar and largely through the efforts of Mr. A. L. Merrill, we have appointed representatives in Idaho to coordinate the different studies and projects of the American Bar with our own. This should aid us in solving some of our local problems.

RULES OF PROCEDURE

Considerable time and effort have been expended during the past year to further the aim of the Bar for court rules of procedure. This is a subject that has been before practically every Bar meeting during the past nine or ten years. In 1941, the Legislature passed an Enabling Act confirming the inherent power of the Supreme Court to prescribe rules of procedure. To date this has not been accomplished. In this respect, we are falling behind the progress made by some of our other western Bars.

A recent survey shows that throughout the United States, twenty-five state courts now have practically complete rule-making power. The exercise of this power is becoming more wide-spread especially since the American Bar in 1938 went on record as follows:

> "The regulation of procedure by court rule is not an innovation but a return to fundamental principles."

Many of the leaders of our Bar in speeches to us in past years have voiced the same opinion. Where the power and authority of the courts of last resort are clearly provided, the great majority of state courts have seen fit to exercise this power and adopt rules of procedure. Only in Idaho, North Dakota and West Virginia have the courts allowed their rule-making power to remain dormant.

Many of our sister western states have adopted new rules of procedure. Among them are: Arizona, New Mexico, Colorado, Washington, and recently the state of Utah. This should be the No. 1 problem for the Bar until the project is completed. I do not mean to say that we should adopt in its entirety the Federal Rules. If a guess were of any value, I would surmise that the majority of practicing attorneys in the state do not desire this. At the same time, I believe the majority of practicing attorneys would approve some features of the Federal Rules, such as simpler and shorter forms of pleading, pre-trial conferences, and pre-trial discovery.

The survey which I have mentioned shows that a few of the states, principally: Arizona, Colorado, Delaware, Maryland, New Jersey and New Mexico follow almost completely the Federal Rules while in other states a modified code has been adopted. The problem of getting these rules prepared and adopted, however, is not a simple one as we have found out in a number of conferences with members of the Supreme Court.

First of all, it will take a lot of time, and financial help is also required to obtain the necessary assistance, and to have the necessary printing and mailing done, etc.

We find that members of the Supreme Court, especially Justice Givens, have already done a considerable amount of background work on new rules of procedure. For the purpose of assisting them and continuing the project and getting it completed, we have prepared a Resolution which we will submit to the Convention, approving help from the Bar in obtaining the necessary appropriation for that purpose. Most of the states which have adopted new court rules have done so after study and recommendation by a committee of the State Bar. If this is not done in Idaho, certainly the proposed rules should first be generally circulated among members of the Bar and their consideration and suggestions given to the court. *It is imperative that we improve and speed up our process for the determination of litigation.*

METHOD OF SELECTION OF JUDGES

Another objective of the Bar to which I would call your attention is the method of selection of judges. *It is the obligation of the Bar to take a more active part in the selection of judges, both trial and appellate.* We have changed from a partisan to a so-called non-partisan judiciary, but it is doubtful if there has been much improvement in the method of selection. Considering the hazards of the present method of selecting our judges, I think we are indeed fortunate in having the high quality of men who now grace our judiciary. Other states have considered this problem and have arrived at different solutions. A study of the different methods of the selection of judges seems to lead back to the opinion that the so-called Missouri plan is about as good as any which has been devised. This was first advocated by the American Bar in 1937 and is in effect in nine states at the present time. Under such a plan, an impartial committee, upon which the Bar is represented, recommends three names to the Governor for appointment. The Governor makes his selection of one. Upon the expiration of the term of office, the question of whether the judge should be continued in office is submitted to the people. If it is decided that he should not retain his office for another term, then another appointment is made. Undoubtedly it will take the Bar some few years to build up the necessary momentum to get the Legislature to make a change. But now is the time to begin if we believe a change is desirable. We believe the question of selection of judges is of sufficient importance for this Convention to set up a permanent committee to give this particular study its best thought and recommendation.

FUTURE OBJECTIVES OF THE BAR

There are so many projects to engage our attention and energy that we must focus and concentrate our efforts during the coming year, therefore, I earnestly recommend that our Bar concentrate upon the following:

(1) Give strong and effective assistance to the Supreme Court in revising and establishing court rules of procedure.

(2) Continue our efforts to improve the quality of Bar examinations and the setting up of a voluntary plan of clerkship for at least a short period either before or after the examination.

(3) Improve the program to assist our young lawyers in getting placed and started in the practice, and,

(4) Begin an active drive to improve our method of selecting judges, so that courts have an administrative head.

In all our work our fundamental professional aim must be improvement in the dispensation of justice. By working toward this, we serve ourselves and raise our profession in the esteem of those who depend upon us. *Our courts and our procedure must be constantly improved so that each controversy may be tried upon its merits and tried and determined speedily.*

A learned teacher has said:

> "Public criticism arises against the profession when its machinery for justice has become stereotyped and sterile. It is the responsibility of the lawyer to ceaselessly appraise and improve the machinery for justice."

This is not theoretical, but is the most practical aspect of our profession, and if we shoulder the burden and give every assistance to our Supreme Court, it is certain that we can make great strides forward in improving our court machinery and increasing public respect for the judiciary and for our profession.

This being the annual Convention of our Bar, we are naturally reluctant to consider and discuss that which does not immediately concern us, but we should not disregard the implication of the times in which we meet. Our country is not at peace. A great part of the world's population consider us an enemy. Our country is being attacked, not so much by physical force, but by an assault upon the mind, ideas, and ideals of our people. Our profession must be leaders in recognizing this danger and in resisting it to the utmost. In all of our everyday contacts, in our action and in our work with groups to which we belong, and in all else, we must do everything in our power to protect, preserve, and strengthen our form of constitutional democratic government. That is a heritage which is eternally sacred to all American lawyers worthy of the name (applause).

Gentlemen, at this time Mr. Frank Meek of Caldwell, who is Chairman of our State Committee on Illegal Practice will give his report.

MR. MEEK—Mr. President and Members of the Bar: I can assure you at the outset of this report, that it at least will be brief.

I sometimes wonder why I continually look for trouble and wonder when, with the growing years, I will ever learn the wisdom of some of you; to keep my mouth shut and stay within the confines of my office and practicing law. I make this observation for the reason that, around the first of last December, I had occasion

to report to our secretary, Sam S. Griffin an instance of what I felt to be a rather continuing flagrant practicing of law by a real estate agent in a neighboring city and the next thing I knew the President of our Bar Commission asked me if I would not accept the chairmanship of the Committee on the Illegal Practice and having stuck out my neck, as I now view it, too impulsively accepted.

Sometime later, our President appointed on the committee with me, Erroll Hillman of Idaho Falls and J. Ward Arney of Coeur d'Alene.

I find in times past, particularly in 1947 at the meeting of the State Bar, two resolutions were passed dealing with the subject of illegal practices. One of them was aimed at realtors, trust companies, banks and others engaged in the preparation and drawing of trust instruments, wills, contracts, agreements and conveyances of real and personal property, the other one having to do with an appearance before the Industrial Accident Board or the Public Utilities Commission of persons not licensed to practice law. Both of these resolutions are indefinite and are the type of resolutions that in my opinion had as well never have been written, and much less acted upon, for the reason that being so indefinite, they offered no constructive solution or enforcement, or follow through.

I find that at the meeting of the Bar in 1948, Jess Hawley of beloved memory, gave a very instructive and constructive address on the subject of illegal practices to the State Bar, then meeting here at Sun Valley and submitted, therewith, certain very definite recommendations; this report of Mr. Hawley can be found in full commencing on Page 68 of the printed proceedings of the 1948 meeting of the Idaho State Bar. I recommend it's rereading to every lawyer of the state. At the conclusion of this report, I will reincorporate again the report made by that committee, and ask for its adoption.

This committee on illegal practices has not been at all active and I believe I can state for the other members, as well as myself, that the reason for our inactivity is simply because I have found in my district, as I am sure they have in theirs, an almost complete lack of interest of other lawyers in doing anything toward curbing the illegal practice of law.

It is probably true that here in Idaho the practice of law by real estate agents, notary publics, insurance agents, banks and others is not particularly affecting our office practice and perhaps it is true that the mistakes made by those not trained in the law, eventually bring us litigation over contracts, leases, and other instruments which is more remunerative to the lawyer, as some lawyers have remarked to me.

However, be that as it may, it is evident that in some localities at least a considerable amount of legal work that requires the service of a skilled, trained lawyer is falling into the hands of people incompetent and ill equipped to properly do the work.

Every trade and every profession except our own takes advantage of and uses the laws, rules or regulations that have been set up to protect them. Strange as it may seem, we, as lawyers, have prepared those laws, rules or regulations which protect them. We have similar laws, similar rules and similar regulations by which we may be protected.

I am reluctant to say what should or can be done in this regard for I appreciate the reluctance of each of us, individually or as a state association, or as a local Bar association, to take any drastic court action in the matter.

I can only report one instance that has come to my personal knowledge of where the real estate men in one community were prevailed upon to quit drawing

legal papers. That was accomplished by holding a meeting with all of them and discussing the problem freely and openly with them, by pointing out to them the importance of having contracts and allied papers properly drawn and the responsibility assumed by a lawyer in drafting papers. After a full and complete discussion an agreement was reached with all of them that in the future a lawyer would draw the papers necessary to complete the transaction and I am happy to say that so far in that community, that agreement has been carried out.

Some three years ago a realtor was brought into the district court of the Seventh District and entered a plea of guilty to illegal practice and was admonished by the court and for a time at least in Nampa that stopped real estate agents drawing instruments.

The American Bar Association has a standing committee on unauthorized practices of law which is quite active and in fact it publishes quarterly a review of its activity to curb the unlawful practices of law and they encourage the state and local Bar associations to bring action against persons or companies who engage in unlawful practices.

Recently the State Bar of California has become quite interested in an attempt to curb the activities of insurance claim adjustors and are asking the assistance of other state Bar associations in that work. It is apparent therefore, that illegal practices of law, or the unauthorized practices of law is on the increase and it behooves every state Bar association and every local Bar association to do something about it.

As a conclusion to this brief report your committee feels that the report of the 1948 committee should be incorporated in this report as a recommendation of the committee for the future guidance of the state and local Bar association of Idaho. That report is as follows:

To the Commissioners of the Idaho State Bar:

Your committee on Illegal Practice of Law reports as follows:

The Commissioners of the Idaho State Bar should be fully authorized and also directed by the Idaho State Bar in official session:

(a) To provide promptly for submission to the Idaho Supreme Court of the need of further and more particular definition and clarification of the practice of law applicable to laymen, including realtors, bankers, trust and title insurance companies and officers and employees in the preparation of instruments, and advice thereon, affecting the titles to property rights and obligations of signatory parties:

(b) To petition the Supreme Court of Idaho to free from doubt the exclusive rights of attorneys to draw instruments and to advise as to their legal status as affecting titles and contractural duties, rights and obligations. Appropriate Court proceedings should be had at once to accomplish the purposes set forth in paragraph (a) and (b) hereof.

(c) To seek legislative enactments to further protect the public from laymen drawing, and advising concerning, instruments which require analysis of law or legal conclusions from facts.

(d) To promptly seek cooperation of realtors, trust companies, bankers and others, whose dealings with the public impinge upon the practice of law, in order to determine the questions involved in a more particular definition of illegal practice of law, and the limitations which should be recognized in the use of forms.

(e) To establish that the practice of law includes contested trials and hear-

ings before administrative boards of Idaho such as the Public Utilities Commission, Industrial Accident Board, State Land Board, Commissioner of Finance, State Board of Pardons and the Director of Insurance; that appropriate rules be presented to these commissions and boards and officials for their early adoption; that recourse be had to the Courts, if necessary, to establish the scope and limitations of law practice before the said boards and officials.

(f) That the Commissioners of the Idaho State Bar are fully authorized and directed to promptly appoint committees and make all expenditures necessary to carry out the purposes of the report.

PRES.: Is there any discussion of the report? (The report was adopted.)

Pres: At the last meeting the Commission was directed to set up a Corporation Committee to make suggestions for improvement in corporation laws. Mr. Robert I. Troxell is Chairman of the committee, and I take pleasure in introducing him.

MR. TROXELL: In the convention of the State Bar held last year at Payette Lakes, one of the seminar discussion groups considered questions concerning corporate organization.

That discussion developed the thought that probably the Idaho corporation statutes should be revised or amended.

On the final day of that convention, Wm. S. Hawkins, Ralph L. Albaugh and I were appointed members of a committee to report suggested amendments and revisions of the Idaho Business Corporation Act.

The committee is reporting.

The Idaho Business Corporation Act was enacted by the 1929 session of the Legislature. That act was substantially in the form of the Uniform Business Corporation Act. A number of other states adopted a similar form of corporation laws at about the same time. The other states have adopted substantial amendments. Idaho has enacted very few amendments. With a strong emphasis on corporate financing, some states such as California have, in recent years, adopted substantially new corporation codes. The new California code was adopted in 1947.

The question facing the Idaho Bar is one of how far to go in revision. It is a difficult question of policy, whether to adopt an entirely new code possibly patterned upon either the Delaware or Nevada or the new California codes, or whether to merely correct certain glaring inadequacies in the present Idaho Act.

The Delaware and Nevada codes are consistently held out as outstanding liberal but comprehensive compilations of corporate statutes. Furthermore, the Delaware code carries with it a wealth of interpretive decisions.

We know that the new California code was prepared after a great deal of research, consideration of desirable features of the statutes of other states, and with the correlated thoughts of the best legal talent in that state. We further know that the California attorneys like it very much.

It might be desirable for Idaho to do likewise and entirely revise its corporation act—possibly taking in its entirety either the Delaware or Nevada or California code.

Conversations with Idaho attorneys have led us to believe, however, that there is no great dissatisfaction with the Idaho Act—that it is generally quite liberal—and that the members of the Idaho Bar would probably not favor complete revision of the Idaho Act at this time. Furthermore, it might be desirable to let the California code mature—wait until it has been perfected on the basis of usage—then adopt it in its entirety for Idaho.

Therefore, we are suggesting general retention of the Idaho Act for the time being, but we are suggesting certain amendments to that act.

Re: *NOTICE OF MEETINGS TO INCREASE AUTHORIZED CAPITAL STOCK*

At the present time, it is the opinion of the office of the Attorney General and therefore the requirement of the office of the Secretary of State that Articles of Incorporation may not be amended to increase the authorized capital stock of a corporation unless the meeting of shareholders at which that action is taken is held following at least thirty days written notice. That period of notice is required although the issued shares of the corporation are closely held and written consent to holding the meeting without such period of notice has been obtained from all persons concerned and all persons entitled to notice are present at the meeting.

Apparently every other type of shareholders action may be accomplished at a meeting held pursuant to consent and waiver of notice signed by all persons entitled to notice and attended by all such persons, under the provisions of paragraphs 6 and 7 of Section 30-133 of the Idaho Code. Meetings at which the Articles of Incorporation are amended to increase the authorized capital stock should not be in a different category.

It is proposed that Section 30-133, Idaho Code, be amended to permit shareholders action to increase the authorized capital of a corporation without formal meeting in accordance with the procedure set forth in paragraph 6 of that Section or at meetings of shareholders held pursuant to written consent and waiver of notice by all persons entitled to such notice and attended by all such persons.

Specifically, it is proposed that paragraph 8 of Section 30-133 Idaho Code, be amended to read as follows:

> "8. The *authorized capital* stock of corporations shall not be increased except in pursuance of general law *and* without the consent of the . . . *holders* of a majority of the *issued Capital* stock first obtained *in the manner provided in paragraph 6 of this section* or at a meeting *either* held after at least thirty days' written notice *or held pursuant to the provisions of paragraph 7 of this section.*

Re: *AUTHORITY TO PURCHASE, ACQUIRE, REDEEM OR RETIRE OWN CAPITAL STOCK*

We want to pose these questions:

Under the Idaho Business Corporation Act in its present form;

First: May a corporation purchase or acquire its own capital stock?

Second: May a corporation redeem or retire its preferred or special shares of capital stock?

The answer is that Idaho statutes give no express authority to a corporation to do either of those acts. Idaho is one of the very few states whose corporation code does not expressly grant that power.

We realize that it is customary practice to include those powers in Articles of Incorporation, and there is some authority to the effect that if so empowered by the Articles of Incorporation, the corporation may purchase its own capital stock or redeem or retire its preferred or special capital stock.

However, in so doing, without statutory authorization, there is a present danger that such will be treated as a reduction of capital, and if such is the result it would

not have been effected in accordance with the procedure set out in Section 30-149 of the Idaho Code for reduction of capital.

At this point, consider these further questions:

Assume that capital stock is purchased by the issuing corporation, what is its status after purchase?

In case preferred or special shares are redeemed or retired, what are their Status thereafter?

The Idaho Business Corporation Act should expressly authorize the issuing corporation to purchase its own shares of capital stock, and authorize a corporation to redeem or retire its preferred shares, and impose desirable conditions and controls over each type of action; and further, that Act should expressly provide what will be the status of that repurchased and redeemed or retired capital stock—viz., whether it will be treasury stock or will be authorized but unissued stock or whether reduction in capital will be effected.

The statutes in the various jurisdictions authorizing a corporation to purchase its own capital stock are similar in terminology. An example is that of Delaware (Section 19 of the Delaware Corporation Law annotated) which reads as follows:

"Every Corporation organized under this Chapter shall have the power to purchase, hold, sell and transfer shares of its own capital stock; provided that no such corporation shall use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the corporation; and provided further that shares of its own capital stock belonging to the corporation shall not be voted upon directly or indirectly; and provided, further, that nothing in this Section shall be construed as limiting the exercise of the rights given by Section 27 of this Chapter."

However, with regard to the circumstances under which preferred or special shares of capital stock shall be redeemed or retired, the manner of so doing and the status of the stock following redemption or retirement, the statutes of the various jurisdictions vary somewhat.

As typical, the following is a summary of the Delaware statute (Section 27 of the Delaware Corporation Law Annotated):

"Preferred or special shares may be redeemed

(1) At times, prices and otherwise as stated in the Certificate of Incorporation; or

(2) At any time the corporation may purchase such shares at prices not exceeding that provided for redemption; or

(3) By directors' resolution, retire shares redeemed or purchased, out of surplus.

"Capital may be used for redemption or purchase not greater than the sum of (1) capital paid in for the shares and surplus transferred and treated as capital and (2) amounts by which capital has been increased by other transfers from surplus. No capital may be used unless the assets of the corporation remaining are sufficient to pay corporate indebtedness.

"After certificate hereinafter required has been filed, the redeemed purchased or retired shares shall have the status of authorized and unissued shares of their respective class; provided, however, should the Certificate

of Incorporation prohibit reissuance, the authorized capital stock of that class shall, following filing the certificate, be reduced to the extent of the par value of the shares so redeemed, purchased, retired, converted or exchanged, or if without par value, to the extent of the total number of such shares.

"Whenever capital is used for such redemption, etc., a certificate thereof, under seal, executed by designated officers, acknowledged, shall be filed in the office of the Secretary of State and a copy recorded in the county in which original Certificate of Incorporation is recorded.

"Thereupon the capital of the corporation will be deemed reduced to that extent.

"If the Certificate of Incorporation prohibits reissue, the filing and recording of the certificate shall constitute an amendment to the Certificate of Incorporation effecting a reduction in the authorized capital stock of the corporation.

"Nothing in this section shall be construed as limiting the exercise of the rights under Section 19 or in any way affecting the right of any corporation to resell any of its shares theretofore purchased or redeemed out of surplus for a consideration fixed by the Board of Directors."

A statute similar to that of Delaware should be enacted in the State of Idaho as a new section in the Business Corporation Act.

Re: *RESTRICTION OF VOTING POWER TO CERTAIN CLASSES OF CAPITAL STOCK*

We realize that, in the formation of corporations having more than one class of shares of capital stock, under the Idaho Business Corporation Act, it is customary to grant voting power to the holders of only one class of stock, or at least restrict the voting rights of holders of certain classes of shares of capital stock.

That practice would appear to be a direct violation of the Idaho Act and in fact of the Idaho Constitution.

Section 30-134 of the Idaho Code specifically provides that "every stockholder shall have the right to vote in person or by proxy." Section 30-136, having to do with quorum and Section 30-140 pertaining specifically to election of directors, carry out that thought.

Article XI, Section 4 of the Idaho Constitution now provides:

"Shares of stock—How voted.—The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors, multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner . . ."

This is a serious situation for Idaho corporations having more than one class of shares of capital stock.

It is highly important that the Idaho constitutional and statutory situation be corrected, with the effect that shares of capital stock of corporations formed under the Idaho Business Corporation Act, when divided into classes, may have full

voting power or limited voting power or no voting power as shall be provided in the Articles of Incorporation.

To accomplish that end, Article XI, Section 4 of the Constitution will have to be amended and statutory amendments will involve Sections 30-117, 30-134, 30-136 and 30-140 of the Idaho Code.

Re: *INVOLUNTARY DISSOLUTION*

In Chapter 3, Title 30 of the Idaho Code is contained provisions for voluntary dissolution of corporations. However, Idaho has no statutes providing for involuntary dissolution.

In our opinion such are highly desirable.

Take an example—You represent an Idaho corporation whose capital stock is owned 50% by each of two stockholders, and the by-laws call for a Board of Directors of four members, two the nominees of each stockholder. Friction develops between the two stockholders, resulting in a stalemate in setting corporate policy by the Board of Directors—or assume that the Board of Directors consists of three members and the two stockholders are unable to agree on a third member for that Board of Directors.

What happens to the corporation? It can't continue in business because the Board of Directors cannot effectively act. It cannot be dissolved voluntarily. Therefore, it can only deteriorate, to the loss of creditors and stockholders. The solution would appear to be statutory authority for involuntary dissolution.

The foregoing is only one example. There are many others in which authority for involuntary dissolution is desirable.

In order that you may be familiar with a typical procedure, take the Washington statute (Section 3803-50 of the Remington Code) as an example:

The grounds are these:

"(a) That the corporate assets are insufficient to pay all just demands for which the corporation is liable or to afford reasonable security to those who may deal with it; or

"(b) That the objects of the corporation have wholly failed, or are entirely abandoned or their accomplishment is impracticable; or

"(c) That it is beneficial to the interests of the shareholders that the corporation should be wound up and dissolved; or

"(d) That the number of directors is even and they are equally divided respecting the management of the corporate affairs, and, when the voting power of all shareholders is equally divided into two independent ownerships or interests, and one-half thereof favor the course of part of the directors and one-half favor the course of the other directors, or the holders of such equal parts of the voting power are unable to agree on the election of the board of directors consisting of an uneven number."

The petition may be filed by either:

(a) A shareholder; or

(b) A creditor whose claim has either been reduced to judgment or is admitted by the corporation.

The court may appoint a liquidating receiver or receivers under provided procedure.

Receivers are bonded.

The rules of the Federal Bankruptcy Act are applicable to proof, allowance, payment and priority of claims.

Provision is made for direct settlement of creditor's claims between stockholders and creditors.

The Washington statutory provisions could not be adopted in their present forms for Idaho, to be used in conjunction with the present Idaho voluntary dissolution procedure. The Washington practice on voluntary dissolution differs from that in Idaho by providing for voluntary dissolution by appointed trustees out of court or under court control, and the voluntary procedure is intertwined with the involuntary procedure in the Washington statutes.

On the matter of voluntary dissolution, Idaho statutes provide only a court controlled procedure. Therefore, either the Washington plan or involuntary dissolution would have to be adapted to the Idaho voluntary dissolution procedure, or the Idaho system entirely adapted to that of Washington.

We are not necessarily advocating the adoption of the Washington plan or statutes, although we believe there is merit, as well, in the Washington system for voluntary dissolution, namely, either out of court by appointed trustees or under court control similar to the present Idaho plan. We have merely cited the Washington statutes as an example of a desirable and workable plan.

We do firmly believe that the Idaho legislature should adopt statutes providing a method for involuntary dissolution of corporations.

There are probably a number of other respects in which the Idaho Business Corporation Act should be amended, which are possibly as serious as those enumerated above. Should they exist, it would be desirable for them to be brought to the attention of the State Bar prior to the next session of the legislature.

In any event, we believe that the matters herein enumerated should be corrected by amendment without delay.

PRES.: Does anyone have any discussion of any point of the report Mr. Troxell presented to us. (The report was adopted.)

RALPH R. BRESHEARS: Will that be submitted to the Legislative Committee for action?

PRES.: Was it your idea that the convention should authorize a continuing committee to further the work on those changes?

MR. TROXELL: I definitely believe the committee should prepare the forms in which the bills will be presented before the next legislature and possibly have the support of the Bar in their adoption.

MR. BRESHEARS: I think every one of the recommendations made by that committee is very important. I have listened with a great deal of interest to them. I have had a lot of experience with many of them, and I should like to see the matter referred to the Legislative Committee and something be done about it, because we need every one of those changes.

PRES.: It would be of value to have the present committee draft these in concrete form to present to our legislative committee. Do you make that as a motion?

MR. BRESHEARS: I make that motion.

(The motion was put to a vote and carried.)

PRES.: Mr. Troxell, your committee will continue, and will draft proposals you think should be submitted to our Legislative Committee.

Gentlemen, we have a very able speaker who is going to discuss the subject of the validity of Idaho divorces under federal decisions. I take great pleasure in introducing Mr. Herman Rossi.

MR. ROSSI: Mr. President and members of the Bar: There was a young lawyer whose business wasn't very good. One day he was aroused from his law books by the entrance of a very timid looking woman. She said, "I came about my husband. I want to know if I can get a divorce from him."

He closed his book, looked at her, and said, "Let me ask you one question, madam. Are you married?"

She said, "Yes, of course."

"Well, then you can get a divorce."

Dr. Samuel Johnson was talking about the second marriage of a friend: "Alas, another instance of the triumph of hope over experience."

The question of making Idaho divorces valid is one which hits home to all of us; particularly, to those who obtain divorces for wealthy clients who have a considerable interest at stake in a divorce action.

The Federal decisions governing this situation should be reviewed:

First, of course, there are the Williams cases, and the important point decided there is that the Supreme Court of the United States held that a foreign decree of divorce rendered in a state where neither parties were domiciled was not required to be recognized in another state under the full faith and credit clause of the Constitution, and that the latter state could go behind the finding of jurisdictional fact of domicile and find that no domicile in fact existed in the foreign state to entitle the foreign decree to extra-territorial recognition.[1]

Following the Williams cases, we have the cases of Sherrer vs. Sherrer and Coe vs. Coe,[2] both decided by the Supreme Court of the United States in June of 1948. The decision in these cases has been felt to be somewhat of a retreat by the Supreme Court from its harsh decision in the Williams case. In both of these cases, there was a personal appearance on the part of the defendant in the state where the action was begun. In both cases, evidence was introduced to establish domicile, but no contest was made by the defendant nor any evidence introduced to the contrary. In the Sherrer Case, the court held that as the husband had appeared and participated in the divorce proceeding without availing himself of the opportunity to raise the jurisdictional question, the divorce court's finding of jurisdiction was res judicata and entitled to full faith and credit in Massachusetts. The court said, "The desirability of according full faith and credit to judgment of courts of a sister state was thought to outweigh the interest of Massachusetts in the regulation of the marital relations of its citizens." In other words, "local policy" is required to give way to the requirements of the full faith and credit clause.

In the Coe Case, also a Massachusetts case, where the state court held that the question of jurisdiction to grant such divorces was open to litigation in Massachusetts, the Supreme Court of the U. S. held that as the wife had appeared and participated in the proceeding without availing herself of the opportunity to raise the jurisdictional question, the court's finding of jurisdiction was res judicata and entitled to full faith and credit in Massachusetts. The Supreme Court again said that the desirability of according full faith and credit to judgment of courts of a

sister state was thought to outweigh the interest of Massachusetts in the regulation of the marital relations of its citizens.

The decisions in these cases are not new and are based upon the older case of Davis vs. Davis,[3] in which there was an appearance and at least a colorable contest of the jurisdictional fact. The Sherrer and Coe cases represent a considerably relaxed view as to the character and necessity of a contest in the foreign divorce forum on the fact of domicile, in that there was no actual contest of the jurisdictional fact and the court said that as long as the opportunity was afforded the defendant for such a contest, the matter became res judicata and the spouse was forever barred from again litigating the fact of domicile in another state.

Following the Williams cases, there is a long line of decisions in the state courts of almost every state of the union, which universally holds that where the defendant is served by either publication or personal service outside the state in which the action is brought, the jurisdictional fact of domicile is open to question by the courts of other states alleged to be the bona fide domicile of the parties. There are innumerable cases cited in 1 ALR 2nd 1387. It is important to note that each state seems to have its different ideas upon what facts will or will not constitute domicile, and there seems to be no universal yardstick which can be applied.

Oddly enough, while the state courts have very liberally set aside foreign divorces where the lack of domicile appeared, they have still quite closely followed the rule laid down in the Sherrer and Coe cases in holding that any sort of an appearance by the defendant will preclude him from later attacking the judgment on the ground of lack of the jurisdictional fact.

Although the Sherrer and Coe cases go a long way in telling us what to do in obtaining valid divorces, we must remember that the courts still have held that a marriage contract is a tripartite agreement in the sense that the domiciliary state of the parties, being a third party thereto, is vitally interested in its preservation, maintenance or dissolution. Therefore, no action or appearance by any of the parties can foreclose the domiciliary state's right to inquire into the jurisdictional fact of domicile for its own purposes. By this line of reasoning, I assume that the decisions mean that a situation such as was presented in the Williams case, where the defendants were convicted of bigamy, could still be decided the same way *even* if the wife had actually appeared and contested the jurisdictional fact in Neveda upon the divorce proceeding. The Supreme Court of the U. S. seems to have arrived for the present at a sort of middle ground between the Williams cases and the Davis case in their statement made in the Sherrer case, which quite significantly states their position when they say, "It is one thing to recognize as permissable the judicial re-examination of finding of jurisdictional facts where such findings have been made by a court of a sister state which has entered a divorce decree in ex parte proceedings. IT IS QUITE ANOTHER THING TO HOLD THAT THE VITAL RIGHTS AND INTERESTS INVOLVED IN DIVORCE LITIGATION MAY BE HELD IN SUSPENSE PENDING THE SCRUTINY BY COURTS OF SISTER STATES OF FINDINGS OF JURISDICTIONAL FACT MADE BY A COMPETENT COURT IN PROCEEDINGS CONDUCTED IN A MANNER CONSISTENT WITH THE HIGHEST REQUIREMENTS OF DUE PROCESS AND IN WHICH THE DEFENDANT HAS PARTICIPATED."

In applying these principles to Idaho divorces, we must look at several Idaho judgments which have been attacked. In the case of *Bowditch vs. Bowditch* 50 *NE 2nd* 65 (*Mass.* 1943), which was decided between the Williams cases, we find a husband who left Massachusetts and moved around in Washington and Idaho, and eventually obtained a divorce in Idaho upon personal service outside the state.

In an action by the wife in Massachusetts to be appointed guardian of a spendthrift trust, the Massachusetts court held that it was incumbent upon the husband to prove bona fide residence in Idaho in his affirmative defense and having failed to do so, the Idaho decree was not given full faith and credit.

The most significant case attacking an Idaho divorce would seem to be the case of *Wampler vs. Wampler,* 170 *P. 2nd.* 316 (*Wash.* 1946). In this case, the husband and wife separated. The husband was party to a bigamous marriage of which a child was born. At a time when the woman was again pregnant, the husband prevailed upon the wife to go from the state of Washington into Idaho and remain two months and obtain a divorce, the husband paying all expenses. A substantial property settlement was made and decree granted a divorce to the wife. The husband then again went through a marriage ceremony with the other woman. The wife returned to Washington and sued for a divorce again alleging further sums due from the husband. The husband pleaded estoppel and the Idaho divorce. The Washington Supreme Court held that the divorce was collusive and that as the wife had never actually been domiciled within Idaho, the Washington courts were not required to give full faith and credit to the Idaho decree. Time does not permit me to comment upon this extraordinary case, but I commend it to your consideration.

It seems that our sister state of Washington is probably one of the places we can expect the most trouble with our divorces. In 1949, the Washington legislature enacted the "Divorce Act of 1949" which is now Chapter 12-A §997-20 of the Washington Code, the pertinent portion of which is as follows: "A divorce obtained in another jurisdiction shall be of no force or effect in this state if both parties to the marriage were domiciled in this state at the time the proceeding was commenced." §997-21 states "Evidence of Domicile: Proof that a person obtaining a divorce from bonds of matrimony in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom or (b) at all times his departure from this state and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced."

Much comment has been made as to the validity of these statutes and many eminent attorneys feel they will eventually run into constitutional difficulties, but nevertheless, it must be reckoned with in obtaining divorces for clients who have come from Washington or who might return there.

Now in respect to validity of Idaho divorces, I think you can adequately judge for yourself the situation with respect to existing divorces on the ground of the particular method in which they were rendered. A good share of them will stand a fair chance of being held invalid in other states.

As to divorces to be rendered in the future, I think we can certainly take procedures to put them on more solid ground. Under the doctrines of the Sherrer and Coe cases and related decisions, any sort of an appearance on the part of the defendant if possible, will go a long way in making the divorce valid elsewhere. In important cases where property is involved, an attorney should be extremely careful in alleging a bona fide domicile and substantiating it as much as possible coupled with an appearance and an opportunity to contest such jurisdictional fact by the defendant. In the light of certain state court decisions, I would be particularly careful in the allegations of residence and domicile in the Complaint and make quite complete findings of fact and conclusions of law, and in the decree, carefully set these all out.

If the opportunity presents itself, the lawyer should carefully map out a course of conduct for a client prior to entry into the the state of Idaho, during his residence here and upon departure. I would look to the decisions of the state where there might be possible attack upon any decree and from those decisions, certain facts will present themselves which will indicate the advice to give your client, depending upon the particular facts of his situation. For instance, in the case of a doctor[4] who went from Mississippi to Nevada, passed the medical exam, practiced medicine for a period, then obtained a divorce and shortly returned to Mississippi, it was held by the Mississippi court that he had no bona fide domicile in Nevada. However, upon reading that case, you can just about see where the mistakes were made in establishing domicile. In another case of an Oregon doctor who went to Nevada and took a postiion other than practicing medicine and who stayed through a period in which he filed his income tax in Nevada, giving his residence as Nevada and paying certain state taxes, it was held that he had established a bona fide residence there and his subsequent return to Oregon was by reason of the fact that he was unable to adequately support himself outside the practice of medicine.

I realize that the usual fee for divorces does not permit exhaustive research and attention to minute details which are indicated, but if there is a chance that a client may run into difficulty with another state, you should go into this detail and charge accordingly, particularly when the client is able to pay for the service. I would consider it of importance to make as complete and detailed a record as possible beginning with the Complaint and ending with the Decree with the thought in mind that in the event he must put this judgment in issue, he will be able to clearly and concisely prove the jurisdictional facts.

There are, of course, innumerable combinations of situations and circumstances which will direct the course of your proceedings in each particular case which all must be taken in the light of existing statutes, and decisions of any state which might be considered as a domiciliary state in addition to Idaho.

In preparation of this paper, I have discovered possible flaws in my own methods and intend to correct them, and I sincerely hope this may in some way aid other members of the bar.

1 317 US 287, (1943) 325 US 226
2 Sherrer vs. Sherrer 334 US 343, 68 S.Ct. 1087 (1948)
Coe vs. Coe 334 US 378, 68 S.Ct. 1094 (1948)
3 Davis vs. Davis 305 US 32, 59 S.Ct. 3 (1938)
4 Hall vs. Hall 24 So. 2nd 347 (Misc. 1946)
See also Cox vs. Cox 44 A. 2nd 92 (N.J. 1945)

JOHN CARVER, JR.: Was that Washington statute sponsored by the Bar Association?

MR. ROSSI: It was sponsored by a legislative member who was an attorney.

DALE MORGAN: I understand you to say that other states would consider these Idaho divorces invalid. Perhaps that might be the practical effect in the state which was rendering a decision, but isn't it more technically accurate to say that they would fail to give credit or consider that decree binding? Because, of course, providing the Idaho court has found that according to its law the jurisdictional requirements and other requirements for divorce had been complied with, another state cannot upset an Idaho decree. However, they might find some way to declare it not binding upon them, but it doesn't make the divorce invalid so far as Idaho goes. I think that is quite important.

MR. ROSSI: I believe you are certainly right in that. I didn't mean to make

a statement that would be considered that broad. It depends entirely upon the purpose for which the divorce is being attacked.

HENRY FELTON: Have you ever considered this? Frequently the divorce is for remarriage. Suppose you have this situation: There is a divorce in Idaho, and then they remarry in Idaho. Then where will your jurisdiction be?

MR. ROSSI: That is a question that has bothered a lot of people. Justice Jackson of the Supreme Court says that the only answer to a question like that is to bring the action in the residence of the defendant.

ARTHUR M. NIELSEN: I am interested along the same line for we sometimes have these matters come up in Utah. As an illustration. Suppose a party from the east came to Idaho and got the divorce, then moved to Utah. Have you discussed the proposition from the standpoint of what such a state as Utah might do with respect to this same decree where neither of the parties was originally domiciled there but one of them finally wound up there—the one who has the property or children who is being sued?

MR. ROSSI: Well, if you have any kind of an appearance on the part of the defendant in that case, I don't think the Utah courts would upset it. If it is at all possible, get some kind of an appearance on the part of the defendant.

MR. NIELSEN: You think the appearance of the defendant in the original divorce action is the important element that must be present?

MR. ROSSI: According to the Supreme Court of the United States, if you have that, you have got a pretty good divorce decree.

MR. NIELSEN: Without that you still might have domicile, but you would have the burden of proving it?

MR. ROSSI: That is right.

SAM S. GRIFFIN: Isn't your proposition that only the original state of domicile can raise this question? Utah couldn't raise the question in this case, because it isn't the original state of domicile.

MR. NIELSEN: That is what I wonder about.

MR. ROSSI: They disregard the question of marriage domicile.

MR. GRIFFIN: Any state can attack it?

MR. ROSSI: Depending upon the purposes of the attack. I think very likely, if Utah decided to do so, they could inquire into such a case if somebody had a complaint for bigamy.

MR. NIELSEN: Mr. Griffin's point is the one I wanted to make. Just before I came up here, an attorney of North Carolina referred to me a case of a young lady who took the child of the parties and came to Nevada and obtained a divorce and immediately moved to Utah and remarried. The former husband in North Carolina was seeking custody of the child. He wants me to bring action in Utah to void the Nevada decree and obtain custody of his child and make them recognize him. She has remarried and has taken the child and has taken the name of a new husband.

MR. ROSSI: It is very likely it could be found that there is no domicile in Nevada under those circumstances.

MR. NIELSEN: Then Mr. Griffin's point is that I should have trouble in getting Utah to pass upon the question of Nevada's jurisdiction, because it is not the original domicile of the parties.

MR. ROSSI: Well, is your client domiciled in Utah at the present time?

MR. NIELSEN: The woman is there and domiciled there, and the child is there. I will have to go there if I want to get custody of the child.

MR. FELTON: How are you concerned with the validity of the divorce at all? Courts have recently held that where a child is moved out of the state, the question of the custody of the child is for the state of the domicile of the child at the time that the action is brought.

MR. NIELSEN: Unfortunately our Court has held it will always affirm the decree of the Court giving custody as far as custody is concerned, and in this case there was a decree entered giving full custody to the wife. Our Court will recognize that. I must go behind that decree if I attempt to get custody in the father. That is the thing I wanted to do.

DEAN EDWARD STINSON: I am very glad to hear us discussing the conflict of laws. (laughter) I just want to make one observation about the Shearer and Coe cases. The cases are of interest to me because I think domicile is utterly unsound and ought to be thrown out, and we ought to use the same basis of jurisdiction as in other cases—physical presence and appearance. Of course, in the Shearer and Coe cases, in recognizing the appearance as making that a valid decree, they have shifted a bit from the domicile theory and have said that the fellow is in Court who appeared even though he was not domiciled there, and thus they are over on an appearance theory and have shifted from the domicile theory.

The State of Alabama passed a statute which said that parties could come there and get a divorce and there would be jurisdiction although neither of them was domiciled there. That, of course, would be strictly a territorial theory, if they both were there or even if one was there. I don't remember how the statute was worded now. But that came up to the Alabama Supreme Court, I believe, and they held that the act was unconstitutional, so they didn't have an opportunity of shifting by statute from the domicile theory to a territorial theory.

MAURY O'DONNEL: I am going to ask Herman to restate some of the facts. Do I understand that in one of those cases mentioned the wife came into Idaho and acquired domicile and signed a verified complaint alleging that she was a resident of Idaho for the statutory period and that her husband paid her expenses and counsel fees and also appeared with counsel?

MR. ROSSI: No, he didn't appear. He was served in Washington. Let me restate the facts in that case again. The parties were separated, and he began living with this other woman and went through a marriage ceremony with her, knowing very well that it was bigamous, because he had obtained no decree whatsoever concerning his former wife.

MR. O'DONNELL: Where was he domiciled?

MR. ROSSI: He was an Army officer, and at that time he was over by Tacoma, Washington, at the fort there. He went with this other woman that he purported to marry to Texas, and they had a child, and then he was later sent back to Portland, Oregon. He asked his wife to help him out of that situation, and apparently she agreed to do so. She came to Idaho and stayed two months and was given a divorce upon personal service on him in the State of Oregon. Then he was again remarried in Portland, Oregon, to this second woman. The first wife came back into Washington and thereafter filed suit for divorce against him in Washington. They held in that case he wasn't entitled to estopppel. One of the reasons was that this woman he was living with was already pregnant when his

wife went into Idaho, and therefore he hadn't changed positions (laughter). It's a very interesting case.

One thing that bothers me about that case is that they went through a very complete settlement of their community property. There was something like $10,000.00 in bonds awarded to the wife and a home in Indiana, and I believe a car, and she got quite a substantial settlement out of it. Both he and she signed the settlement agreement, and she came back into Washington, and Washington paid no attention to that at all.

ROBT. E. BROWN: Was that settlement agreement approved by the Idaho court?

MR. ROSSI: I believe it was. It was introduced in the case.

FRANK MEEK: You said that the Washington Court held there was collusion in Idaho. That might be one reason why you would distinguish that case.

MR. ROSSI: One of the reasons behind the enactment of that statute in Washington is that they are having a lot of trouble with their aid to dependent children and things like that, and they are being overrun with dependents from these other states. They claim that if the parties in Washington go to Idaho and get a divorce and bring the children back, the wife immediately makes a claim for dependent aid for those children or a mother's pension. They deny it to her on the grounds she is still married to the fellow and he ought to support her.

There is a question of constitutional law about that statute. It might run into trouble with the full faith and credit clause, because it is a statute which prima facie makes the divorce decrees of other states invalid, but I don't want to get into that.

C. J. HAMILTON: In practically every case that I know of the person who had not made an appearance or was not the original plaintiff was the one who upset it.

MR. ROSSI: In this case it was the one who got the divorce. You might infer from the Shearer and Coe cases that they would hold it was precluded by that judgment, but I don't wish to put my neck out.

PRES.: Thank you very much, Mr. Rossi, for a very able presentation.

Gentlemen, this concludes the formal part of our program this afternoon. We will be recessed until morning at 10:00 a.m.

TUESDAY, JULY 14, 1950, 10:00 A.M.

PRES.: The meeting will come to order. It is a real pleasure to introduce the first speaker this morning. During the entire year the Attorney General and his staff have given every help and cooperation to Bar work. I don't believe we ever had an Attorney General who was more cooperative with the Bar organization. Attorney General Robert Smylie will give a report this morning on Laymen Law Practice Before Idaho Boards.

MR. SMYLIE: Last night at about 11:00 o'clock I promised Commissioner Brown I would tell a story, because in his then existing condition, he thought it would be quite appropriate this morning. The story goes:

A pink elephant, a green dog and a purple pig walked into a bar in Boise, and the bartender said, "I'm sorry, he is not here." (Smiles.) That's the same thing that happened to this story when I told it to Brown (laughter).

Mr. President, Ladies and Gentlemen of the Bar: There is presumption involved

in my calling this a report because a fair appraisal indicates that your committee has not accomplished anything great in the way of progress.

During the last several years I worked with the late, great Jess Hawley on the problem of unauthorized practice. At his suggestion, doubtless made because of my position, I centered what work I could do on the question of practice before the various boards and commissions of the State Government. When, as happened last fall, your President asked me to accept the chairmanship of the committee, it was natural that I should continue to be interested in that same problem. I have attempted to serve as chairman with the Honorable Paul Hyatt and E. L. Rayburn as members.

At the present time there are twenty-five (25) agencies of the State Government which conduct proceedings of one kind or another where rights are determined. In only one of those agencies is there a rule which requires that representation be accomplished through persons licensed to practice law. That agency is the State Tax Commission, and the proceedings are appeals from the County Boards of Equalization. Your committee was able to secure the adoption of this rule, and its effect has been salutary and for the working bar, I think, significant. That single success constitutes the progress report of your committee.

Your committee believes that the problem of practice before these Boards and Commissions is insufficiently understood by the Bar generally. For that reason I shall attempt a resume of some of my thinking on the subject. I believe that in main part representation before these bodies should be restricted to practicing lawyers. I will use the Public Utilities Commission as an example.

The assertion has been made that the Public Utilities Commission, before which illegal practice was said to be carried on, "is a creature of the legislative department of the state exercising law making powers . . ." It is further asserted that "if the courts have inherent judicial power to regulate the practice of law . . . then by the same token, the legislative department has the inherent power to prescribe qualifications for those practicing before the Public Utilities Commission which exercises delegated legislative powers and that on the theory of strict division of powers "the inherent power of courts does not extend far enough to entitle it to hold, indpendent of statute, that persons practicing before the legislature's delegated agent, the Public Utilities Commission, must be licensed by the courts." It is intimated that if the Court does have this power it might also make a rule "permitting only licensed attorneys to appear in a representative capacity before legislative committees investigating facts preparatory to the enactment of statutes."

It is submitted that it is time that we should reconsider the nature and function of administrative tribunals, such as public service commissions, and modify any conception responsible for statements such as those quoted above. That such a tribunal exercises only law making powers certainly is hard to justify in the light of its day-to-day functioning. Most assertions of this nature go back to the case of *Prentis* v. *Atlantic Coast Line Co.*, in which Mr. Justice Holmes denied the power of the federal court to enjoin the application of a rate schedule fixed by the State Corporation Commission of Virginia. The ground of denial was that the rate as fixed was not final but might be modified on appeal; therefore, as the state agencies were not yet through with the process of rate making, the court should not interfere by injunction. In so holding, the rate making process was referred to as legislative in its nature, to distinguish it from judicial, for purposes of applying the Act of Congress there involved forbidding the United States Courts to enjoin proceedings in "any court of any state."

> "The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial in kind . . . (the) proceedings . . . are not a suit in which a writ of error would lie . . . The decision upon them cannot be res judicata when a suit is brought."

This case was decided twenty-nine years ago when administrative tribunals as known today were largely non-existent, and when the historical precedent of legislatively fixed rates was a fresh one. As a matter of fact the practice was still in use in many states at that time.

Since many state legislatures, at one time or another, have, by ordinary legislative enactment, provided for flat two-cent passenger fares on all intrastate roads, or other similar rates, and since historical precedent is one factor of importance in determining the nature of a disputed governmental function, a potent argument is always available to establish the legislative character of rate-fixing bodies such as our Public Utilities Commission. But if the function performed be carefully analyzed, such a conclusion is hard to reach. A decision on an application for a certificate of public convenience and necessity, or the determination of what is a reasonable rate to be fixed in a particular case, seems to partake somewhat of the nature of both a legislative and a judicial act without being strictly either. In either situation the result is a special determination of a particular case, applicable only to the party before the commission.

Not only is the determination or order of a public service commission, in its nature and effect, more like a judicial determination than a legislative enactment, but the procedure by which the tribunal functions requires a similar characterization. The commission proceeds upon complaint, either upon its own motion or by another, or by petition. It summons witnesses, compels the production of books and papers, administers oaths, holds hearings upon notice to all parties to a controversy, takes testimony, examines and weighs evidence, makes rulings of law and findings of fact, determines rights, and renders decisions required by law to be published, by which it builds up a body of precedent in a way not greatly unlike ordinary courts. Such proceedings are started only upon due notice to all parties whose rights are to be affected, are conducted substantially according to judicial practice, are participated in throughout by those parties in person or by attorney with full right to present all pertinent evidence, and would seem to be judicial in their nature. Decisions of the commission are subject to review by the courts, where all matters are determined on the basis of the record made before the commission. The orders and decisions of the commission become final and binding unless modified on rehearing or review within the statutory period, and when they so become final are made conclusive in all collateral proceedings. Such functions as performed by the commission are clearly not legislative, but judicial in their essential character. Courts commonly speak of them as being *quasi-judicial*, to distinguish them from the strictly judicial proceedings of a court. This would certainly seem to indicate that they are regarded as being other than legislative in character.

The courts further assert that "the orders of the commissions are entitled to great weight, can be set aside only if arbitrary and unreasonable or in clear violation of a rule of law," that "courts should review or interfere . . . only so far as necessary to keep them within their *jurisdiction* and protect constitutional rights," and if their determinations are not thus defective and are "supported by substantial evidence we accept (them) as final."

It is not necessary in this discussion to consider the matter of exactly how the administrative function fits into our tri-partite set-up of governmental powers. Such commissions as here under consideration are habitually characterized by the courts as

administrative tribunals, which clearly they are, defying accurate classification within any one of the time-honored categories—legislative, executive, or judicial—but partaking of the nature of all three, and performing functions characteristically appropriate to each.

No definite characterization of the administrative tribunal would seem to be necessary, however, to make it perfectly obvious that appearance before it in a representative capacity, for the purpose of securing a determination of legal rights and duties on the part of the person represented, necessitating a knowledge of law and an ability to take the necessary steps properly to protect the legal interests of the party represented, involves the performance of functions which fall within the broad conception of the practice of law as understood at the present time. This would seem to be equally true whether the person in question be representing clients in the ordinary fashion, or acting on behalf of an employer. If it is ever proper to include in this conception the performance of functions not involving appearance before a court of record, this would seem to furnish an illustration. Rights are determined in first instance by the commissions, that determination is reviewed by the courts, and the record made before the commissions constitutes the sole basis for the action of the Court. It would seem, therefore, that the Court's inherent power to regulate the practice of law, admittedly including all sorts of office practice as well as appearance in court, should include, without the aid of statute, the commission appearances which I have been discussing.

PRES.: Thank you. We have a full program this morning, but we will have time to allow anyone to make any observations on these talks or to ask any questions. If there is any discussion of General Smylie's report, the floor is open.

A. L. MERRILL: General Smylie referred to the fact that these matters with the federal government got out of line, and that is true. When they did so, the American Bar Association gave a great deal of attention to the drafting and the presentation of a model of an Act governing these proceedings called the Administrative Procedure Act. It was adopted by Congress and has proved successful.

A model Act has been drafted for administrative procedure in the respective states, a copy of which I have with me. It covers very clearly these various points that Mr. Smylie mentioned. It is an Act which seems to me highly deserving of attention, and if adopted, it would clear away a great many of the difficulties.

One of the things that it does is give a clear presentation of the rule-making powers and restricting the rule-making powers under certain circumstances, so the rules generally will be the same before all Boards and Commissions and will be published in a certain way so that no lawyer will be without full information as to the rules before each Commission. There is uniformity of the rules wherever possible, and it would clear away a great many of the difficulties that are now confronting us in our appearances before these various Boards. I want to call to the attention of the members of the Bar that Act and ask that it be given consideration. It will probably be offered for adoption soon before the Idaho Legislature, and if the Bar knows of it and has a full concept of it, I don't see that there would be much question about its adoption.

PRES.: The next order of business this morning is a talk on Lawyers' Concern With Traffic and Justice's Courts. I would like to introduce Don Bistline of Pocatello.

MR. BISTLINE: Mr. President, and members of the Bar: I attended the Traffic Institute for Judges and Prosecutors held at the law school of the University of Southern California earlier this year under the auspices of the National Safety Council and the Traffic Institute.

At the Institute we covered two phases of the traffic court: First, the Court itself, how it functioned, its location and manner of meting out so-called justice. And second, the use it could be put to in the matter of safe driving.

Today I shall deal primarily with the court as the point of most concern to lawyers. At the outset, I am the Police Judge—and right here let me say that term should be changed in all instances to Municipal Judge so that the people, and some officers, will know the Judge is not a part of the police department—of the City of Pocatello, and have been for the past three years. From this experience and the information and knowledge gained at the traffic conference, I want to make some suggestions anent our courts in Idaho in which traffic cases are handled, discuss courtroom procedure, treatment of violators, and point out some needed improvements covering drunken driving, juvenile traffic violators, uniform punishment and enforcements, salaries of judges.

Did you know that over 14,000,000 people a year appear in traffic courts and over 4,000,000 are tried? On a basis of a population last computed at 140,000,000 —this means 10% of the nation every year is in traffic court.

And most of these 14 million people obtain from the traffic courts their only conception and idea of law, justice, order and dignity of the courts. And what a conception and opinion do they form of our third great branch of the government, the judiciary, from these experiences in traffic courts!

Most traffic courts are operated solely to collect revenue and perhaps deter other offenders. And how do these courts treat the individual appearing before them?

In the first place, the traffic violator, with the exception perhaps of drunken or hit and run drivers, are not criminals. They are honest, respectable law-abiding, well-intentioned people, but UNINFORMED. Most of them have never been in court and when they are hailed into court and their money summarily taken, what impression of justice does that leave with them?

Have you lawyers ever attended a traffic case in municipal, justice or probate court, and heard an offender advised of his rights? Every person accused is entitled to due process of law, and in order that his constitutional rights be protected and preserved, he should be advised of them, even in traffic courts.

Most courts run only on a conveyor belt, cafeteria style of justice. In again—out again, as rapidly as the court can obtain a plea, assess a revenue raising penalty and get on to the next case.

The ordinary person, coming into court knows little of the procedure at best; it is a mumbo-jumbo strange affair; he is frightened, probably somewhat embarrassed at being there and humiliated by the whole experience and anxious to get it over with, and certainly gets a poor opinion of law and justice when dragged over the conveyor-belt system. Most individuals are never in another court the rest of their lives and hence take with them from traffic court a life-long impression of law, justice and courts.

What should be done? Advise these people of their rights, and treat them not as criminals but as traffic violators. I believe that every court should advise each violator, or all violators as a group of the following rights:

1. That he may have an attorney.

2. That he may have witnesses subpoenaed on his behalf.

3. That he has the right to testify, or not to testify on his own behalf, and that he cannot be compelled to be a witness against himself.

4. That there is a presumption of innocence—not of guilt—and that presumption continues until he is proven guilty beyond a reasonable doubt. (And here I might note in an aside, that in the Pocatello court at one time the presumption was that the man having been arrested was guilty, and it was up to him to prove himself innocent.)

5. That he has the right of appeal.

6. That he has the right of a trial by jury (except in Cities of the First Class, where the legislature has abolished that privilege); and that the cost of such jury trial will not be assessed against him. Experience has proven, incidentally, that in courts fairly and impartially maintained, there are very few demands for jury trials.

7. That he has the right to be confronted with his accuser. Many times in my experience as Judge I have had the arresting officer, upon being notified of a plea of not guilty and setting of the case for trial, call at my home or office and ask to testify then since he is working nights, or the day is his day off, and he doesn't want to come to court the next day. And it is true, attending court imposes hardships upon officers at times, but attending court is part of his duty, and if he makes QUALITY, NOT QUANTITY, arrests, he will not be required to be in court often.

8. The individual should be advised of the right to plead either guilty or not guilty and to know the effect of a plea of guilty.

9. He should be informed that if he pleads guilty the court will not summarily impose penalty (as many do) but will listen to any facts he may have to offer in explanation of his offense, or in mitigation of punishment.

10. He should be advised of his right to a continuance, either to obtain a witness, an attorney or to decide what he wants to do—provided the case is not permitted to drag along unduly.

Finally, the Judge of the court should state: Neither the court nor the officer gets a percentage of any fine; no officer has to write a certain number of tickets to hold his job. Court procedure is strictly impersonal, and the court is enforcing the laws of you, the people.

So much for advice to the defendant before proceeding.

Now for procedure. All the courts should hear all cases in open court. Private hearings lead only to suspicion and distrust by other members of the public. Every judge at one time or another has had persons call him on the phone, try to corner him in the hallway or outside the court and want to discuss and dispose of the case in private. This practice should be absolutely discouraged. All cases are public and should be heard in open court.

And when the case is heard in open court, it should not be carried on in a low confidential whisper, but in a voice and manner that can be heard by all present. COURTS MUST NOT ONLY DO JUSTICE, BUT MUST APPEAR TO BE JUSTICE.

The Judge in every court should set the standard. He should be on time. He should be courteous, informed. A discourteous, sloppy, poorly-informed "anxious-to-get-it-over-with" Judge sets a motif for the court that is only too well carried out by the personnel of the court, usually officers, all of which leaves the people of the community and the violators the victims of the court. The Judge should be courteous, maintain dignity, be prompt and well-informed, and should have some background of legal knowledge, and should require the same conduct on the part

of persons connected with the court. This will establish a degree of confidence of the people in the court and create the proper attitude and respect.

The Judge should be in charge of the court, and run it. Many times I have seen an officer hold whispered conferences with the Judge in the middle of a case, or even summon him out of the room. WHAT IMPRESSION DOES THIS LEAVE WITH THE VICTIMS, and I mean victims, under such circumstances. They feel the Judge is listening only to the officer, or worse yet, is being guided by the officer in reaching his decision and imposing a penalty.

No court, or any officers thereof, or any police department should fix any tickets. No citizens can have any confidence in a court or police department, where they know or believe tickets for some offenders—the rich, the influential, the buddy of the officers—are being taken care of while the poor or uninfluential violator goes to court.

Every ticket should be accounted for through the court.

Most traffic courts in Idaho try other types of offences too. In such cases, traffic violations should always be tried first. I know at one time in Pocatello general arrests were tried first—for some reason known only to the Clerk of the Court. Traffic violators sat through that portion of the session, mixed in with drunks, prostitutes, vags and a conglomeration of offenders. Traffic violators attending those sessions, who have not since returned, carried away with them a lasting disagreeable, disgusted feeling and opinion.

Courts should be extremely careful in reducing charges or suspending sentences, or they will lose confidence of the people. Naturally you don't influence people and win friends imposing a fine, but you will with fair play and confidence in the court.

The Court should never operate for revenue purposes.

The Court should assist people who are honestly in doubt as to whether they have violated the law. Actually this is the function of a prosecutor, but in the general run of traffic courts in this state, there is no prosecutor present—except in the form of the officer.

But in the absence of the prosecutor the Court should not be required to act as prosecutor too. However, in most places, not only is he underpaid as a judge, but he winds up assisting the officers in getting in their evidence. And when the court does this, what impression of fair play does that leave? Under such circumstances the Judge cannot appear to be an impartial arbiter—and thus confidence is lost in the court.

The task of judging is difficult enough as it is. Many people, for instance complain: "You always believe the officer." No Judge should ever accept the testimony of one witness over another simply because that one witness happens to be in uniform. Officers are human and make mistakes, though I have had many tell me that when they bring an offender in, I can rest assured he is guilty or they wouldn't have brought him in—that they have never been wrong. The only person I have heard of who has never been wrong is the mythical Chinese character HEEHU; He-Who never does anything, never makes a mistake.

The Court should of course, in passing upon testimony, bear in mind that the defendant has the greater interest—more personal and more direct in the outcome, than the officer. But the uniform alone should never influence a decision.

Then there is the officer who threatens never to bring another case into court when a decision is rendered against him. If we could eliminate our fee system of justice courts and some city courts, we could eliminate this type of officer who

obviously doesn't need a judge, if he is entitled to a conviction every time he brings in a case. The officers should make the arrest, give their evidence, and leave the decision up to the court without in any manner trying to influence the outcome.

The courtroom itself is the next point; its appearance, facilities, hours of operation and location. If the courtroom is not clean and impressive, all else is lost or reduced in value. I doubt if there is a traffic court in Idaho that meets the simple fundamental requirements of an elevated bench.

In addition to the elevated bench, the court room should have tables for counsel, ample seating space for witnesses; restrooms available, a flag, and the bench separated from the offenders; should be well-lighted, well ventilated and have good acoustics.

Too many of the courts in this state are dingy holes in the wall; a spot next to the chief's office—or even in the chief's office, with no facilities whatever for conducting an orderly court. No place for witnesses or attorneys. One violator has told me of being tried in a nearby city in the local pool hall, with the owner, as Justice of the Peace, interrupting the card game long enough to impose a fine. Many a person has left a courtroom of this kind with a life-long, never-to-be-corrected, impression of what they have seen, heard and, some times, what they have "smelled."

I daresay that in the State of Idaho, there are very few traffic courts that would meet even the minimum requirements of a courtroom and as I said before—it is from these courts the majority of people get their idea of law and justice.

Next the Judge of the court: It is true in our state we cannot expect to have full-time judges, nor can we expect with our small population all judges to be learned in the law. But WE CAN DISPENSE WITH THE FEE SYSTEM. And we can see that we have honest, intelligent persons, independent of police departments, or the state police or sheriff's office. The fee system cannot produce good justice—the fee system Judge may be disinterested all right—disinterested as to everything but his fee.

The Judge should have some legal training, so that he can interpret and apply traffic laws, safeguard individual rights, sift admissible evidence and honor legal prerogatives. Likewise, he should be able to evaluate statistics and utilize them, for example, skid-marks. But there are few traffic judges in the State of Idaho that can meet even these minimum requirements. The Bar has a job cut out for itself in this field.

Go one step farther. How does a Judge start out in office? If he was appointed as I was, or elected as many Justices of the Peace, he merely goes in, takes over the office and begins to administer justice. There are no preliminary proceedings, no indoctrination. The new Judge just begins to mete out "justice."

The Bar practices in these courts. It is well aware of the situation, and it is time it acted.

There are some other matters on which the Bar should act with respect to traffic courts—some are merely educational, some require legislation which the Bar should sponsor.

To begin with we should start with the lawyers themselves and the manner in which they generally treat traffic cases. They dislike to accept a traffic case because of the nominal amount involved. However, if they do accept a case, they seldom find out much about it until they get into the courtroom; then they try to arrange a reduction in the offense in exchange for a plea of guilty—a particularly common

practice in the matter of drunken driving charges. As I have said, they do not know the facts, frequently do not familiarize themselves with the laws or ordinances involved, nor do they seem to be interested *in the welfare of the general public* as affcted by the outcome of the case in which they appear. They frequently cite the payment of the automobile damages or personal injuries as grounds for mitigation of punishment or charge, although they well know that the traffic offense is a criminal offense in no wise related to the civil offense (but not explaining to their client the difference in civil and criminal liability). They hurry in—they hurry out, and this despite the fact that traffic court handles more cases than all other courts combined. Such procedure cannot but leave a bad taste, or poor impression of law and justice in the minds of the people who attend courts.

Fortunately, however, the American Bar Association has taken a great interest in the matter of traffic courts and has been working on the matter of improvements since 1937.

Whether the case is large or small, the fee nominal or none at all, the lawyer should have a deep interest in the appearances in traffic court for the sake of the profession. For it is here people form their opinions of courts, lawyers, and justice. And lawyers might help to improve the impression generally held of them.

An important factor enabling a traffic court to render a fair deal to violators, and an element almost entirely missing in Idaho, is good records. And it would be of aid to the Bar too. I particularly recall the case of a young lawyer making a strong plea on behalf of a good and noble citizen who was in the coils of the law. At length he pointed out that the individual had no previous difficulty with the law, was of outstanding character, etc., ad infinitum. Purely by chance the offender's driver's license was examined. It was found that only 3 months earlier he had been convicted of the same offense, drunken driving. Good records would have saved that attorney considerable embarrassment.

However, we need records covering more than convictions for driving while intoxicated. If we get good records we'll get some of these dangerous chronic violators off the highways (and they are rarely insured anyway). The Bar has an opportunity to do a public service by promoting legislation that will provide better and immediate records available to courts trying traffic offenders. The state has the radio network—all it needs is to set up the record's bureau.

Some states make every ticket a part of a driver's license. That might be one solution. But before that becomes a solution, we need a good law covering driver's licenses. I need not point out to you the mode of operation of the present law—you all know any one with a dollar can get a license.

I do not say that enforcement of the present law, or passing a stronger driver's license law is a panacea, but it would be a starting point, and the Bar should endorse and promote such legislation.

I'll take a moment to mention why I do not believe it could solve all our difficulties, at least in Pocatello. With the Fort Hall Indian reservation being immediately north and practically adjoining our community the problem of the Indian driver meets us head-on—and in many instances I mean just that.

Many Indians own cars—usually beat-up old vehicles. And they are involved in many accidents. When the investigating officers go to the scene they find that the Indian does not have a driver's license, nor insurance, and most of the time is not even at the scene of the accident, having made "tracks"—and worse yet, that the car involved belonged to another Indian. Driver's licenses and regulations mean

little, if anything to these people—at least not much under our present licensing and enforcement program.

I once asked an Indian about their accidents. He replied that they only had accidents with whites, never with another Indian. And he explained that as to other Indians, he knew what kind of cars they drove, how they drove and hence had no accidents with them.

In addition to legislation concerning driver's licenses, something is needed on the statute books governing the handling of juvenile traffic offenders. As you all know, they are licensed to drive at 14, and equally true, many of them are arrested for some traffic violation or another while under the age of majority. As Judge and lawyer, I am totally at a loss as to what can legally be done with these offenders, and yet obtain some respect for the law and law enforcement. Technically, I presume they should be transferred to Probate Court, but that court will only put them on probation, or send them to reform school, the former too weak, the latter too harsh, a punishment.

I have undertaken to handle these cases, but have often wondered what might happen. Imposing a fine on a juvenile might be a way of making a better driver out of him—but suppose he wouldn't pay?

Can he be placed in jail—or if he can, should he be? I have undertaken to handle these primarily by revocation of license, lectures, or fine paid with the violator's own money. But not long ago, I imposed a fine of $25.00 upon a young man. He went to his father. The latter gave him $10 and the boy came back. I refused to accept a down payment, and the boy went back to his father, whereupon the father repossessed the $10 and drove away. What could we do with that boy—he couldn't pay?

Some legislation is definitely needed on this subject.

And speaking of revocations of license—I read the statute to the effect that it may be suspended or revoked for offenses less than drunken driving, only upon three previous convictions for reckless driving. If this is the correct interpretation, the law should be changed. In actual practice a temporary revocation for a first but minor offense has resulted in the making of a good safe, sane driver. The Bar should be *as interested in the results of its courts* as in having good courts, and some action should be taken on this law.

I have mentioned salaries and the fee system of the judges of traffic courts. The fee system cannot produce justice, and the low salaries paid our traffic judges—for instance $90 per month in Pocatello—is not a salary to tempt very many qualified individuals to the office. It is true our state is thinly populated and not "well-heeled," but it should have an adequately compensated judiciary all the way down to the most inferior court, the police court. And if the legislators and people will not take cognizance of this situation, the Bar should. The people will be the beneficiaries through better courts, fair and impartial justice. It is a strange situation that the court in which most of the people are likely to appear, and the greatest number do appear, has the lowest paid judges.

The Bar should be interested in uniformity of punishment—and interpretation of laws—throughout the state.

Why should running a stop light in the City of Burley be penalized with a $25.00 fine; in Pocatello only $5.00 or $2.50. True there should be some differential to allow for the circumstances—such as the speed of the vehicle, place and time of the day the offense occurred, whether it caused an accident, etc.

Why should one city court penalize a speeder at $5.00 a mile, another $1.00 a mile; one city start at the speed limit in assessing the fine, the next allow 5 miles per hour or 10 miles per hour leeway?

Why should one city arrest for making the California or sliding stop when another city permits such stops? Certain acts are reckless in one place, not another.

We need uniformity in the enforcement and interpretation of the laws, and it behooves the lawyers, as officers of the courts, to obtain this uniformity throughout the state. The general public cannot comprehend why there is not uniformity, and certainly tourists—one of our largest industries—count upon it and are entitled to it.

One offense in particular is entitled to uniformity of interpretation—driving while under the influence of intoxicants. This is one of the greatest headaches of the traffic judge—in that sense it is uniform throughout the state.

Courts do not want to convict the man who is not under the influence though he has had a drink or two; neither do they want to reduce a charge to reckless driving, and return to the highway the man who has been drinking and is a hazard to everyone on the highway, including his lawyer.

Scientists and chemists are pretty much in accord that the blood must contain a certain percentage of alcohol before they will aver under oath that a certain individual is under the influence. This varies of course with the individual; one might be under the influence with one drink, or the usual two beers, or another might not be affected by half dozen.

But what is the poor Judge in the State of Idaho to do—or the poor officer faced with the task of making a determination at the time of arrest—or for that matter the poor lawyer defending a client who is met with the time worn cliches of testimony, "staggered, talked thickly, eyes bloodshot, argumentative."

It is not that this modern age of science and invention has not provided ample means of making an accurate and effective determination. And that courts throughout the nation have approved such methods. Some cities take motion pictures of the driver after his arrest. And a great many pleas of not guilty are changed when he or his attorney later views the movies showing him staggering along a line, trying to touch the tip of his nose.

There are balloons for taking specimens of the breath. A drunkometer has been devised, in fact I believe Boise has one in use. Blood tests can be taken if the accused will waive his constitutional rights, and some courts have now far-sightedly held that not to be an invasion of constitutional rights. It is for the protection of the person, and could save many wrongfully accused persons of conviction.

The penalty being as serious as it is in this State—remember a second offense is punishable with 2-5 years in the penitentiary at hard labor, a sentence harsher than for manslaughter—the driver is entitled to some positive protection when this charge is involved. Likewise, officers and judges can escape abuse and ill will heaped upon them for convicting the man who has had the usual "two beers."

Such equipment is expensive, but weighed against a term in the penitentiary or loss of employment by reason of loss of license on one side, and elimination of drunken drivers and thus saving human lives and maimings and property damage on the other, it is for the best interest of the people. Such equipment would eliminate, guesswork and discrimination in such cases—cases that are now being decided upon evidence of "he staggered, talked thickly, had bloodshot eyes"—or on the other side, "don't convict him because he will lose his license and thus his employment."

Courts need and are entitled to proof positive, and it is up to the Bar of this state to see that the people of this state through their law enforcement agencies are provided with means of obtaining that proof.

Traffic cases being generally repulsive to the lawyers any way, they should bend their efforts in this direction and their services will not be required so frequently.

While traffic courts are inferior courts, nonetheless, by reason of the fact that they handle so many people, the manner of their operation is of great importance to the Bar. Nowhere will the Bar have a better opportunity to serve as officers of the court in educating people to the meaning of law and justice than in improving these courts and laws relative to them in the State of Idaho.

PRES.: Thank you. It seems to me that the matters brought up in Mr. Bistline's report are of sufficient importance to follow through on a suggestion he made. If there is no objection from the convention, we will appoint Don Bistline, Hugh Maguire and Frank Kimble as a continuous committee to prepare some of these recommendations in the form of legislative proposals to be submitted to the Legislative Committee by December 1st. Hearing no objections, that will be done.

ADONIS NEILSEN: Of course this report has been of interest to lawyers. It would appear to me that it would be of much more interest to the Justices of the Peace and Probate Judges and Police Judges. I move that if the Commission find it to be financially possible, and practicable, the Secretary deliver or send to each of those people a copy of this report so they can be advised as to how they can operate in court. That should include the Justices of the Peace, the Probate Judges and the Police Judges of the state. And perhaps some system can be worked out so that when a man is appointed or elected to office, he will receive a copy of that report.

THE SECRETARY: As I understand it, you wish to send a copy of that to all prospective and present judges?

MR. NEILSEN: Yes.

MR. GRIFFIN: I agree the objective is most meritorious but can you tell me who has a list of them other than of Probate Judges?

A list like that is unobtainable in the State of Idaho without a most extensive search.

MR. NEILSEN: I know, but it seems to me that the Bar could be of service to these people in doing that. (The motion was carried.)

PRES.: We will have the report of the Canvassing Committee for the Northern District. Mr. Kaufman:

SAMUEL KAUFMAN: We, your committee appointed to canvass the election for office of the Northern Division Commissioner of the Idaho State Bar, report the following results:

Total ballots cast – 21

Robert E. Brown – 21 votes

Others – None

PRES.: Mr. Robert E. Brown is elected. He is not here at the moment.

On the program the next talk was on Constitutional Amendments to Provide a Unified Court System. We will postpone that a little bit. We have a guest speaker

from the neighboring State of Utah. We will have his talk at this time to be sure that we are able to finish before the noon hour.

We are greatly privileged to have a man from Utah who was the chief draftsman of the new rules of procedure which Utah has recently adopted. He is a former Assistant Attorney General of the State of Utah, and at the present time he is in the general practice of law in Salt Lake City. At this time it is a pleasure and an honor to introduce him. Mr. Arthur M. Nielsen, of Salt Lake City.

MR. NIELSEN: I greatly appreciate the invitation of your President, Mr. Marcus, which made it possible for me to attend your convention and participate with you in the excellent discussions and meetings which have so far taken place. Unfortunately, you are going to be subjected to the inconvenience of having to listen to me talk as a penalty for my being with you. At the request of Mr. Marcus, however, I have reduced my remarks to writing, so that anyone who desires to take a "cat nap" during the course of the discussion may later find an opportunity to review what I say by reading the report of the convention in your legal bulletin.

For want of appropriate language to describe the subject of my talk I finally concluded to call it "LOOKING FORWARD TO A MORE UNIFORM AND SIMPLIFIED PRACTICE AND PROCEDURE BEFORE THE COURTS." I use this heading for the reason that as a practicing attorney I am anticipating, and have already experienced, much improvement in the practice of law before the courts in the State of Utah by reason of the fact that not so long ago there was adopted in our state rules of civil procedure governing "the procedure in the Supreme Court the district courts, city courts, and justice courts of the State of Utah, in all actions, suits and proceedings of a civil nature, whether cognizable at law or in equity."

On November 30th, 1949, the Supreme Court entered an order which approved the report of the committee on rules of civil procedure and adopted the proposed rules to be effective January 1st, 1950. The order concludes, "Thereafter, all laws in conflict therewith shall be of no further force or effect." Thus was brought to a conclusion a work originally commenced in the fall of 1941, when the judicial council of the Utah Bar Association undertook to inquire into the feasibility of revising our Code of Civil Procedure which code had been in effect for more than fifty years. For your information, however, it did not take eight years to prepare and promulgate the proposed rules. It took less than two years after the committee really became interested in doing the work and it appeared that the Bar generally was in favor of the plan. The rest of the time was spent in periods of inquiry and inactivity.

In the fall of 1941 the Judicial Council of the Utah State Bar, in making inquiries relating to the possibility of undertaking the work of revising our Code of Civil Procedure, directed a letter to Mr. Phillip VanCise of Denver, Colorado, who had devoted considerable time to the work of formulating the rules of civil procedure for Colorado. In reply Mr. VanCise referred to a former letter which he had written to the State Bar of Iowa outlining the work that had been done in Colorado to draft its rules which rules had been made effective April 6th, 1941. Among other things, he stated:

"We divided the federal rules into fifteen groups and divided the lawyers into fifteen groups with a subchairman for each one.

"The idea was that the subcommittees should study their section of rules and the code and the statutes, determine what should be done in reference thereto and report back to the main committee and the main committee would pass upon the work of the subcommittees. *The underlying plan was that so far as practicable the*

work should have the Colorado Code conform to the federal rules." (I emphasize the last sentence of this quotation because I feel that in that statement is contained the basis for obtaining a practicable and uniform system of practice and procedure in any state.)

As a result of the report of the Judicial Council, and upon recommendation of the Utah Bar Association, our Supreme Court on February 3rd, 1942, appointed a commission "to study the matter of confirming the rule making power in the Supreme Court" and also "to make a study of the Federal Court Rules and report as to whether they would be adaptable for rules of practice in the courts of Utah, and whether they or other rules to be worked out would improve the administration of justice in this State." The Commission in turn following the procedure adopted in Colorado, divided the federal rules into fifteen groups and assigned each part to a subcommittee for study and comparison. Most of these committees made reports on the subject matter submitted to them and with the exception of three indicated that the Utah Code of Civil Procedure could well be adapted to the Federal rules, and that such adaptation would improve the system of justice in our state.

It is interesting to note that the chairman of one of the subcommittees wrote a lengthy letter giving his frank and candid views not only of what he thought of the proposed action to reform our Code of Civil Procedure, but also what he thought of the Federal rules by which he was required to practice in the Federal courts. Among other things, he stated that the contemplated action would make it possible for every "Tom, Dick and Harry" to practice law, and that it was about time that lawyers quit making it so easy for people to join their profession but should adhere to the principles by which justice had been administered in this country for approximately a century. Although he was probably not alone in his views on this subject, he was the only one who took occasion to reduce his sentiments to writing and submit it to the rules commission.

Of course, one of the first questions which had arisen concerning the formulation of rules of civil procedure was the power of our Supreme Court to adopt rules. Although no one seemed seriously to contend that the Supreme Court did not have inherent power to regulate the practice and procedure before the state courts, no one seemed willing to proceed without first determining the attitude of the Legislature. Accordingly, a bill was introduced in 1943 entitled "An Act recognizing the power of the Supreme Court of the State of Utah to prescribe, alter, and revise . . . the forms of process, writs, pleadings, and motions and the practice and procedure in all civil actions and proceedings, including divorce, probate, and guardianship proceedings." The bill apparently met with no opposition and was finally adopted, being signed by the governor March 11, 1943. The one condition imposed by the statute (which was also imposed by the Congress of the United States in the law adopted confirming the right of the Supreme Court of the United States to promulgate rules) was that such rules "may not abridge, enlarge or modify the substantive rights of any litigant."

In his report yesterday Mr. Marcus stated that your legislature had also passed such a statute in 1941.

Unfortunately, after obtaining the "go ahead" signal from the Legislature, the activities of the Commission apparently bogged down and nothing was done either to stimulate interest or proceed with the work authorized until the summer of 1946. Subsequently, in reviewing the matter I came to the conclusion that lack of funds, together with the problem of coordinating the work of so many subcommittees made it impossible to continue the activities of the Commission with any degree of success.

In 1946, however, some enterprising newspaper editor wrote an editorial or two calling attention to the failure of the Bench and Bar to do anything with our court procedure although we had been very energetic in having the Legislature declare the right of the Supreme Court to prescribe rules of practice for the courts of our state. The members of the Court were rather embarrassed about the newspaper comments because at that time there was presented to the voters of Utah an amendment to the Constitution authorizing an increase in the salaries of the judiciary. Accordingly, Mr. Justice Wade was appointed by the Supreme Court to make a further study into the feasibility of adopting rules of procedure conforming to some extent to the Federal rules. Justice Wade made an extended tour through the country visiting the Supreme Courts of the various states where rules had previously been adopted and particularly reviewing the work of the Colorado Commission. In the latter state he found that although the rules had been in effect for five years there were some who were still inclined to resist them.

One of the justices of the Supreme Court of Colorado wrote: "I think years will pass before the members of our Bar, who had reached the age of forty at the time of the adoption of the rules, will feel as much at home with them as they did with the code preceding them." Contrarywise, in our state there was only one person on the Rules Committee who was under 40 and I noted with interest President Marcus' comment that the older members of the Idaho Bar have been active in the work here. In Florida the Legislature, also in 1943, had enacted a statute authorizing the Supreme Court of Florida to prescribe rules, etc., for the courts of that state. After careful consideration by the Supreme Court of Florida, it was determined not to abolish the system there in effect, but to modify it by adopting only portions of the Federal practice. This work has now been completed, the Florida rule as finally approved taking effect the same time as the Rules of Civil Procedure in Utah.

At the conclusion of his investigation, Mr. Justice Wade submitted a comprehensive report to the Supreme Court in which he stated:

> "At this time I am of the opinion that there is a definite need for a revision of our rules of procedure . . . The matter should be given wide publicity through the newspapers and the Bar publication and meetings. The Judiciary Committee should be interested in the matter and the faculty of the law school should be approached for their help. That a careful study of the entire subject be made. As much as possible the revision should conform to the federal rules so that the practice in the two courts will be as nearly alike as possible. That the legislature should be approached to provide funds to carry on this work and defray the expenses."

It is interesting to observe that until this time very little, if anything, had been done to obtain funds from the Legislature to support the program. However, Justice Wade's report received wide publicity so that the Legislature in 1947 appropriated the sum of $5,000.00 to help defray the costs and expenses of drafting the proposed rules of civil procedure. The Supreme Court also took renewed interest in the matter and reorganized the committee so that it included eighteen members. Mr. Justice Wade was appointed to represent the court on the committee, Dean F. Brayton was retained as Chairman, and Mr. L. M. Cummings, the clerk of the court, was appointed secretary. Many of the former members of the commission were also retained on the new committee. The committee, thus rejuvenated, immediately began to formulate plans for drafting the rules. Among other things, it determined that the best possible means of obtaining continued activity would be to appoint an attorney part time to act as counsel in the preparation of the rough draft for submission to the members.

Without having had any previous contacts on the matter, I was asked to take over the work of drafting the rules. At the time I was requested to accept the responsibility, I knew so little about the matter that I was unable properly to comprehend the work to be done. I accepted primarily for the reason that I concluded that if we were to have new rules of practice and procedure, I ought to begin immediately to learn something about them. The fact that I was also to be compensated for my time, even though small, was a contributing factor.

My first step after taking over the work on July 1st, 1947, was to spend a month analyzing the Federal rules of civil procedure and comparing them with our civil code. I also obtained a copy of the Colorado rules and determined how closely they followed the Federal rules where the subject matter was similar. I concluded, and the committee supported me in the matter, that for the sake of uniformity it would be advisable to use the numerical system of numbering the rules and subparagraphs which the Federal committee had adopted. It also decided that the committee would meet once each week at 4:00 o'clock in the afternoon at which time they would discuss in numerical sequence the proposed rules as drafted by me. It was my responsibility to prepare a rough draft of the rules, have the same mimeographed in sufficient number to be distributed to each member of the committee, and see that there was sufficient material in the hands of the committee a week in advance of its consideration. In this way the committee members would have an opportunity to read and analyze the proposed rules, so that no one would be in ignorance of the matters to be discussed when we came to the weekly round-table conference. The secretary was required to keep minutes of every meeting and to mimeograph and mail to members the day following the meeting a list of all rules adopted and all corrections or amendments made or other action taken. By agreement it was determined that a majority of the members of the committee present would determine what action, if any, was to be taken on any proposed rule or amendment thereto, but that in no event would it be possible for less than five members to approve any proposed rule or amendment. This meant that at least five members of the committee would at all times have to be present in order to do any work. At the first meeting some concern was expressed as to whether it would be possible to have five members at every meeting inasmuch as the attorneys serving without compensation came from every part of the state. The interest in the work, however, was to great that the average attendance was in excess of twelve and members travelled regularly as far as eighty miles in order to attend the meetings.

I might add I was not a member of the committee and therefore not entitled to vote on any matter inasmuch as I was the person who originally prepared the material and proposed each rule for adoption. On several occasions, however, I submitted alternate proposals indicating that one or the other of two theories might well be adopted in view of our long standing practice. Such a situation arose with respect to Rule 3 (a) relating to how an action is commenced. Under Federal Rule 3 an action may be commenced only by the filing of a complaint, after which the clerk of the court issues the summons. For years our practice has authorized an attorney to sign a summons and to commence an action by issuing a summons before the filing of a complaint. This practice was retained by the committee in preference to the Federal provision, so that along with other changes there are some differences between our rules and the Federal procedure.

The work proceeded as rapidly as the committee could digest the material furnished and agree upon the action to be taken. With very little exception after a rule had been thoroughly analyzed and discussed and suggested corrections made, the committee would be unanimous in its action. Of course, there were some controversial issues. One which carried itself throughout the entire work and which

finally resulted in a change after the proposed rules had been submitted to the Bar Association was the question of the time to be allowed to serve an answer or other responsive pleading. Many of the committee members felt that twenty days was longer than was necessary to answer a complaint, and that measuring time by weeks, and in some instances months, would be better than by days. Accordingly, time to answer a complaint was reduced from twenty days to two weeks and all other times involved were correspondingly reduced so as to be determined in weeks. The chief argument against the accelleration of time seemed to be uniformity with the Federal rules which used the same time provided under our Code of Civil Procedure. After the proposed draft was published and submitted to the Bar, the committee upon the suggestion of the Supreme Court polled the individual members and by a divided vote changed the time to conform to the Federal rules.

In my original analysis of the Federal rules, I determined that there was much greater similarity between them and our Code procedure than appeared at first blush. There are only so many steps in the prosecution of a lawsuit and although the Federal rules differed in some aspects, in many rules the only change made was to rephrase the language of our statute and use a different numbering system. For instance, Rule 2 provides: "There shall be one form of action to be known as 'civil action.'" This is the same as our former Code Section 104-1-2.

In addition to preparing the proposed rules, I added notes to each rule or subparagraph stating whether there was a statute on the same subject matter, if so, how the rule compared with the statute, and in what respects it modified or changed our existing practice.

Occasionally I was required to submit a written memorandum on a proposed rule or subject matter to satisfy the committee as to its merits, how it had been interpreted, or whether it was properly within the scope of the rule making power, i.e.: that it did not abridge, enlarge, or modify the substantive rights of the parties litigant. Such a situation arose when we came to consider Rule 35 authorizing a physical or mental examination of a party under certain conditions. Prior to the adoption of our Rules the Supreme Court of Utah on more than one occasion had held that under our procedure one party was not entitled to have a medical examination of the other even though the present physical condition of such party might have been the only issue involved in the case. Attempts to have the legislature authorize such procedure had failed. Then I came along with a proposed Rule conforming to the Federal Rule suggesting that it be done. Surprisingly, the members of the committee (both plaintiffs' counsel as well as recognized defense counsel) felt the Rule was desirable but a majority questioned the propriety of the matter until I satisfied them that the very rule had been questioned in the Federal Courts and had been upheld by the United States Supreme Court in the case of Sibbach v Wilson and Co., 312 U.S. 1.

For a few minutes let us consider the various topics covered by the Rules and what changes they make in our code practice:

I have already mentioned that we retained our Code practice allowing attorneys to sign and issue a summons in lieu of the Federal practice. In addition the Federal rules were not adequate in providing a method of obtaining service of process by publication so that our own code provisions were revised and adopted as additional subdivisions to Rule 4. In several other instances the Federal rules did not purport to cover a particular subject so that our own Code provisions were adopted verbatim or in a modified form.

Other subjects which are treated by the Rules include the definition and discussion of pleadings, motions, and orders. Parties, including joinder of claims and

remedies, is covered by the next category. Then comes the inquiry stage between the commencement of the suit and trial, in which depositions and discovery play an important part. The trial is treated under one heading as is also the judgment. Next we have a consideration of the subject of Provisional and Final Remedies—including special proceedings, and finally Appeals. In addition several rules treat the duties and powers of the courts and clerks; and several general provisions, together with an Appendix of Forms wind up the discussion.

As previously stated, there was very little change made in the former procedure relating to the manner of commencing an action. However, a more revolutionary change took place in connection with the pleadings, motions and orders. Demurrers and other special pleas were abolished entirely. The pleader was allowed to state his case in more simple terms and the technical preciseness of pleading was not required. Too, the requirement that pleadings be verified was dispensd with in favor of the Federal provision (Rule II) authorizing the attorney to sign pleadings on behalf of his client. Another rule which was adopted from the Federal procedure authorized the pre-trial conference. In fact this rule was proposed to the Supreme Court and made effective by them while the work of the committee was still going on.

Again, greater liberality appeared in the Federal rules with reference to the joinder of parties and claims. In conforming to the Federal procedure, pleading hypothetically or in the alternative was authorized.

With respect to depositions and discovery although the Federal rules were adopted by the committee, considerable discussion arose as to the interpretation of Rule 30 (b) providing for orders to protect parties or deponents against unnecessary or unreasonable examination. Because of the numerous conflicting decisions on the matter the rule, as finally approved, included an amendment which had been proposed by the Federal committee. This amendment however has never been approved by the Supreme Court of the United States. Instead, the Supreme Court in a case involving the right of one party to require the production of reports, witnesses statements and other facts obtained during an investigation of a case and before trial, interpreted Rule 30 (b) so as to include the substance of the amendment. The court held: "The general policy against invading the privacy of an attorney's course of preparation is so well recognized and so essential to an orderly working of our system of legal procedure that a burden rests on the one who would invade the privacy to establish adequate reasons to justify production through a subpoena or court order." (Hickman v. Taylor, 329 U.S. 495.)

In reviewing the subject of trials the committee determined to retain our code provision, defining the right to a jury trial. Personally, I believe that the chief reason for not disturbing the statute was that no one knew what it meant and we were a little afraid of making a Rule which would be understandable to the lawyers.

We also preserved our system of 8 instead of 12 jurors and allowed a 3/4 majority to return a verdict in a civil case.

Some innovations taken from the Federal Rules include the right to cross examine an adverse party, consolidation of matters for trial, motions for a directed verdict which might be held under advisement by the court until after the verdict is returned, and other minor changes. Again, Rule 51 relating to instructions to the jury became a controversial issue. Although the committee proposed to follow the Federal practice of requiring the arguments to the jury to be made before the instruction, the Rule was changed because of the unfavorable response received from large groups of the Bar.

The only substantial changes under the subject of "Judgments" came with the

adoption of the summary judgment rule authorizing a judgment on the pleadings, in effect.

For some time there had been suggestions to revise our appellate procedure and do away with "Bills of Exception" and the technical difficulties incident to getting the record in proper order for appeal. Accordingly, the committee did much to make our appellate procedure the same as the Federal. We did, however, permit the original papers to be transmitted to the Supreme Court in lieu of copies.

The one phase where the Federal rules gave little, if any, help involved the provisional and final remedies, including such special writs as habeas corpus, quo warrant, prohibition, mandamus, and certiorari. Here we reviewed our own procedure carefully and made considerable changes which I believe are proving very helpful to the Bar.

Well, the work was finally completed in the early spring of 1949. It included not only a revision of our procedure as above outlined, but I also prepared parallel tables showing where our code provisions appeared in the Rules and which statutes were rendered obsolete and were deleted by reason of the new procedure.

Insofar as possible our city court and justice court practice was brought under the same rules that applied to the district court so that as finally submitted the proposed draft of the Rules made a rather uniform system of practice and procedure for all the courts of our state.

The draft was submitted first to the Supreme Court which then authorized its publication and submission to the Bar. This was done in time to have the work discussed at the annual convention in June, 1949. Thereafter, the matter was let open for suggestions and criticisms until October 1, 1949. During this period various discussions, lectures, and symposiums were held with local Bar Associations and nearly all responded with some suggested revisions. During October the committee met and reviewed the suggestions received and made several changes, notably those heretofore referred to.

The final work was then submitted to the Supreme Court, approved by them, and published in book form. Since January we have had occasion to see the effect of the Rules and although there are many who complain a little about them, *the Judges* have been unanimous in their praise—particularly in the way it has speeded up the work of the court.

Criticisms now appearing seem to come from those who are unwilling to take advantage of the opportunities afforded to them:

Plaintiffs complain of depositions and discovery.

Defendants complain of simplicity of pleading.

In conclusion, I would like to relate a little incident that occurred during a symposium conducted in one of the meetings at the last Bar Convention held in Jackson, Wyoming, last month. One or two fellows arose to indicate their displeasure with the new Rules stating it was hard to adjust to them and wondered why any change had been necessary. By way of reply one of our district judges arose and pounding his chest said that he believed such remarks must have been made by the primitive cave man when his neighbor left the cave and went down into the valley and built himself a shelter out of logs and began to use his brains instead of brute force to cope with the problems of survival.

Let it always be said that the Bench and Bar are ever alert to the social and economic needs of the public and willing to adjust their own personal desires to satisfy the needs of the people.

PRES.: We have just listened to an expert in this particular field, and I know I express our sentiments when I say we are happy to have Mr. Nielsen with us, and we hope that he and Mrs. Nielsen can enjoy the rest of our convention.

At this time we will have the report of Justice Givens on the Judicial Section's meeting. Justice Givens.

JUSTICE GIVENS: Mr. President and members of the Bench and Bar and visitors: The Judicial Section, at the instigation of Mr. DeWitt, who is in charge of the State Committees of the Judicial Section of the American Bar Association, is activated by a Committee consisting of Judge Clark of the Federal Court, Justices Porter, Taylor and myself of the Supreme Court and Judges Winstead and Baker of the District Courts and Mr. A. L. Merrill and Mr. Vernon Clements, members of the Idaho State Bar.

The topics we selected for discussion were those suggested by the national organization and consisted of the following: Calendar Calls and Motion Days, discussed by Justice Taylor and with an informal discussion participated in by all the members present; Improvement of the Jury System by Judge Winstead, discussed by Judges Koelsch and Lowe; Delegation of Rule Making Power in the Federal Rules, Judge Clark, with additional discussion by Judge Sutphen; Integration of the Judiciary by Justice Porter and discussed by Judge Thatcher. Another topic that was to be reviewed could not because of the absence of the person to whom the topic was assigned. The Improvement of Methods of Judicial Selection was discussed by Judge Martin.

A committee was authorized to provide, and if possible secure, the adoption of uniform district court rules, not rules of practice, but the rules in the district courts. This committee consists of Judges Baker, Winstead, Thatcher, Wilson and Sutphen.

Two resolutions were adopted by the Section, and these have been handed to the Resolutions Committee. One concerns the death of Henry P. Cummock, a veteran court reporter; the other concerns legislation changing the making up of trial jury lists from January to December.

I would like just a moment to speak with reference to the topic that we have just heard so ably discussed by Mr. Nielsen. While so far as the ultimate results are concerned, it is true that there has been no action by our Supreme Court relative to the legislation which authorized and empowered our Supreme Court to adopt rules of practice and procedure, it has not been because the Court has been inattentive.

You will remember that Mr. Nielsen mentioned one of the prerequisites or a condition or a feature which was present in the promulgation of the rules of the Supreme Court of Utah—and so far as I know has been present in other states where the courts have adopted the rules—and that was an adequate appropriation to provide, in the first instance, for a committee, and in the second instance, the promulgation of the proposed rules, so that the Bar of the state would have an opportunity to note and register their objections to such changes as might be contemplated.

Twice the Supreme Court, through and with the cooperation of the State Bar, and since the enactment of the legislation, has asked the Legislature for an appropriation which was modest, I think, compared with the amount that apparently has been used and made available in other states. No appropriation up to the present time has been made. I think that the Court felt, and I believe they were justified in feeling,, that it would be unfair to the Bar to promulgate rules or even to take the initial step of deciding that the entire matter of practice and procedure should be taken over and made by court rules (which could be done if we adopted as court

rules the present codes of civil and criminal procedure and probate and justice court practice) without the Bar having an opportunity to know what was to be done. That is a very important initial step.

I mention this not by way of excuse for inaction, and I wish I had time to go into detail with regard to the various features of the matter that have been specifically considered by the Court by itself and also in connection with conferences with the State Bar.

If action is desired, it seems to me that it is absolutely imperative that there be a sufficient appropriation, and that is something that the Court of itself, with what assistance the State Bar has given, has not yet been able to get the Legislature to do.

PRES.: Thank you, Justice Givens. We did have a little more business this morning, but we will try to include that in future sessions of the convention. I would like to call your attention to the fact that we meet promptly at 1:30 this afternoon. Will you please exend to the speaker the courtesy of being here promptly?. We will recess until 1:30 this afternoon.

FRIDAY, JULY 14, 1950, 1:30 P. M.

PRES.: I would like to introduce Robert E. Brown, Bar Commissioner for the Northern Division, who will in turn introduce our very distinguished speaker. Mr. Brown.

MR. BROWN: Ladies and Gentlemen: Last winter your Bar Commission determined to select someone from the State of Iowa, the Buckeye State, to appear before this meeting. We searched and sought for someone from that state, and we finally found him in Beverly Hills, California. We contacted Mr. Giesler to appear before this group. Subsequently, I had occasion to be in Beverly Hills, and I went by his home simply to confirm the fact that he would appear before us. The evening that I reached his home in Beverly Hills, I was admitted into his home, and Mrs. Giesler told me he was in the study. She said, "Walk right in." I went in, and I found Mr. Giesler seated on one side of a card table with a chess board before him and a dog seated in the chair across from him.

He nodded to me and told me to be seated, and I watched them for 20 or 30 minutes while they proceeded with this chess game. They finally concluded, and I said to Mr. Giesler, "That is the most amazing dog I have ever seen."

He said, "Amazing hell! I have beaten him two games out of three!"

He is an individual with an amazing reputation, and I am very happy to present him to you now. Mr. Jerry Giesler of Beverly Hills, California. (applause)

MR. GIESLER: Mr. Brown, President Marcus, members of the State Bar of Idaho and ladies and gentlemen: It is indeed a great pleasure and a privilege for me to have the honor to be here today. Frankly and honestly, though, had I known back in December, when I accepted this invitation, what was going to happen to me when I got here, I don't know whether I would have come or not. Your President has been quite kind to me in many respects. He did write me a letter and enticed me under false representations which I will not go into at this time. (laughter) That is a matter for future determination as far as I am concerned. He may still come through.

And then this morning over at the hotel, when I tried to get out of my room, I couldn't get out. They had one of those double doors, you know, one door outside with slats in it, and another door. Last night, for some reason I do not recall at the moment, I locked the door with the slats. When I tried to get out this morning, part of the lock was gone, and I couldn't open it. And I came to the conclusion that

probably your President locked me in there so that I couldn't go away in view of his failure to keep his promise. (laughter) It was either that, or perhaps some others didn't want me to come over here this afternoon and thought probably that was one way to keep me out. I called downstairs, and they came up and let me out, so I was able to go down to breakfast and also to get over here.

They have treated me very nicely since I have been here, and I hope they will continue to do so until I get out of town. I have one, two or possibly three possible lawsuits against your President. I am just selecting him individually at the moment. He has already sought counsel (laughter) and whether I proceed or not will depend on what happens to me before I leave here tomorrow morning.

This is a beautiful place to hold a state Bar convention. I had never been here before, and I certainly love it. It is grand, and I like all the people I have met. I am not saying that merely to curry favor with anybody, because I don't do that. I really mean it sincerely. Every one of the persons I have met so far have been sincere and honest in their welcome, and I know that is the true nature of you folks, and I appreciate it.

I hope I do not disappoint you. I don't go in for making speeches, and I very seldom talk outside of the court room, and when I do talk outside of the court room, it is usually to law schools and law students, because when I talk to them, I can say almost anything and nobody is going to correct me. (laughter) That is one reason. But the other reason is that I like to talk to law students, because if there is any little thing, even a small item, out of my many years of experience at the Bar that might be of some benefit to a young lawyer or young law student about ready to start in with the law, I want them to have it. I can then feel that I have done something at least a little worth while. The only other groups I do talk to are lawyer groups such as this. I am not a public speaker, and I do not go in for public speaking. My talking is done in the court room.

When I was asked what I would talk about, I said that probably it would be better if I just talked about some of my experiences throughout the years. Some of them might possibly have some interest for you, and they might be of some benefit to some of the younger members of the Bar and law students also if any are present.

I was born in Iowa, down in southern Iowa along the Mississippi, Muscatine County, south of Davenport. And not in criticism but only in correction on behalf of the State of Iowa, I will advise your Vice-President that it is the Hawkeye State and not the Buckeye State. (laughter) At any rate, that is where I came from. The reason I mention that is that basically there was the start of my interest in criminal law which has been one of the most important parts of my practice. It came about when I was a youngster down in Muscatine. We took the Chicago papers. We were only 210 miles out of Chicago, and Idaho enters into this remotely, because it was as a youngster that I read the great forensic battles that took place out here in your state in the famous trial in which Clarence Darrow came out here and defended the defendants, and the prosecution was conducted principally by the late Senator Borah who was one of the prosecuting attorneys of one of the counties. And since I have been here today, I met several of the younger members of the Bar who informed me that their fathers had been in that case on one side or the other. It was a case that attracted nationwide attention, as you all know. So as a youngster I read about the forensic battles that took place in the court room between Clarence Darrow and the late Senator Borah. And it inspired me, as it did many other youths, in the desire and ambition to get into the criminal courts, particularly on the defensive side, and engage in some of those fights or battles we read about. That is what really fundamentally and basically interested me in my desire and ambition.

Shortly after that I happened to come to California, and I worked out in California about a year. And while working there I one day saw upon the side of a building down on Broadway "University of Southern California, College of Law." It was then down town at Third and Broadway on the second and third floors of a little old building which is still there today. The school, however, has moved out to the campus of the University. In those days most of the students also worked, and we went to law school early in the morning and again in the evening. We were permitted and did work in law offices as law clerks, office boys and the like. And to my mind that was a great experience and of great benefit to young men starting out in the practice of law. It was a foundation that you don't get today, because the boys going to law school must go to school out on the campus, and the hours occur throughout the day and not in the early morning or evening, and there is no chance for them to do that. They therefore lose that opportunity which, to me, is most important, because it gives one the chance of getting close to active practice, and seeing those lawyers in their offices and in the court rooms builds a foundation that is so important for future lawyers.

At any rate I had that opportunity. And during the day a couple of other young fellows and myself had what we called the Prospective Law and Collection Agency. I mention that only because it brings up the reason and how I first met Earl Rogers who was one of the greatest trial lawyers of all time in my opinion. No one living today, so far as I am concerned, even comes up to his shoulders. It happened that in our collection agency we received a bill one day for the Encyclopedia of Evidence. That is an old book that is now out of print—the American Encyclopedia of Evidence. When it came into the office, I saw that the bill was against Mr. Rogers, and I saw the opportunity I had been looking for, the opportunity of meeting him and trying to get into his office as office boy. That was my great ambition at that time, but up to that time I had no access. So when the bill came along, I decided I would take the bill personally and go over and try to collect it. And I did try to collect it. I honestly tried to collect. And in trying to do so I had to follow Mr. Rogers around, because he would never see a bill collector. That was one person he was never in to. (laughter) So I couldn't get to see him in his office, and therefore I started to follow him around the court house. Whenever he had a trial, I would be outside waiting for him at recess time. Rogers was a man who rolled his own with Bull Durham, an inveterate smoker, and when there was a recess, he was out in the hall smoking his cigarettes and walking up and down. He was a very nervous type individual. I was his shadow. I would go up and say something to him, and he would say, "Pardon me just a minute," and he was gone.

I kept that up for a long time. Wherever he was, there I was with this bill trying to get to him. Well, I guess that he finally realized and recognized that he might as well talk to me, because I was always there and always right outside at recess time when he wanted to smoke, so one day I did get to talk to him. I talked to him, and he said, "Fine. I will take care of that, and I will talk to you about that, Mr. Giesler." So I talked to him, and after I had performed what I considered my duty to the people who sent in the bill, I asked him for a job.

I said, "Mr. Rogers, I would like to get into your office as an office boy."

"Well," he said, "we will talk about that." So I still hung around. Finally I guess that he figured that maybe this might be as good a chance as any to settle that law book bill. So one day he said, "Mr. Giesler, you go down and tell them I said you were to go to work in the office." So I did. And I will have to say, I hope not to my discredit, that I don't believe that bill was ever paid. (laughter) If it were not for the fact that the company has gone out of business, I think I would pay that bill today myself. I really would. But they are out of business. (laughter)

Well, anyway, I went in as office boy in the office of the greatest lawyer of all time, to my mind. And there I had the privilege and opportunity of sitting in court just more or less as a menial, so to speak, doing odds and ends and running errands and carrying messages back and forth. And I had the chance to sit there and watch him in action, to see how he tried law suits, and it was really something terrific to me. As I say, if the younger fellows today only had the chance, while they are studying law, to sit in the court room and watch their elders in action and see men who really have something on the ball performing their services, they would learn a lot they would never forget and that would stand them in good stead throughout their entire lives. I am sure it did with me.

So after I had been in the office a short time, I finally came to the conclusion that I had studied enough to take the Bar. The Bar wasn't so hard in those days, ladies and gentlemen. Today it is pretty stiff everywhere. I know it is stiff in California, and I know it is hard here.

SAM S. GRIFFIN: No!

MR. GIESLER: No? Well, I would say that the younger men will tell you it is pretty hard. If you had to take it over, I don't know what would happen. (laughter) At any rate, I went up to take my examination. In those days they were taken before the appellate court. There were three judges, and they sat up on the bench, and all of the class sat out in front. They gave a short written examination of about an hour. That didn't amount to too much. Then they called us in, and they would start down the line asking questions. I had a seat way back in the rear. It was a large class, and by the time the judges got through with the others and came to me, I guess they ran out of questions, because all they asked me was my name and address, and then it was time for lunch. So I was admitted to practice. My name and address made me good material for admission to the Bar. (laughter)

Well, when I came out of there, I thought I was the greatest man that ever lived. I walked down Broadway from Temple Street down to the office we had on First Street, and all the way I wondered what I should call myself. Attorney? No, not so good. Lawyer? Well, I don't know. Barrister? Now you are getting somewhere! Esquire? Well, by the time I got to the office I decided barrister sounded good, so I thought I would be a barrister to start with before I even had a client. (laughter)

Mr. Rogers' office was one of these walk-ups. You went up a flight of stairs to the second floor on the corner of First and Broadway at that time immediately across the street from the old Los Angeles Times. The building is still there. His office was like the office of Mr. Tutt. You may have read Arthur Train's stories about him in the Saturday Evening Post. There was a fireplace, and the scuttle sat there throughout the summer. It was used for other purposes through the summer time, because a lot of gentlemen came in who chewed tobacco, and they had good use for these receptacles.. There were some pretty expert ones, too. (laughter) Some long distance men.

In those days it was perfectly proper to have your name on the window—attorney at law, and your name. Well, when I got there all the windows were filled on both Broadway and First Street. (laughter) And it was most important that I have my name on that window, especially on one facing Broadway as close to First Street as I could get it, because the city jail was just half a block up the hill on the other side of the street. People who would go to see their friends and relatives in there would have in mind their need for a lawyer, and they would come down half a block and look up, and low and behold there were a lot of lawyers' names on the window right across the street. (laughter) Don't fool yourselves. That was a source

of considerable business. And Mr. Rogers' name naturally headed the list.

Anyway I couldn't find a window. I was in a bad place. Well, good fortune happened to come my way, because one morning, when I came in, one of the windows was broken, and when it went up again, my name was on it. (laughter) I never have confessed how that window got broken. (laughter)

Then I was ready to go in every respect, except that I had no clients. But I began to get a few clients that came in the office that had no money. (laughter) When Mr. Rogers and the others there talked to them and found out what kind of a case they had, no matter what it was, when they came to that point where they asked, "How much money have you got?"

"I am sorry, but I have none."

"Oh, we have just the man you want to see." (laughter)

So I got some cases, finally, without pay. But it was good experience, and it helped a lot. It made it possible for me to get a start and to study. I had to study if I was going to help the poorfellows whoever they may have been, and it did teach me one thing.

One of the first things I learned was the necessity of preparation. Preparation is 90 per cent of a law suit, I will tell you right now, in my book. It is 90 per cent of any law suit. Preparation as to fact is most essential, but you have got to know everything about your case and the other fellow's case besides—both sides, good and bad. You must know everything you can possibly learn. And preparation of the law of the case is very necessary. And therein lies the tale of one of my first experiences.

One chap without money was sent over to me one day charged with a public offense. He had had his preliminary, and his trial was coming up shortly. I looked at his transcript, and I read it and studied it. At first blush it looked bad. I thought he might have to plead guilty. And then I got to looking up the law, and low and behold I found a beautiful case. You know there are such things as beautiful cases in the law—in the books. It was on all fours, and it said in there in plain language that with this set of facts, the act did not constitute a crime in the State of California. Well, after I read that, I got to feeling pretty good. But I made one mistake. It was a mistake I have never made since. I told my client how good it was, and I told him he needn't worry, that we were going to win. I said, "Don't worry at all. You will walk out of here with no trouble at all. You are going to be absolutely free." (laughter) I said, "You just take it easy and have no fear." He felt pretty good. He loved me.

So the day of the trial came around, and I was so much enamoured (if I may use that word) with my book that I even hid it in my briefcase so the district attorney wouldn't see it. You know, take him by surprise! Get him right then! So I went to trial, and the judge was a wonderful man. The district attorney was a good Irish man named Hogan, and he put on his case. He put the same evidence in that he had at the preliminary. And my client was sitting there, and his hat was on the table, and he was reaching for it, and I said, "Not yet. Not yet." He was all ready to go. (laughter) I told him he could leave pretty soon. I said, "Wait a few minutes. Just leave it there. And he sat back and gave me a smile. He was very happy.

Then the Court turned to me, "Mr. Geisler, you may proceed."

Then I got out my case, you know, and secretively pulled out the book and opened it slowly. I wanted to scare the district attorney. I looked over at him. He looked over at me. I said, "It is really a terrific surprise to me how the district attorney can sit there and put a case on against this poor man and this poor defendant.

I have a case here identically like the case that the district attorney has presented, it's on all fours, and I would like to read it to Your Honor."

He said, "Proceed, Mr. Giesler."

I opened the book and read that law which was so clearly in my favor. I didn't know how to use my voice then, and I shouted to the high heavens. That courtroom rang out with my voice. And when I was through I sat down, and my client started reaching for his hat again. I said, "Just a minute or two, and then you can go."

He said, "All right, Mr. Giesler."

The Judge said, "Well, Mr. Hogan, what have you got to say about that?"

Mr. Hogan got up and said, "Your Honor, it would appear that Mr. Giesler has taken me completely by surprise. It would appear as though a great injustice had been done to this defendant. But I would like to inform you, Your Honor, that the case Mr. Giesler read was from the appellate court, and that case was reversed by the Supreme Court, and I would like to read to Your Honor the Supreme Court's decision." (laughter)

I don't know if that has happened to any of you lawyers, but it happened to me as a youngster just starting out. I would have welcomed if that floor, which happened to be right over the county jail, would have opened up and let me down. I wouldn't have cared where I was going just so I could get out of that court room. (laughter) That actually happened to me.

For the ladies who are here who are not attorneys I will explain to you that we have in the law what is called Shepard's Citator. That is a work for lawyers, and if you go to that and study it, you can find what has happened to every case that has been decided. For instance, if the case has been decided by a lower court, you can find whether it went to a higher court. And if it did go up, you can find whether it was upheld or reversed or modified or changed or whatever may have happened to it. Well, I hadn't done that. I didn't pay any attention to Shepard's Citator then. To be honest, that never occurred to me. I never thought of looking there. You may think that I was awfully dumb. Well, I wasn't so dumb, because a lot of young lawyers starting out may do that. They weren't taught that in law school at that time. Today most of them are—at least I hope they are—but we weren't then.

I felt terrible—not quite as bad as my client, though (laughter) By the way, he didn't get to use his hat for a long time after that. And I felt very badly for myself. But one thing came out of that as far as I was concerned. That judge happened to be a wonderful type of man. I would call him a sweetheart of a judge, and I think there are some people you can say that about. Some judges like to sit up there—and I am not talking about Idaho judges—and if a young fellow makes a mistake, they like to bawl them out as hard as they can right in front of their clients. And in my opinion that isn't fair. It doesn't do anyone any good. The only one it hurts is the young fellow. The judge can do it in a much more decent way by giving him an opportunity and not taking the heart out of a fellow. At any rate, this judge that I was before was one of those sweethearts. He didn't say a word except to adjourn. Then he told the bailiff to ask me to step in his chambers. He said, "Jerry, you have learned a very important lesson. Always Shepardize your cases. It could possibly have saved you a lot of distress and worry, but you have learned something very important."

And I certainly had. From that date to the present I take two sets of Shepards, one for the office and one for home. And let me tell you, I have never sat in a case from that date to this without first running it down in Shepard's. And I don't have somebody in my office do it. Every one of those cases I run down myself to be

sure nothing like that will ever happen to me again in this lifetime. That was a terrific lesson for me, and I want to say that to me it is something that every young lawyer may well bear in mind, because it is important.

That was on the side of law. On the side of fact I had another case with reference to preparedness. It was not on the law but on another phase of a law suit. It was when I had been admitted only a short time, but I was helping Mr. Rogers in the trial of cases by looking up points of law and sitting as his assistant in the court room and giving suggestions that might come to my mind, immature as it was in law and practice. There came to pass in Los Angeles a case of manslaughter against the world's heavyweight champion, Jess Willard. Jess was right at the peak, and unfortunately, in a boxing exhibition out at Vernon on the outskirts of Los Angeles, the chap he was fighting was killed. The district attorney arrested Jess and charged him with manslaughter. Jess got Mr. Rogers as counsel, and Mr. Rogers asked me to sit in the trial. I did so with a great deal of pleasure, because I had the opportunity of watching Mr. Rogers again. The trial went along for approximately two weeks. It was a short trial, and we finished up one afternoon close to 5:00 o'clock. As we left that afternoon Mr. Rogers said, "Well, Jerry, it has been a short trial. I guess only one of us need to argue." I was happy to hear that, because I wasn't used to arguing cases. I had made only one in my life up to that moment in the court room.

So I said, "Fine, Mr. Rogers."

He said, "O. K., I'll see you in the morning."

Once in awhile in those days as a youngster—I was not married and had no responsibilities—I would go out in the evening with some other young men, and we would stay out quite late, possibly later than most people would think proper. On this particular occasion we went out to the outskirts of Los Angeles to the Vernon Country Club. It was quite a well known place in its day. It is gone now and has been for years. We went out there, and we stayed later than usual, and there was a Hawaiian dance going on in the corner. I can remember that to this date. It was very interesting. (laughter) But one thing that made us a little later than usual was that coming back we had to cross a street where the trains were operating up and down, and that blocked the traffic. At any rate, we got back to town at about 4:00 o'clock in the morning, and I decided to sleep down town. I got a room on Fifth Street between Spring and Broadway and went up to get some sleep so I could get back to court at 10:00 o'clock that morning. The building is still there, and every time I see it this all comes back to me. I got up just in time to rush to court. I had no time to shave or get anything to eat, and I had hardly any sleep. I thought that I would probably do my sleeping that day in the court room without any disrespect to anybody who was participating. I went up and sat down. The district attorney started the argument. He was another good Irishman named John Ford. He was one of the greatest prosecutors in our county. He is now dead. But after he was prosecutor he was a great defense lawyer and was a mighty swell fellow.

As I told you before, Mr. Rogers was a very nervous man, and he always liked to roll cigarettes during an argument. He could hardly sit and listen, so he would get up and go outside the court room and walk up and down the hall. He would roll his cigarettes and take a smoke and then look into the court room through the hole in the door and watch what was going on. If the argument got strong, he would rush in and say, "Your Honor, I object." He didn't know what he was objecting to, and if the court ever asked him what his grounds were, Mr. Rogers would have been stymied. But at least it broke up the trend of the jury's thought about the argument of the district attorney. Of course, that isn't proper, and I am not saying that for the benefit of any young lawyers in practice. That wouldn't go today, you know.

You might get in trouble. But that is what he would do, and he did that in this case. He was walking up and down and peeking in and running in, and I was sitting there trying to get a snooze, and the district attorney was arguing. At 11:35—and I will remember that hour as long as I live—the district attorney said that he had completed his argument, and he said that he would conclude his argument that afternoon after Mr. Rogers had given his argument for the defendant, and he sat down. I am still snoozing away, and all of a sudden I hear steps coming down, and I assume Mr. Rogers is going to address the jury. Instead of that I saw a hand come over my shoulder and pick up a cane. Mr. Rogers always carried a cane. And then another hand came over and picked up a hat. And then as from a tomb I heard a voice: "Your Honor, Mr. Giesler will argue until 12:00 o'clock, and I shall start at 2:00." (laughter) Today I might be able to get up there and give an argument on the facts, but remember that up until then I had only tried one law suit. Oh boy! I didn't know what I could say or do. I was in a terrific spot. Well, just as I was kind of pulling myself together, unshaven, unkempt, no food, I saw the penal code of California lying on the table. That looked good to me. It was something wonderful at the moment. I picked it up. I opened it to homicide, which includes manslaughter, but we were only on trial for manslaughter mind you. I took the penal code, and I walked over in front of the jury and started reading every section relating to homicide. (laughter) And that included murder in the first degree. (laughter)

So I read that deliberately. I don't think any time in the history of California, before or since, have those sections been read so deliberately. And I read the section on manslaughter three or four times, because I realized that was the only one that had anything to do with the case. Well, I finally succeeded in reading those sections up to about five minutes to 12:00. The Irish prosecutor was sitting there and realized the spot I was in, and like a good scout, he suggested to the Court that we take an adjournment for the remaining argument during the afternoon. That judge was another sweetheart. I have met more sweethearts like that that pulled me out of a spot when I was a youngster than I deserved. I hope you young fellows, when you get in a hole, find that kind of a judge, because if you don't, you will be in a terrific spot. As any lawyer or judge knows, you have no right to read the law to the jury. That is the duty of the presiding judge, and he is the one that should give the law to the jury. The trouble was I read too much against my client. But the facts were not so bad. The jury was nice, and Rogers made a wonderful closing argument, and Mr. Willard was acquitted. Mr. Willard and myself went down Spring Street and stopped at every emporium along the road, and I was feeling good by 6:00 o'clock that evening, and I regained everything I had lost.

Those are two illustrations—one on law and one on facts. And as all of you lawyers know, preparation is the greatest part of any law suit. If you are prepared, you are not afraid of the other fellow, because you will know his side as much as your own. You will know as much as you can learn of it. If you are not prepared, then you know you haven't done your duty to your client.

Another very important factor in the trial of a law suit is to let the trier of fact, whether it is the judge or jury, learn, or at least let them think they have learned something for themselves, because if he or they do, then it will make a much bigger point on your side. I had two illustrations of that happen in one case, strange enough. It was a murder case.

A doctor was on trial upon the charge of having killed his wife. At the outset I will tell you that he was innocent. The jury said so, and that is quite sufficient proof. I am sure you all agree. At any rate he was supposed to have carried his wife from the back porch of their house along the walk in their yard and into the garage, laid her on the floor underneath the car, started the motor and left her there alone.

He didn't do that, but that was what the charge was. He was a very well known man in the community out there, and the trial attracted considerable attention.

I worked hard on that case. I prepared it from every possible angle, in my opinion, both on the law and the facts. As I have already indicated, I felt that necessary. I interviewed every witness I could find. I learned the names of every witness who could possibly know anything about the case no matter how minute it might be. At least I thought I did. But low and behold! the first witness that came onto that witness stand was a colored maid. She testified that she had known the doctor and his wife and had worked in their home. I turned to the doctor. I said, "Doctor, who is this?"

He said, "Mr. Giesler, I have never seen her before in all my life."

I said, "Doctor, hear what she says!"

"Mr. Geisler, I have never seen her before in all my life."

Well, she went ahead, and she said that at the table on one or two occasions she heard quarreling between the doctor and his wife over certain matters, and the doctor was quite heated in his language towards his wife. The purpose of that, as you all know, was to show animus. Well, I was completely taken aback. It was the first witness in the law suit, and I hadn't heard a word about it before and didn't know anything in connection with her. My client insisted that he didn't know her. I had nothing to cross examine on. I started out to trace her antecedents, where she came from, how long she had been there and so on. She came to Los Angeles about a month or two before the death of the woman, and that was the best I could do. I said, "Your Honor, I would like to excuse this woman at this time with the privilege of recalling her at a later time."

He said, "All right, Mr. Giesler."

Then we started a most intensive investigation in every way possible, and it turned out, as we finally found out by sending a detective back to Little Rock and checking in Los Angeles and other places around the community, that she did come from Little Rock, but she had come out at a time after the death of this woman. That would make it impossible, naturally, for her to be in the house on any occasion prior to the woman's death.

Well, that sounded like a terrific thing. I couldn't imagine a person going on the witness stand and deliberately perjuring themselves in such a matter. But we followed it up, and they still had the transportation tickets she had used back at Little Rock, and we brought that out, and we discovered other evidence in Los Angeles, and we put that on. But it was tough to destroy this testimony she had given. But the secret to it was that at the very last moment, just as we were about to conclude and after rebuttal and surrebuttal had already gone in, I felt somebody pass behind me and step over to the district attorney sitting next to me. I glanced over, and here is this girl, and I saw in her hand a letter. It was dark in that court room. The windows were over near the street, and they had to keep the shades drawn because of the light and sun on the backs of the jurors. They had artificial light, and you couldn't see quite as good as you could ordinarily. But I saw her hand something to the district attorney.

He said, "Just a moment. I would like the privilege of reopening the case for one moment to submit one piece of evidence."

I couldn't say anything.

The judge said, "All right."

She went on the stand, that same girl, and the district attorney said, "Miss So

and So, you have given to me a letter which you say you received at a time prior to the death of this lady showing that you worked for another person down in Santa Monica at a time prior to that."

"Yes, sir."

"Just a letter?"

"Yes, sir."

"You have it in your possession?"

"Yes, sir."

"Where was it?"

"In my trunk."

He showed it to me. I could do nothing. He offered it in evidence. It was just at recess time, so the judge took a recess. During the recess I went over to the clerk's desk, and I looked at this letter under a stronger light. And then I saw with my own eyes what was quite obvious. The date mark had been changed. It wasn't an expert's job, and you could see that the date had been changed. I got a glass, and we looked at it through the magnifying glass, and it was very clear. I said nothing, and the case went to the jury.

I sent out and got several magnifying glasses, and one of the first things I did during my argument was to hand the glasses out to the jurors. I said, "Will you please look at this paper through the glasses?" I passed the letter to them, and they looked at the date through the glasses. Well, you could see from the expression in their eyes and on their faces how it changed their minds when they observed for themselves that it had clearly been tampered with.

That is merely an illustration of the importance of letting the trier of the facts discover something for themselves. If they do, it leaves a far more lasting impression than information brought out merely through testimony. It gives them the satisfaction of believing that they themselves have learned something first hand.

And in that same case, peculiarly enough, because you seldom get two situations of the same type in the same law suit, I had another similar experience. That case had not been brought to trial for about three years. The indictment was returned about three years after the death, and he was brought to trial at that late date because of the fact that a man who was to be a witness and who claimed to have been a private investigator who worked in that neighborhood and who had watched the houses at night claimed he had been out of the state for three years and had been over in Honolulu. He had been discovered by someone interested in the family of the decedent and had been brought back. He went to the district attorney and said that on the date in question he had been down there collecting his fees and had walked along the sidewalk in front of this lot and had seen the defendant carry his wife from the house down a walk and into the garage and then close the door and go back into the house. You can see how important that would be, if true. But that witness reckoned without consideration of the facts as they were at the time in question.

Our investigators went out and searched high and low for someone who knew the condition of that property at the time in question, three years before. It had been quite an interval of time. And they found a woman who had worked in the house for the doctor and his wife who had had her picture taken, quite strangely, but most important for us, right outside a fence standing on the lawn. And that picture showed a fence about seven or eight feet high all the way from the house to the garage and one through which you could not see a thing. We took that picture and had it blown up as big as we could get it. We brought it into the court room

and offered it in evidence, and it sat right in front of the jury so they could look at it while this witness was testifying on cross examination. You can see for yourself, without any further explanation, about what effect that would have on any jury. It did have an effect, for the doctor was acquitted, as he should have been.

What happened subsequently was that the girl who testified falsely—and that is to the credit of our district attorney at that time who happened to be Mr. Fritz—was prosecuted and convicted of perjury and served a term in jail for it. The man who offered the other evidence later was arrested for armed robbery in Bakersfield, was proscuted and convicted for that offense.

But there are two illustrations of letting someone find out something for themselves. Because if you do, you know and I know just how that does hit them and how it affects them and how they hold onto it as though it is something of their own. There are many other illustrations of that type that could be mentioned, but that, I am sure, is sufficient.

Another thing I have learned about the trial of a law suit is that you should never—and that "never" should be capitalized from the first letter through the last—ask the question "why?" That is because our highest court has said that the answer may properly be based upon fact, fiction or suspicion. A motion to strike will not stand. That is the ruling of our highest court in California. When a defense counsel or a prosecutor has asked a witness why and has gotten an answer covering anything and everything he didn't want, he has got to take it and like it. It may be based upon fact, fiction or suspicion. That is the case of People vs. Page, 28 California Appellate Second.

Another thing that I feel is most important in the trial of a law suit, something we have all come in contact with I am sure, is the danger of asking that one question too many on cross examination. That one question! Oh how we wish we hadn't asked that question! If we had only not asked that question, that one question too many. As an illustration of that I cite a very important murder trial.

Fortunately for me, the thing that happened was not on my side. It happened to the district attorney, thank goodness. It has happened to me in other cases, and it has happened to all of us who try law suits. That one question too many! For one reason or another we do it. I don't know why, but we do it. In this particular case the defendant was charged with killing two people, his wife and her paramour. It was in an isolated spot in a little town outside of Los Angeles. Very few people lived in the neighborhood. As a matter of fact, the only neighbor was immediately across the street where two spinster ladies occupied the home. The shooting occurred in the middle of the night around 2:00 o'clock in the morning. No one was in the vicinity. No eye witnesses. Two people were dead. Only the defendant was alive.

That was another case we worked hard on investigation. We sought to learn everything possible about that law suit, every factual thing that had occurred, every and any possible witness, if any. As to the spinsters, we could get no information from them. One didn't like my client. She had never liked my client. They had had some words at one time, and she wouldn't talk to anyone on the side of the defendant. She wouldn't talk to counsel. She wouldn't talk to investigators. She wouldn't talk to anyone. She said, "What I am going to say, I will say in court." And she wouldn't even say whether she knew anything or not. But lo and behold! she was subpoenaed!

We got up to the time of trial. It was a very difficult case for both sides. It went back and forth and back and forth, fluctuating here today and there tomorrow. We finally got down to the time when the "piece de resistance" on the part of the prosecution was to be presented, and that was this maiden lady. He called her. I sat there.

And I am telling you, so help me, I had no more idea of what I would have asked that woman if she had been on the witness stand for the defense than I have today in asking you about something that I don't know anything about at all as far as you are concerned. I couldn't have gotten anything. I didn't have anything. I couldn't show any animus, so I had to just sit there and smile. You have got to smile no matter what comes up. You can't let them know you are fearing it, because if you do that, you are giving yourself away, and the jury is always watching you. So you have to smile. Be happy. Sure! You are not happy here though. (indicating stomach)

She got on the witness stand. The district attorney said, "Miss So and So, you know the defendant?"

"Yes, sir." She clipped off her words.

"Were you home the night of the shooting?"

"Yes, sir."

"Did you hear anything unusual that night?"

"Yes."

"What did you hear?"

"Some shots."

"How many shots?"

"Five."

"Now, Miss So and So, was there any appreciable space between any of those shots, or were they fired one after the other?"

And here enters the most important phase of that questioning and of her testimony. The defendant claimed that he had been in bed asleep, that he got up upon hearing a noise, and he stepped into a certain spot, and he saw something, and then his mind went blank, and he must have gone back and gotten the gun and stepped out and fired those shots. The important thing was that if he had fired all five shots rapidly, one after the other, his position would have been one that would have sustained the district attorney in his contention for homicide. Whereas, if he had fired a couple of shots first and had then taken a different position, it would have had a considerable effect upon the question of his guilt or innocence. It was important for us to know whether there was any appreciable spacing between the shots, but she had said no. The district attorney looked at the jury and turned to me and said, "Mr. Giesler, your witness."

Well, I didn't want that witness, so help me (laughter). I didn't know what to do with her. But I smiled and said, "Well, Your Honor, no questions." I didn't want to get any further into that, although I knew it hurt and hurt badly.

And then something happened that never happened before or since. As she got down and started to leave the witness stand and walked in front of the jury in that way of hers and looked over at the defendant and myself as though she would liked to have done something else to help the prosecution, I saw one of the district attorney's associates lean over and whisper something to the district attorney. They got in a huddle. You know how you feel when you see them huddling like that. You try to guess, and you don't know (laughter). Well, just as she about reached the table, he said, "Just a moment, Miss So and So." He got up and said, "Your Honor, I would like permission to recall this witness for one additional question."

The Court looked down and said, "Mr. Giesler, any objections?"

How could I object? She had done everything she could to me anyway, and I had to look as though I didn't care. I said, "No, Your Honor, that is O. K."

So she went back. He said to her, "Miss So and So, do you think if I were to

hand you a pencil you could demonstrate to this jury how the shots sounded to you with reference to spacing, if any?"

"Yes, sir."

She took the pencil he handed to her, and she sat there, and he said, "Please indicate on the arm of the chair."

She took the pencil, and here I am with my stomach churning some more, but I am smiling. (laughter) She had the pencil, and she took her time. That makes it worse for you. (laughter) And then she went tap-tap, and so help me there was a space, and tap-tap-tap. It was like that.

Well, I can tell you that if there ever was a person relieved, it was me. I couldn't say anything. Naturally I couldn't express myself. The district attorney turned to me, and it was evident he was completely taken off his feet. All I did was say, "Your Honor, I suppose the district attorney will stipulate with me that there was an appreciable spacing between the second and third shots."

What could he do, poor guy? He said, "Yes, Mr. Giesler, there was." It was in the record anyway.

And then the Court said, "Mr. Giesler, do you have any questions of this witness?"

I said, "No. Thank you very much, Miss So and So." And she stepped down thinking she had done a lot of harm, but it had helped us terrifically. It was a gamble in the dark as far as I was concerned.

Afterwards I found out the deputy prosecutor had been taking some night schooling at the University of California in a new course on human equations or something—how sounds make a difference. I am not sure just what it was. (laughter) I have never tried anything like that since either. But that actually happened, and it got us over an awful hurdle.

Another thing that has been asked me many times is what has been the hardest case I have ever tried throughout the years, and I have tried to figure that one out many times. I finally came to the conclusion that I had two or three which possessed the possibility and one in particular. One I believe really fills the bill as being the hardest case.

I was representing a politician in Los Angeles who together with about eleven other people was on trial charged with conspiracy. Conspiracy, of course, involves the world, if you want to put it in, and they charged all twelve of these people with conspiracy. I represented just one, my politician, and each of the others had a lawyer. So we had twelve defendants and twelve lawyers sitting on the defense side of the table all crowded together.

Well, the case started and went along for a day. My client's name wasn't mentioned. Another day went by, and my client's name still wasn't mentioned. It went along for a week, and my client isn't mentioned, and here I am in the midst of eleven other lawyers with my mouth shut, and I couldn't open it, because if I did, I would probably bring my client in. All these other lawyers are jumping up and objecting and cross examining and asking this, that and the other, and I was always worrying that they would ask some question that would bring my client into the case. They never mentioned him for a whole week.

The second week went by, and my client isn't mentioned. I was losing weight. I wish I could lose some weight now. (laughter) I was losing weight in that trial, and I need another one like it. I was so nervous I couldn't say a word. You know

what it means to sit and not talk? I am hired and paid to talk, you know. (laughter)

The third week came and went, and my client isn't mentioned. I am not telling this as a joke. This is the truth. The fourth week comes and goes, and my client isn't mentioned, and I was just about ready for I don't know what—one of these examinations for some kind of nervousness.

Well, that case actually went along to the end of the prosecution's case—I think it was six weeks—and they never mentioned my client. So when the prosecution finished, I got up with the balance of the strength I had left, and I said, "Your Honor, my client hasn't been mentioned."

"No, Mr. Giesler?"

"I move, Your Honor, to dismiss my client."

"Motion denied." (laughter)

That is the absolute truth. If I ever looked nonplussed, I looked it then. But that was the judge's decision. These eleven defendants could put on their defense, because they had all been mentioned and were all involved. So the case went on. Weeks passed. And there I was, sitting there, and I couldn't open my mouth. My client wasn't mentioned at all throughout the defendants' case. Under different circumstances that probably would have been good, but it wasn't for the lawyer. Well, so help me, that case went all the way to the finish, and my client was not mentioned. Finally, when the evidence was all in and the case was a closed book and my man had never been mentioned, I gathered what little strength I had left and got up. I didn't even get to ask the Judge for a dismissal. He recognized there was nothing further he could do except to dismiss the case against my client, and my client went hence, and I went hence a much thinner man.

I asked that judge later why he let me stay there through all that trial, and he said, "Well, Jerry, I thought that was a political case, and there was a lot of political ramifications to it, and I thought I might just as well let the matter go clear through and give them every chance to say what they wanted to say."

I said, "You didn't think much about me sitting there all the time." I will tell you that that was the most terrific strain I was ever under. That was really the hardest case I ever tried, and it was a case in which I never had a chance to say a word other than to make a motion for dismissal which was denied. (laughter)

During prohibition I represented a colored gentleman charged with selling some liquid material he wasn't supposed to sell. It was tried in a little town named Watts. You heard a lot of puns about Watts, and it has a different name now. Anyway, he was living in Watts, and he was tried in Watts, and the judge in Watts wasn't a lawyer. He didn't have to be at that time. He was a cobbler. Whenever he was called upon for judicial duties, he left his cobbling and was the judge.

I was a youngster and hadn't had much experience. We got out there in the morning to try the case, this colored gentleman and myself, and the district attorney hadn't shown up.

The judge said, "We will wait another half hour."

All right. Half an hour went by, and the district attorney didn't show up. An hour went by, and the district attorney didn't show up.

So the judge said, "Well, Mr. Giesler, we will go ahead now. I will represent the people, and you represent the defendent" (laughter).

I said, "You can't do that."

He said, "Yes, I will represent the people. You go ahead and examine the jury first." (laughter)

So I went ahead and examined the jury, and I challenged one or two, and he challenged a couple, and we finally got a jury.

He said, "I will call the first witness for the prosecution." And he put him on, and he said, "You may cross examine." If I made an objection, he would pass on it, and we would continue. He said, "Mr. Giesler, you open for the defense, and I will close for the prosecution." And when the time came, he got off the bench and talked for the prosecution. (laughter) That actually happened. It was in the newspapers.

Well, in the end the jury disagreed, and that was the end of that law suit. (laughter) But that was also one of the hardest cases I had to try. (laughter)

Well, I don't want to take up too much of your time. I have just one or two more. Is that all right, or do you want me to stop? (applause) Thank you very much. I don't want to overdo this. I hope these few things will be helpful to the young lawyers here. I don't want the older ones to think I am trying to tell them anything, because I am not. I don't know any more about it than they do. A lot of it comes in the breaks, you know.

I am a great believer in settlements in civil cases. I believe there is no law suit too good not to settle. That is my own personal point of view, and maybe I am wrong. I have in my office an old clipping I cut out of a newspaper a long time ago. It is a picture of what they call the law suit cow. It is a picture of a plaster of paris cow they sold to farmers called the law suit cow. At the head was the plaintiff pulling the horns, and the defendant was pulling the tail. On a pile of law books down here was the lawyer milking the cow. (laughter) This is only for lawyers. It isn't for any clients. (laughter) Windsor McKay said, "The only trouble with this picture is that there should be a pile of law books on the other side with the other lawyer milking." And then he gave some apt illustrations about different law suits. One was about a law suit down in South Carolina where one man borrowed a whip from his neighbor, and he hadn't given it back for seven years. When the neighbor came to get it seven years later, seven inches were gone. So the fellow wanted his seven inches of whip, and the other fellow said he didn't have them. The suit took seven years and cost $7,000.00, and it never became final.

If my clients are hard-headed, he or she—of course, it is the man who is usually hard-headed—I pull that picture out and show it to them just as an illustration of the law suit cow, because it is so true, as we all know. There is no law suit really honestly and sincerely down to earth so good that it probably wouldn't be the best judgment to settle it on the basis that would be honorable. You know it, and I know it.

I have set down here what I call some simple and basically sound unwritten rules of conduct that I have personally set down through the years of my experience that I feel are important. They apply not only to lawyers and clients, but they apply to anyone in life, and they apply throughout life as well as in the court room.

Number one: The cheapest and most valuable asset of all that I have ever been able to discover is courtesy, common, ordinary, every-day courtesy. It takes less effort than to be unpleasant. It helps the giver as well as the receiver.

Number two: Always keep your sense of humor. Take it with a smile. Never lose your temper or become disturbed. It won't do you any good. It doesn't help you. It doesn't get you over any bumps. All it does is tear you up inside. It isn't good to have that tearing going on.

Number three: Learn to take it on the chin. There is not a lawyer, and I don't care who he may be, that hasn't had to take it on the chin. There is not a lawyer sitting in this room today who will not have to take it on the chin before he concludes his practice. We all do. You have got to learn to take it. No man can win all law suits. There are bound to be some you are going to lose, although you try as hard as you can and do everything you can. So learn to take it on the chin. That is something I have always compared with boxing. It used to be called prize fighting, but now it is called boxing. One reason why I accepted the position as Chairman of the California State Athletic Commission—we had charge of the boxing and wrestling in California for about five years—was because I liked to go to these boxing matches at the stadium and watch those boys in action, because it reminded me so much of the court room—what we have to put up with and what we have to learn. I saw those boys going forward, and one of them would get a blow in the second round and go down for the count of five, and he would get up and go on and would be down in another round or two for a count of eight or nine, and he gets up and keeps on going and has the courage to fight, and it may come to pass that the other chap finally goes down, and he is down for the count of ten, and the fellow who has been down three, or four, or five times comes out the winner. That happens in the court room. Learn to take it on the chin and get up and go on again.

You have got to do that in court. One day you will come out feeling wonderful. You feel you have got them licked all the way around. The next day you go back, and the other fellow comes out feeling better than you. You never know until it is over, until the final bell, until the judge has given his decision or the jury has spoken. You never know what is going to happen until it is all over, so never give up. Take it as it comes.

Number four: Work. Work hard. Work harder, and work still harder. Work is the greatest tonic for your success. We all know that. We all admit it. And then relax when the case is over or when your work is done. Relax. Forget it. Let it roll off your shoulders, and you will not be affected by work.

Number five: Never get too big or too old to learn. I don't care how old you are, how long you have practiced or how much success you have had. No one ever gets too old to learn. Don't forget that, because there is a lot of truth in it.

Number six: Never discredit the little things, because they may be the guide posts to bigger things. How do you get to these mountains if you have never been there before and you don't know anything about them and don't know the way? You look at those little signs that point the way. You follow those signs, and you get there successfully. It is the same way in a law suit, and it is the same way in life. There are little signs all along the road. If you will observe them, watch them, follow them, you will never regret it, because in the end they will bring you to what you are looking for if you are entitled to it.

Number seven: Never get the idea that you and you only are the only one who can do the job. You and I know that the cemeteries in every state and town in this world disprove that very fact. There is always somebody ready to go ahead, and perhaps they will do even a better job than you.

Number eight: Never get envious or jealous. That won't help you. That will not solve your problem. All that will do is turn over your stomach and keep turning over your stomach until you get something that will put you in the hospital. Envy and jealousy has no place in your everyday life, because it doesn't help you. If it would help you, it would be fine, but you know and I know that it doesn't help you.

Number nine: Be accessible. Have ready ears and be alert. The best tips some-

times come from the strangest places and the strangest people. I want to tell you right now that in some of the law suits I have tried I have learned something from some person who has been sitting in that court room. You know there are a lot of people who come to these trials, especially trials that have any public attention, and there are hangers-on, and some of them are nondescripts. They come and sit day after day throughout the trial. Watch! Watch! Watch! Watch every movement in the court room. As I have come out of the court room at noon time or during a recess, some of those fellows will catch hold of me and say, maybe, "Jerry, I saw a certain witness talking to a juror at recess time." Or perhaps they will say, "I saw a witness doing this or a juror doing that or somebody else doing this. " You never know. They may give you other things they have learned or things that may come to their minds that may help you. Never turn away from anyone if you are trying something important in the court room.

Perhaps I carry that to extremes. Some of the cases I have tried have attracted nationwide attention because of the names of the people involved. I have had cases where New York and Chicago and other papers have carried the story, and I have had people call me up long distance on the phone. The operator will call and say that there is a phone call for me from New York or Boston or someplace else and will I accept the charges. At first I didn't accept these reverse charges, but I finally decided that maybe I better. If I am trying a case or there has been something in the papers about me representing some client and someone calls from any place, and I don't care where, at any time, and if the operator says the charges are to be reversed and they don't want to give their name, I accept it. I attribute the winning of one of the most important cases I ever had to the fact, in the final analysis, that information came to me from New York from a person back there who didn't want to disclose his identity, who had some valuable information about one of the most important of the prosecuting witnesses. I got the information over the telephone during such a call. So I do it. I do it constantly, and I always do it.

Be accessible. Of course, you can carry it to an extreme. I know that. In a case I was trying about a year or so ago I got a call about 3:00 o'clock in the morning. It awakened my wife first, because she is over on that side, and she said, "Jerry, somebody on long distance wants you to accept the charges from back in Virginia."

I was in the trial of this case, so I said, "All right, I'll take it." I got up, and there was some woman on the phone.

"Mr. Giesler," she said, "I noticed your picture in the paper in connection with this case."

I said, "Yes, what about it?"

She said, "You know, Mr. Giesler, I have one of the best hair restorers you ever heard of." (laughter)

I paid for the call and thanked her, but I still haven't got my hair.

Number ten: Follow your hunches. I compare that to a woman's intuition. Women are usually pretty much right, too. I always talk over my cases with my wife and with my secretary. I don't tell the secrets, naturally, that you are not supposed to divulge, but we talk over tactics. This is no reflection on my wife or secretary, but I talk it over with them and get their reactions, particularly today when we have so many women on the juries. A woman can tell you more about their reactions on a certain point than a man can hope to learn.

Sometimes I practice on my wife, when I am trying a murder case, to try and find how the bullet went in—not with a loaded gun (laughter) but with a gun. I had one case in particular where I represented a man who was charged with killing his

wife and her paramour. As far as the paramour was concerned, there wasn't much question about it. But why should he kill his wife? Well, he said he didn't. The only trouble was that one of the five bullets that hit his wife went in her back. That was something hard to explain, you know. It was a little difficult. (laughter) But he said it was not intentional and that it was an accident. She got in the way somehow. However, we had to prove how that could happen. Now I don't want to get myself involved as an expert, which I am not, in the field of big game hunting. But the force of a rifle bullet, when it hits an animal, has a tendency to throw it off balance and sometimes spins it from one side to the other. So we figured out that one of the bullets hit his wife's shoulder in such a way that it turned her around, and another bullet went in her back. Anyway, what I am trying to tell you is to use your wife sometimes. It helps you. (laughter) Don't let her know you are using her as a guinea-pig, because if you do, you are not going to have much happiness around.

Number eleven: Stick to it. We all know that is very important.

Number twelve: As a lawyer retain your confidences inviolate. That could be for anyone, but it is particularly important for lawyers. We are exposed to it in the first instance, and in the second instance our client expects us to.

Number thirteen: This is very important. Keep faith with your own conscience. Always keep faith with your conscience. Then you will be able to go home at night and sleep even if you are working hard and going at it hammer and tong. If your conscience is satisfied that you have done right during the day, you will sleep at night.

Number fourteen: Always be yourself. Don't envy somebody. Don't try to pretend you are something you are not. I won a very hard case—I guess all of them look hard when one looks back—not because of anything I did, but because the district attorney changed his pace, so to speak. I honestly believe that. He was one of those real tough buys. He always was jumping around and hammering the desk and hollering and accusing you of everything. And he had always succeeded. It wasn't done by a friend of mine, and he didn't do it for that purpose, but somebody suggested that he try this particular case differently. He said, "You know when Giesler comes in and tries a case, he always tries to be courteous and always tries to be fair in his manner. Why don't you do the same thing? You will take him off his feet."

So when it was time to try the case, I expected to find somebody biting nails. And what do I find? Here is this bird so gracious, overly gracious, Gaston stuff. To cut it short, I honestly and truly won that case just because that fellow changed paces. No kidding, he wasn't any good at all. He hadn't been used to it. He hadn't practiced it, and he didn't succeed, so he lost his law suit. That is actually the truth. Always be yourself. Don't try to be somebody else.

Number fifteen: This is the last one of these rules, and it is as important as number one, which is courtesy. These are the two most important. Practice the Golden Rule. Treat others as you want to be treated yourself.

I say to you that those rules, so far as I am concerned, have proved very important. I have jotted them down as the things which have been most important to me during my experiences. Those are the fifteen rules that I call my fifteen unwritten rules of conduct.

To conclude I want to read to you a quotation I found in the newspaper. The author is said to have been the late President Theodore Roosevelt. President Roosevelt once said, "It is not the critic who counts, not the man who points out how the strong man stumbles, where the doer of deeds could have done better. The credit belongs to the man who is actually in the arena, whose face is hard with sweat and dust and blood, who strives valiantly, who errs and comes short again and again,

because there is no effort without error and shortcoming, but who knows the great enthusiasm, the great devotions, who spends himself in a worthy cause, who at the best knows at the end the triumph of high achievement and who at the worst, if he fails, at least fails while daring greatly. So that his place shall never be with those cold and timid souls who know neither victory or defeat."

Ladies and gentlemen and friends, I want to say to you sincerely and honestly that I have enjoyed being up here and meeting you all, and thanks a lot. (applause)

PRES. MARCUS: That speech sort of opened my eyes. I rather enjoyed the latter part of Mr. Giesler's talk, but I can't say the same for the first part. I had lunch with him, and he talked about only one cause of action against the President of this Bar. Now he has said he has two or three law suits against me. I think I will have to have a consultation with my attorneys rather soon.

MR. GIESLER: Well, I forgive you. (laughter)

PRES.: We require that be in writing. He didn't know it, but I really had him anyway. We have a rule here in Idaho that requires him to be a licensed attorney before he can practice law over here, so I had a sleeper on him all the time.

Mr. Giesler, I sincerely thank you on behalf of the Idaho Bar. Certainly your great ability has been demonstrated in this talk. I might say that when you meet Mr. Giesler, you know that in addition to his wonderful ability as a member of our profession, he is a very fine and gracious gentleman as well. I thank you again.

Ladies and gentlemen: We have some other guests who are attending some of our Bar meetings. There may be others, but there are three or four that we do know quite well. One is Bill Ennis who really is an Idaho boy, but who wandered up to Spokane and who is Past President of the Spokane Bar Association. Bill, will you stand and be recognized? (applause)

I would also like to introduce Mr. Walter Robinson of the Yakima, Washington, Bar. (applause)

Mr. Price of the Houston, Texas, Bar has attended some of our meetings, but he is not now present.

Mr. Wells from Spokane; Mr. Frank is here from the Baltimore Bar. Mr. Acker from Seattle.

Following a recess we will divide into groups to form the workshop section of the Bar. The section on Trial Techniques—Introduction of Evidence will be held here in the opera house, and the section on Business Financing, Stock Issues and so on will be held in the skiers' chalet between the Post Office and the Challenger Inn. Each section will terminate its discussion whenever it desires, and recess until tomorrow morning.

(The educational sections were conducted informally and are not reported.)

SATURDAY, JULY 15, 1950, 9:30 A. M.

PRESIDENT MARCUS: Gentlemen, the meeting will come to order. Yesterday afternoon we had a couple of matters that we passed in the interest of time. One was a paper by Randall Wallis on Constitutional Amendments to Provide Unified Court System. Mr. Wallis has requested that instead of reading and presenting his paper that it be included in the proceedings without being read this morning, and we have reluctantly acceded to that, because our time will run short. I certainly wish that we could hear Mr. Wallis, because it is a very pertinent question, and it is a very good paper, but it will be in the proceedings, and we hope that you will all read it. Mr. Wallis is a former President of the Third District Bar Association, and I think that

because he got out of this this morning, we will just put him on the program next year. (Mr. Wallis' paper follows).

CONSTITUTIONAL AMENDMENTS TO PROVIDE UNIFIED COURT SYSTEM

Mr. President, Members of the Bar of Idaho, and our Guests: The subject of this paper is not a new one for the members of the Idaho State Bar. Many words have been written and spoken upon this subject at past State and Local Bar Meetings. Probably one thing in particular that makes this subject difficult is the lack of uniformity in the thinking of the attorneys as to what constitutes a unified Court System. If such a System can be agreed upon by the Bar, the matter of the Constitutional Amendments necessary to effectuate such a System will be a relatively easy matter.

By way of a brief review, there are some members present who will recall that in 1932 the Third Report of the Judicial Council of Idaho made a rather exhaustive report having to do with the establishment of a Judicial Council, reports of survey committees, regarding the work of the courts, proposing a Judicial Reorganization, recommending redistricting, and a non-partisan election. It also recommended abolitilon of Probate Courts, appointment of Clerks of Courts, revamping of the Justice of the Peace Courts, proposing statutory amendments and proposing Constitutional Amendments necessary to effect the recommendations of the Council. Some of the recommendations of this Council have been carried into effect, largely through Legislative action rather than by Constitutional Amendment.

Again reviewing for you, the latest action of the State Bar was that taken at the special meeting of the members of the Bar Association held in Boise in December, 1948, prior to the convening of the 1949 Session of the Legislature. At that meeting it was determined to bend every effort toward securing an increase in the salary of the Justices of the Supreme and District Courts. An increase in salary and the establishment of the Court Coordinator were accomplished at the Regular Session of the 1949 Legislature. At that Session an attempt was made to lay the ground work for future Court Reorganization.

Two resolutions were introduced proposing to amend the Constitution to eliminate the Probate Court as a Constitutional Court but leaving it as a statutory Court until such time as the Legislature might determine upon a better Court system. A similar resolution was submitted to accomplish the same thing with Justice of the Peace Courts, no effort being made to eliminate the Courts as such. These two resolutions passed the House of Representatives, but either died in Committee or failed to pass the Senate. Practically identical resolutions were again submitted at the First Extraordinary Session of the 30th Legislature held last February. These resolutions were introduced in the Senate as Senate Joint Resolutions Nos. 2 and 3.

They were defeated in the Senate by a vote of 23 nayes and 21 ayes. The resolution proposing to eliminate the Probate Court as a Constitutional Court provided for amending Section 2 of Article V (which Section provides for the vesting of Judicial Power in certain Courts) by striking the words "Probate Court" and substituting for the words "may be established by law for any incorporated city or town" the words "have been established by law as these may be modified by subsequent Acts of the Legislature, or as may hereafter be established by law."

Section 21 of Article V which provides for the jurisdiction of the Probate Courts was to be repealed and Section 6 of Article XVIII, having to do with the election of certain County Officials, was to be amended by striking the words "Probate Judge."

To accomplish the same purpose with respect to Justice Courts it is necessary that Section 2 of Article V be amended in the same manner as I have pointed out with

respect to Probate Courts by striking therefrom "Courts of Justices of the Peace." Section 22 of Article V providing for the jurisdiction of Justices of the Peace would have to be repealed. Copies of the proposed resolutions introduced at this last Session are attached hereto for the benefit of the record.

The reactions to these proposed resolutions of laymen and a large number of the Legislators representing them in our Legislature were not favorable. In my opinion the reason therefor was that they did not understand that no attempt was being made at this time to discontinue the Probate Court or the Justice Courts as they are now provided for by Statute. As we know, the sole purpose of the resolutions was to lay the foundation for the continuance of such Courts as Legislative Courts until such time as a revision thereof or a better system of Courts inferior to the Supreme Court and District Courts is agreed upon and effected by the Legislature.

It is my considered opinion that if we expect to successfully amend the Constitution in the manner heretofore proposed, each member of the Bar Association must thoroughly indoctrinate respective Legislators and the Public with the purpose to be accomplished by such change. Failing in this, it will be incumbent upon the Bar to evolve the ultimate plan which will supersede the present system, showing that it will serve the ends of Justice in a more efficient manner than is presently being done, prior to amending the Constitution.

Actually, I am only repeating what the late Marshall Chapman said in his paper on Unification of Courts at the 21st annual meeting of the Bar at Sun Valley in 1947, when he said "first agree upon a plan."

As was pointed out in the report of the Judicial Council of Idaho in 1932, "The defects of the present system are that it has developed in a more or less casual and haphazard fashion; that it is top-heavy and that the element of *Management* has been omitted."

Since that time at least a portion of the criticism has been removed by the creation of the office of Coordinator with an appropriation to him to carry out his work. But it appears to me that complete unification of a Court System requires that the "Management" extend beyond the matter of coordinating the work of District Judges, and I am now speaking of a unification with respect to the rule making power of the Courts. Passage of the amendments just referred to would of course not effect this rule making power.

It would seem that in an effort to have a distinct separation of the three branches of our Government, the Judiciary should exercise its functions with complete independence of the Legislature so far as rules of procedure are concerned. And further, that the rule making power, if the Supreme Court is to be supreme, should extend to its authority to make rules of procedure for Courts inferior to it, where there is presently little uniformity.

To accomplish this, it is my opinion that amendments should be made to Section 9 of Article V with respect to the right of the Legislature to provide conditions of Appeal, scope of appeal, and procedure on appeal from orders of the Public Utilities Commission and of the Industrial Accident Board. The language in Section 13 of Article V leaves some doubt as to when the Legislature may provide regulations and methods of procedure of the Courts below the Supreme Court. An amendment to this section of the Constitution specifically vesting in the Supreme Court the rule making power of all Courts below the Supreme Court and eliminating the words "when necessary," which permits the Legislature to act, would certainly clarify and unify the System. As you know, much case law can be found upon the subject and upon the interpretation of the present Constitutional provisions.

Whether it strictly comes within the scope of the title of this paper or not, many changes in our Judicial System have been heretofore suggested which would require Constitutional change. For example, it has been suggested that the term of office of the Justices of the Supreme Court be extended to from 10 to 12 years and that the term of office of the District Judges be extended to from 6 to 8 years. This would necessitate amendments to Sections 6 and 11 of Article V.

Should a plan of the selection and tenure of Judges be adopted in Idaho similar to the California and Missouri plans which were discussed by Judge Baker at the annual meeting of the Idaho State Bar in 1947 and again by Mr. J. F. Martin at the 1948 annual meeting, the same sections of the Constitution to which I have just referred would necessarily have to be amended.

At present the Constitution does not have as a qualification for a member of the Supreme Court the requirement that he be an attorney. Section 23 of Article V at least requires that a District Judge be learned in the law. Some uniformity would be accomplished if a similar requirement applied to the Justices of the Supreme Court.

I regret that more time was not available in the preparation of this paper to more elaborately discuss the subject. However, I think it is obvious that the many suggested changes and ideas that have been advanced from time to time over the past several years would necessarily require Constitutional changes in advance of their adoption. As a practical thing, however, in proposing any Constitutional change, the full and complete program to be accomplished as a result of the proposed change must be available, workable and saleable, first to the Legislators and then to the voting Public.

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF IDAHO SO AS TO CHANGE THE STATUS OF PROBATE COURTS FROM CONSTITUTIONAL COURTS TO LEGISLATIVE COURTS, WITHOUT CHANGING THE STATUS OF COURTS HERETOFORE CREATED BY LEGISLATIVE ENACTMENT AND PRESERVING TO THE LEGISLATURE THE POWER TO CHANGE SUCH COURTS AND CREATE OTHER INFERIOR COURTS, BY AMENDING SECTION 2 OF ARTICLE V, BY REPEALING SECTION 21 OF ARTICLE V, AND BY ELIMINATING THE REFERENCE TO PROBATE JUDGE IN SECTION 6 OF ARTICLE XVIII; SUBMITTING TO THE ELECTORS OF THE STATE OF IDAHO FOR THEIR APPROVAL OR REJECTION THE QUESTION AS TO WHETHER THE CONSTITUTION SHALL BE SO AMENDED; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND FILE A STATEMENT SETTING FORTH THE SUBJECT MATTER OF THIS PROPOSED CONSTITUTIONAL AMENDMENT; AND DIRECTING THE SECRETARY OF STATE TO GIVE LEGAL NOTICE THEREOF.

Be Is Resolved by the Legislature of the State of Idaho:

SECTION 1. That the Constitution of the State of Idaho shall be amended so as to change the status of probate courts from constitutional courts to legislative courts, without changing the status of courts heretofore created by legislative enactment and preserving to the Legislature the power to change such courts and create other inferior courts, this to be done by the following amendments:

(a) Amending Section 2 of Article V by striking therefrom the words "probate court," and substituting for the words "may be established by law for any incor-

porated city or town," the words "have been established by law as these may be modified by subsequent acts of the Legislature, or as may hereafter be established by law."

(b) Repealing Section 21 of Article V.

(c) Amending Section 6 of Article XVIII by striking the words "a probate judge."

SECTION 2. The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows: Shall the Constitution of the State of Idaho be amended so as to change the status of probate courts from constitutional courts to legislative courts, without changing the status of courts heretofore created by legislative enactment and preserving to the Legislature the power to change such courts and create other inferior courts, by striking from Section 2 of Article V the words "probate courts," and substituting for the words "may be established by law for any incorporated city or town," the words "have been established by law as these may be modified by subsequent acts of the Legislature, or as may hereafter be established by law," by repealing Section 21 of Article V and by striking from Section 6 of Article XVIII the words "a probate judge?"

SECTION 3. The Attorney General is directed to prepare the statement required by Chapter 159 of the 1949 Session Laws and file the same with the Secretary of State within the time therein prescribed.

4. The Secretary of State is hereby directed to publish this proposed constitutional amendment for six consecutive weeks prior to the next general election in one newspaper of general circulation published in each county of the state.

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF IDAHO SO AS TO CHANGE THE STATUS OF COURTS OF JUSTICES OF THE PEACE FROM CONSTITUTIONAL COURTS TO LEGISLATIVE COURTS WITHOUT CHANGING THE STATUS OF COURTS HERETOFORE CREATED BY LEGISLATIVE ENACTMENT AND PRESERVING TO THE LEGISLATURE THE POWER TO CHANGE SUCH COURTS AND CREATE OTHER INFERIOR COURTS, BY AMENDING SECTION 2 OF ARTICLE V AND REPEALING SECTION 22 OF ARTICLE V; SUBMITTING TO THE ELECTORS OF THE STATE OF IDAHO FOR THEIR APPROVAL OR REJECTION THE QUESTION AS TO WHETHER THE CONSTITUTION SHALL BE SO AMENDED; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND FILE A STATEMENT SETTING FORTH THE SUBJECT MATTER OF THIS PROPOSED CONSTITUTIONAL AMENDMENT; AND DIRECTING THE SECRETARY OF STATE TO GIVE LEGAL NOTICE THEREOF.

Be It Resolved by the Legislature of the State of Idaho:

SECTION 1. That the Constitution of the State of Idaho shall be amended so as to change the status of courts of justices of the peace from constitutional courts to legislative courts, without changing the status of courts heretofore created by legislative enactment and preserving to the Legislature the power to change such courts and create other inferior courts, this to be done by the following amendments:

(a) Amending Section 2 of Article V by striking therefrom the words "courts of justices of the peace," and substituting for the words "may be established by law for any incorporated city or town," the words "have been established by law as these may be modified by subsequent acts of the Legislature, or as may hereafter be established by law."

(b) Repealing Section 22 of Article V.

SECTION 2. The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows: Shall the Constitution of the State of Idaho be amended so as to change the status of courts of justices of the peace from constitutional courts to legislative courts, without changing the status of courts heretofore created by legislative enactment and preserving to the Legislature the power to change such courts and create other inferior courts, by striking from Section 2 of Article V the words "courts of justices of the peace," and substituting for the words "may be established by law for any incorporated city or town," the words "have been established by law as these may be modified by subsequent acts of the Legislature, or as may hereafter be established by law" and repealing Section 22 of Article V?

SECTION 3. The Attorney General is directed to prepare the statement required by Chapter 159 of the 1949 Session Laws and file the same with the Secretary of State within the time therein prescribed.

SECTION 4. The Secretary of State is hereby directed to publish this proposed constitutional amendment for six consecutive weeks prior to the next general election in one newspaper of general circulation published in each county of the state.

PRES.: Another matter that we passed up yesterday afternoon was a talk by Mr. Ralph Litton, Bar Commissioner for the Eastern Division, on the Interstate Bar Council, and at this time I would like to present Mr. Litton who will tell you about that particular matter. (applause)

MR. LITTON: Mr. President, members of the Bar and friends: On the advice of my questionable counsel here, I threw away my manuscript. Perhaps part of it will appear in the publication, but I understand our Secretary is very careful in his editing of our annual proceedings.

I do want to say this: After much deliberation, much investigation and thought by the Commission, we joined with the eleven western states in forming the Interstate Bar Council. The Council has what I consider a very fine preamble. It has worthwhile objects and aims. The purpose of it is not so much to improve the administration of justice or to help the lawyers in their profession, but it is rather to preserve as much as we can the American way of living.

We believe—and when I say "we" I speak for the members who attended the council, and I had that pleasure last winter at the Salt Lake meeting—as Chief Justice Marshall did, that it will take perhaps as much effort to retain the Constitution as it took to get it in the first place.

It is with that in mind that we have attempted to bring the Bars' point of view to the public not only from the standpoint of lawyers, but to have lawyers understood and recognized upon the local level.

When I first considered the subject "Idaho Joins Other Western Bars," I was somewhat at a loss as to how it should be presented, for the reason that this organization is new, and more in the formative stage than a completed and functioning one. I am conscious of the fact that I must limit myself to what it hopes to accomplish in the future, rather than what it has done to date.

Realizing that the members of the Bars of the Western States should become better acquainted with one another, that they have many mutual problems, and that through closer association and cooperation, much good could be accomplished, a group of distinguished western lawyers with Harry J. McClean of Los Angeles, then president of the California Bar, acting as temporary chairman, undertook to

organize eleven western states into an organization to be known as "Interstate Bar Council." These men, after much careful study and consultation with attorneys from other states drew up the present Articles of Association of Interstate Bar Council, which were duly submitted to the various eligible state Bar organizations for ratification. The eleven states included in the plan are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. All of these states have joined according to the latest report except Arizona, New Mexico and Oregon. One or more of them may now be members.

The articles of association are brief and to the point and undoubtedly the best evidence of the aims and objectives of the council, so with your permission I shall review them briefly. The preamble is as follows:

> "In a changing world whose established order is dislocated by impact of global war and conflicting ideologies of government, with infiltration of such foreign ideologies in our own Government, it is fitting and necessary for organized Bars of the western states to associate themselves together for the better discharge of public duty and for the better protection of the welfare of the legal profession."

There are five main purposes set forth in the articles which in substance are as follows:

1. To explore and investigate areas of danger to our traditional form of representative government within the United States and particularly in the several states which are members hereto.

2. To alert public thinking on the dangers threatening the American constitutional system of representative government, and the traditional philosophy of free enterprise.

3. To consider and recommend to the members methods of counter-attack in defense of the American constitutional system of representative government and the protection of individual rights and freedom.

4. To consider and promote needed changes in either the expression or the exercise of constitutional government within its framework, and to consider and recommend to the members all available lawful means of any resistance to any change not within our recognized governmental bounds.

5. To advise and promote such programs as shall relate to the welfare of the profession of law, including, but not limited to, admission standards, admission procedures, post-admission educational work, disciplinary procedures, improving the administration of justice, and the unlawful practice of law. Membership is limited to state Bar organizations, which shall become signatories to the articles of association through the authorized officers of the various state organizations, and any state joining shall continue as a member until such time as it resigns, withdraws, is expelled, or the organization disbands.

The articles provide that the council shall have neither assets nor liabilities, that expenses of providing a meeting place and costs incidental thereto for the annual meeting of the council is to be provided by the member in whose state the meeting is held. Expenses of the officers of the organization and that of delegates is provided and secured, other than from or through the council. Each member state has three delegates to the annual meeting, and each delegate is entitled to one vote in person. Officers are elected for the term of one year or until their successors are elected and qualified. One meeting is to be held each year at such time and place as the delegates or officers shall determine. The articles of association also

provide that the council shall impose no financial liabilities, make no commitments of position or policy binding upon any member.

I had the privilege of attending the first annual meeting of the council which was held last March in Salt Lake City, Utah. Most of the member states were represented, Washington and California having large and outstanding delegations. A permanent organization was formed, with Mr. McClean as president. Many important subjects were discussed among which were State Bar Convention Programs, Public Relations of a State Bar, Bar Leadership at the Local Level, Continuing Education of the Bar, and Bar Administered Examinations.

The last named subject was ably presented by Mr. Eugene Glenn of San Diego, California, who is chairman of the National Conference of Bar Examiners. Among the suggested plans that received consideration was one to the effect that it might be well for the member states of the council to try out a uniform Bar examination. The same questions would be used in each state and the examinations given upon the same day, and all papers would be sent to a central grading committee for grading. This plan was held over for further study and consideration.

You will note from the preamble and the aims of the council, as set forth in the articles of association, that the council does not restrict itself to the welfare of the members of the profession and the improved administration of justice, but also believes that it is the duty of the law profession through its organizations, as well as individually, to openly advocate and defend our representative form of constitutional government and free enterprise, and to openly oppose all "isms" and subversive elements. It also recognizes that a free Bar is not only essential, but is best qualified to meet this challenge as it has in the past. These matters are forcefully brought before us by the present wide spread unrest in the world, the threats of the many "isms" and the world tendency toward the "Welfare State." We should all recall the words of Chief Justice Marshall when he said "It would require the same exertions to keep the constitution, as were necessary to obtain it."

Idaho became a member of the council only after extensive study and deliberation by the Commission, and I am sure that it is a fine and worthy organization, and that there is need and justification for it in our professional field. Also, that much good and many worthwhole advantages will come to our association and members of our Bar through our joining with the western Bars in forming the "Interstate Bar Council." Thank you.

PRES.: At this time I present Commissioner Robert E. Brown to welcome the new members of the Bar.

MR. BROWN: Ladies and Gentlemen: It has been indeed gratifying to the members of the Commission to note the number of young men of our profession who have attended the sessions this year at Sun Valley. We welcome you on behalf of the Commission and those present.

To those lawyers admitted to the Idaho Bar since July, 1949, we commend to you a deep interest in this work. The profession is a basic and integral part of your lives. Take an active interest in your Bar. You will enjoy it; you will profit by it through all your life. (applause)

PRES.: We will have the Prosecuting Attorneys Section report by Mr. Howard Adkins, the new President of the Prosecuting Attorneys Section.

MR. ADKINS: I express the regrets of Past President Earl Morgan of Lewiston who was unable to attend and make this report.

The Prosecuting Attorneys Association of Idaho convened in the Red Room of

the Sun Valley Lodge at 9:30 on July 13, 1950. Following a discussion on various topics by the members, resolutions were adopted:

Favoring the adoption of legislation requiring that all state, county and municipal accounts be audited by a Certified Public Accountant; providing a committee to meet with the County Commissioners Association and urge that that association sponsor an amendment to our present law which would clarify the right of the county commissioners to spend public funds for liability insurance; opposing any change in the present "check laws" which would reduce the penalty lower than a felony: recommending an amendment to our liquor law which would make it unlawful for minors to be in establishments where liquor is being sold or dispensed, and an amendment to our beer law which would make it unlawful for minors to frequent establishments maintained primarily for the sale of beer, and that a committee be named to draft legislation for these resolutions.

Following our program, the election of officers for the coming year took place, and the results were as follows:

Howard Adkins, President. And I am glad to have the honor and sympathy which goes with that position, particularly the sympathy of those among you who have been prosecutors.

J. Morey O'Donnell, Vice President; George E. Redford, Secretary; John M. Sharp, Treasurer.

The President has appointed a committee consisting of Earl W. Morgan, Retiring President, T. E. McDonald, Retiring Vice President, and Joseph McFadden, Retiring Treasurer as an Advisory Council.

It is our program to have a meeting of the Prosecuting Attorneys Association twice a year which we designate as a midsummer meeting and a midwinter meeting. At these meetings we have been fortunate in having a representation of from 50% to 75% of the prosecuting attorneys in attendance. I don't know whether we can attribute that to the fact that they are interested in the work or perhaps to the fact that some of them have been able to convince their county commissioners that they were on county business. We hope it is the former. In these meetings we have attempted, in so far as we can, to coordinate the law enforcement of the different counties in an effort to make it as uniform as practicable and possible, and we hope that in and by these meetings we will be able to render the service which the prosecuting attorneys should for their counties and the state.

PRES.: Thank you, Howard. It is rather difficult for me to introduce the principal speaker this morning without some personal emotion. Judge Koelsch is retiring from the Bench this year, and we suffer a distinct loss not only in our district but in the entire state. Judge Koelsch is this kind of a man; if he was your father, you would want the entire world to know that he was your father; we lawyers in the Third District have somewhat that same feeling for him. We want everybody to know that he is our Judge. Judge Koelsch falls into the category mentioned by Jerry Giesler yesterday. He is a sweetheart of a Judge. It is a great pleasure and an honor to me to introduce Judge Charles F. Koelsch. (applause)

JUDGE KOELSCH: Mr. President, Fellow Members of the Idaho Bar, Ladies and Gentlemen: When Mr. Marcus, our President, asked me to appear on the program at this convention, I protested that I did not have the spare time to prepare an article such as is expected on an occasion of that kind.

"Oh," said he, "Tell us of some of your experiences during your almost 21 years as District Judge; tell us of the amusing situations, and of the witty and humorous incidents; in short, tell us in 'lighter vein' of your experiences."

I accepted the alternative, but believe I got the worst of the bargain. I say this, District Court proceedings do not furnish many amusing incidents, or incidents that permit of "light vein" treatment. Litigants generally come into court in belligerent mood, and the proceedings are acrimonious or perhaps such as pull the strings of one's heart.

Furthermore, when I hear a case I am so thoroughly absorbed in assimilating the evidence, and in scrutinizing its admissibility and determining its weight, that many an amusing incident may arise but entirely escape my attenton. I recall one such oversight.

Before the Federal Courts took unto themselves exclusively the hearing of applications for admission to citizenship, I used to have a number of such applications, particularly Basques, at every term of Court in Elmore County. It was up to me to ask such questions as I thought necessary and proper touching the qualification of the applicant for citizenship. On a particular occasion, among the questions I asked of a Basque applicant, was the question: "Who makes the laws in Idaho?" "The Supreme Court," answered the applicant. I merely put down the answer as a mark against the applicant. Not so the late Judge William M. Morgan, who sat in the audience. He chuckled out loud. Later, during recess, he stated, in high glee, "I'm going to tell Judge Budge about that Basque's answer."

Moreover, this faculty of seeing the humorous side of things is a gift not possessed by everybody. Some get amusement out of events that stir the ire of others.

Some years ago the Governor of the state was scheduled to make a speech from the front steps of the State House. Rain caused a postponement. Workmen at that time were remaking the lawn in the State House yard. There are so many trees in our State House yard that grass does not grow very well under them. After they had plowed it and harrowed it, they fertilized it by covering it with a thick layer of barnyard manure. For some time the atmosphere around the State House was not exactly as fragrant as attar-of-roses. Many passersby complained about it, and suggested that the unpleasantness could and should have been avoided by using crushed phosphate or some other commercial fertilizer. One day one of our lawyers, walking past the State House, sniffed the air and dryly remarked: "The Governor must have delivered his speech."

Now, since I was asked to talk about my experiences as District Judge, in lighter vein, I propose to tell you of incidents that appealed to my sense of humor—though I undoubtedly missed some and have forgotten others. But, before I do so, I must tell you how it came about that I was appointed to the office that I have held for almost 21 years.

In the year 1929, there was tried in the District Court in Mountain Home, the case of the State against Florence O'Malia. Miss O'Malia had been County Treasurer, and was charged with embezzling County money. Judge Hartson, my predecessor, presided at the trial, and the late William M. Morgan, who had been, and who thereafter again was a judge of the Supreme Court of this State, was counsel for the defendant, and succeeded in wangling a verdict of not guilty out of the jury. Thereupon Judge Morgan proceeded to celebrate his victory in good, old, pre-prohibition fashion. It happened that Judge Hartson had come to Mountain Home from Boise by train and, having completed his work, looked about for a chance to get a ride with one of the several lawyers who had come from Boise by automobile. Judge Morgan, having come from Boise alone, gladly offered to let Judge Hartson ride back with him. But he realized that he had been celebrating, and that it might be wise to let Judge Hartson do the driving. So Hartson took the driver's seat, with Morgan on his right. Now, Judge Morgan's car did not have the standard gear-

shift, and when Hartson tried to back away from the curb, the car jumped forward across the shidewalk and almost into the plate glass window. Judge Morgan got out of the car as quickly as he could and said, "Hold on; let me get out. I refuse to ride with a drunken driver." This far, the story is quite authentic. I will not vouch for the rest. But the story continues that Judge Hartson, who was a very dignified man and who, I don't believe, ever drank anything stronger than coffee, felt so humiliated over the occurrence that he resigned his judgship, and Governor Baldridge appointed me to fill the vacancy.

After my appointment, and shortly after entering upon my duties, the Bar of the Third District gave a luncheon to honor the outgoing judge and to welcome the incoming one. In response to the speech welcoming me, I remember saying to the lawyers present that I was aware that it was considered a fine tribute to a judge when, after his death, his contemporaries caused to be inscribed upon his tombstone the epitaph:

"Here lies an incorruptible judge."

Of course, I had no misgivings about my honesty in the work upon which I was about to embark, and I told my auditors that I was not worried about my epitaph, but that I did have some qualms as to my capacity. I told them of a remark credited to Governor McConnell when a friend urged him to appoint a certain man to an important office. "I assure you, Governor," said the friend, "the man is perfectly honest." "Oh, damn his honesty," retorted the Governor, "it's his capacity I want to know."

I confess that it was with considerable trepidation that I entered upon the performance of my duties. And I believe that when you recall some of the men who constituted the Bar of the Third District at that time, you will condone my trepidity. The Third District has always had a strong Bar, and has such today. But, in 1929, that Bar included some outstanding members, men who would have been a credit to the best Bar in the United States. Here is a partial list of them:

Ex-Governor Hawley, though destined never to appear in person before me, for he died that year, was still the consulting member of the firm of Hawley and Hawley. His long years of experience had so developed his natural gifts that he was ranked among the great lawyers of the country.

His son, the late *Jess Hawley,* had not only inherited the natural abilities of his father, but by his education and industry had developed as one of the leaders of the Bar.

John C. Rice, who had been a member of the Supreme Court, and was later a judge of the 7th District, though residing in Caldwell, appeared quite frequently before this Court in Ada County. Judge Rice was the first man to address me as "Your Honor," after my appointment.

General Frank Martin, who had been Attorney General of the State, was, indeed, an able lawyer. I know of no man who had a more complete knowledge of the law than did General Martin.

O. O. Haga, a quiet unobtrusive lawyer; a great student, and a clear thinker, in short, a good lawyer.

Frank Wyman; Ralph Scatterday, both excellent lawyers.

E. J. Frawley, for many years my law partner, and as adroit a trial lawyer as can be found anywhere.

E. P. Barnes, who embellished his law with literature; these are some of the men whom I knew would appear before me, and I am sure that those of

you here today who knew them, or any of them, agree that I had good reason to feel diffident.

There is another thing that I remember saying to the lawyers assembled at the luncheon meeting to which I have referred. In addition to giving them the trite promise to devote all of my energies to the work that would come before me, and to give them the best I had—in addition, I gave them the distinct promise that I would decide every case that any of them ever had before me, in their favor, if they were entitled to have it decided that way. Looking back over the record now, I am privileged to say that I fulfilled that promise. I did more. I decided some cases in their favor which the Supreme Court said should have been decided the other way!

I began my career as District Judge at Silver City, the then County seat of Owyhee County. Judge Hartson had set a case for trial on October 1, 1929, the day my appointment went into effect. It was a criminal charge against a man for herding his sheep on cattle range.

Some of you remember, others have read or heard of, the miniature wars that used to surge between the cattle and sheep interests over the public grazing lands. Battles, in and out of court, were frequent, and physical encounters, and even murders, not uncommon. All of you have heard of the Diamond Field Jack case. It grew out of conflicting claims to grazing territory. The respective contentions of cattle and sheep men were that priority of use gave priority of right, a rule recognized by our Legislature (Sec. 25-1907) and by our Supreme Court (S. v. Horn, 27 Idaho 782). All of this is now obviated by the Taylor Grazing Act, and the action tried before me at Silver City was one of the last, if not the very last, of its kind. It marked the end of an era.

This little old mining town of Silver City was crowded with adherents to the one or the other side of the case. Many camped on the hillsides, for no rooms were to be had, the only hotel having been practically pre-empted by the principals on both sides of the case, together with their attorneys. William Healy, now a member of the Federal Circuit Court of Appeals of the 9th Circuit, was chief counsel for the prosecution, while Judge William Morgan was the chief defending attorney.

More active than either counsel or principals in the case was a cattleman named Stauffer. He interviewed witnesses, and advised counsel, and, in general, was the most ubiquitous man in town. On the afternoon of the third day of the trial, the jury brought in a verdict for the State, that is, in favor of the cattle side of the case. You may well imagine that when this verdict came in, Stauffer, the man who was so intensely interested in the case, proceeded to celebrate. By evening his hilarity knew no bounds.

As was usual when Court was in session in Silver City, in the evening a crowd would gather in the lobby of the old Idaho Hotel—the Hotel whose records could tell many a startling story of the pioneer days when Silver City was a booming mining town, with all that that implies. This particular evening the lobby was crowded with men and women who had attended the trial. On one side of the lobby there was a telephone booth housing the only long distance telephone in the City. Suddenly in came Mr. Stauffer, showing considerably the effect of his afternoon celebration. He stepped directly into the booth and placed a call for someone in Boise. Now, this booth was constructed of thin boards, and talk in it, particularly if with the enthusiasm with which Stauffer talked, could be heard by all in the lobby as if there were no booth.

Obviously, Stauffer had read of the laconic report made by Commodore Perry when he whipped the English in a naval engagement on Lake Erie in the War of 1812:

"We have met the enemy, and they are ours."

Only Stauffer made it more emphatic:

"We have met the enemy and licked hell out of them."

On appeal the case was affirmed (St. vs. Brace, 49 Idaho 580).

In 1933 there came to the District Court of the Third Judicial District, an appeal from the Industrial Accident Board in the case of Riley vs. Boise City. This was before the amendment of the Constitution allowing appeals from the Industrial Accident Board directly to the Supreme Court. Mr. Riley had been a policeman of Boise City, and had frozen the big toe and part of the ball of his left foot while on his beat as such police- or patrolman.

The Industrial Accident Board denied his application for compensation under the Workmen's Compensation Law, holding that a policeman was not exposed to greater risk by reason of the inclemency of the weather than the people in general were exposed, and therefore his injury did not "arise out of his employment." Indeed, the then Chairman of the Board thought it quite a joke that a policeman should freeze his toe while on his beat. On the appeal I reversed the Board's decision and remanded the case to it with direction to make an award to the policeman. This time the employer and its surety appealed the case to the Supreme Court. Some time thereafter, the attorney for the employer and its surety came to my Chambers and disconsolately informed me that the Supreme Court had just affirmed my decision in the Riley case. I, jokingly, remarked, "well, that's one time the Supreme Court is right." Said the attorney: "I'll be damned if I believe it yet." (The case is reported in 54 Idaho 335.)

In 1935 the State Commissioner of Public Works had let contracts for the construction of a much needed subway under the railroad of the Union Pacific where these tracks crossed the main highway entering into Nampa. Construction work had barely begun when an action was brought in my division of the District Court by owners of property adjoining the projected subway, asking for an injunction against further proceeding with the work. I granted the injunction upon the ground that under the statutes as then existing, the State had no authority to enter into the contracts involved. Counsel for both interested parties agreed with my interpretation of the statutes, and instead of appealing to the Supreme Court, had the Governor of the State call a special session of the Legislature, which rectified the omission, and ratified the contracts (2nd Ex. Session, 1935.). Thereupon work on the subway was resumed, and in due time the subway was completed.

That fall, on my return from a term of Court at Murphy, I parked my car north of, and across the street from the Dewey Hotel in Nampa. When I came out of the hotel there stood what I took to be my automobile, right in front of the entrance steps to the Hotel. Thinking that it might be some thief trying to get away with my automobile, I rushed up to it, only to find that it was a car just like mine, but was not my car. It was occupied by a lady to whom I apologized for my unceremonious approach, explaining that I had a car just like the one she was sitting in, but that I had parked mine on the opposite side of the street, and was alarmed at finding it here. They were both practically new cars, and she asked me how I liked mine, etc., etc. Because of this conversation I concluded that etiquette required that I should introduce myself. I did this by informing her that my name was Koelsch. "Are you Judge Koelsch, of Boise?" "Yes, ma'am, I am." She fairly bristled: "If I had met you a month ago I would have shot you!" "Over my subway decision?" "Yes, sir." She then laughed, and when I finally left, I felt happy at having met the charming wife of the manager of Montgomery-Ward's, in Nampa.

Those of you who read the Saturday Evening Post must have noticed that every

now and then it contains a short article headed: "You be the Judge." Under it there appears a short statement of the facts of an odd or unusual case in court, and concludes by asking the reader, in effect, "If you were the Judge, how would you decide the case?" Thus, in its June 3, 1950, issue, it gave such a synopsis of the facts in a case that came before the Supreme Court of this State from Kootenai County.

> "Two hawks, fighting in mid-air, locked their talons and fell into a power line. A wing of one hawk touched the high-tension wire and a wing of the other rested against an uninsulated guy wire supporting the pole. Current passed through both hawks, down the guy wire and into a barbed wire fence that had sagged down against the lower part of the guy. The fence soon became so charged with electricity that its heat set fire to a barn and several fields of dry grass. The barn being a total loss, the owner sued the power company."

The question is then asked: "If you were the judge, would you make the power company pay for the barn?"

The case was also summarized in the advance sheets of the Pacific Reporter under the caption "Cases of Interest," and is reported in the 111 Pac. 2nd 872. The case was tried in the District Court in Kootenai County, before a jury which found a verdict for the farmer whose barn had been burned. In the Supreme Court it was twice argued. After the first argument that Court would not agree. And you know that whenever that Court has a difficult case which they do not know how to decide, they pitch upon some luckless District Judge to come up and tell them how to do it. In this instance they called me, and I wrote the opinion affirming the judgment of the lower Court.

Let me now depart from the "lighter vein" material, and call attention to the more serious side of my administration of that Court. First, I call your attention to the volume of work that fell to me during my regime. I cannot give you the exact statistics, but so nearly exact that the variance is insignificant. Since October 1, 1929, I have tried and determined 1,230 contested cases. By the end of the year 1950—which will be the end of my judgeship—this will easily be 1,260 cases. This, for 21 years, makes an average of 60 cases a year, five a month, or 1 1/4 case per week. By contested cases I mean just that. Cases in which attorneys appeared on both sides and strove to win for their respective sides. I cannot tell you how many of these cases were jury trials, and how many were tried before the Court without jury. In many, if not all, of the jury cases there were preliminary questions of law, raised by demurrers or motions, followed by a complete set of instructions to the jury; while the Court cases often involved even greater and more painstaking labor.

In all contested cases involving contested questions of law, or contested questions of fact, or both, I announced my decisions, with few exceptions, by written opinions of from three or four to as many as 16 to 18 typewritten pages. In a few, but only a few, contested cases I announced my decision from the bench.

The statistics just referred to do not include default divorce cases. Such cases are heard on Friday of every week, which is our law calendar day. There is always at least one such default case on every Friday, and often as many as seven or eight. As a very conservative estimate, I would say that the number of default divorce cases heard averages at least two a week. This would be over a hundred a year, or over 2,100 during my regime as District Judge.

We in the Third District believe that when the occasion arises the District Court should give thought to the sociological side of its work. Thus, we have an unwritten rule of court that no default divorce case shall be heard until after the

expiration of twenty days from the day summons was served. That is, though the defendant may appear and consent that his or her default be entered, the case will not be heard until twenty days have elapsed. This gives the parties twenty days cooling off period, and it also gives the judge time, in the proper case, to attempt reconciliation of the parties. And I am happy to say that today I could name a number of couples whom I have induced to condone the past and who have lived happily together ever since.

Nor do the statistics I am referring to include ex parte work, such as granting injunctions, appointing receivers and other trustees, guardians ad litem, receiving pleas of guilty, and the placing of juveniles on probation and work connected therewith.

These statistics may not entertain you as much as they do me, but I believe they convince you that there is not much time or occasion for mirth-provoking incidents.

May I now call your attention to a few of the more important cases, cases of lasting interest in that, after affirmance by the Supreme Court, they set precedents for future guidance, and established permanent principles in the jurisprudence of this State.

Foremost among such decisions is that of Wright, State Auditor vs. Callahan, Comptroller, reported in 99 Pac. 2nd 961. It is hardly necessary to tell you lawyers the law announced in that case. Briefly stated, it is that the Legislature cannot transfer to other officers the powers and functions belonging to offices created by the Constitution.

In my opinion when the case was before me in the District Court, I said in the course of a careful analysis of the statute, the constitutionality of which was involved, that:

> "With the necessity or wisdom of legislation, or with motives that actuated the legislature in the enactment of any specific statute, courts are not concerned. Nor is there involved in the present case any charge or contention of evil design in the enactment of the act under consideration. Nevertheless the principle involved in this act opens the door to a species of political manipulation and fraud, not entirely unknown in the political history of this country. Thus, if the legislative department should be in control of one political party, while some or all of the executive or administrative offices were filled by members of another political party, as not infrequently happens under our bi-partisan system of elections, acts like the one under consideration would offer an effective device by which designing political manipulators could acquire control of the state's official business notwithstanding the contrary verdict of the people as expressed at the polls."

I still think this is good caution to the Legislature.

Of the many cases involving constitutional questions that came before me, the two cases of Moon vs. Bullock, 65 Idaho 594, 151 Pac. 2nd 765, gave me immense satisfaction because the Supreme Court accepted, almost verbatim, my opinion as the opinion of that Court. The actions were an attempt to collect damages from a tort-feasor's estate after his death. The main contention was that the common law rule that the tort died with the death of the tort-feasor is abrogated by the provision of our Constitution that courts shall afford a remedy for every injury of person or property (Art. 1, Sec. 18).

I wrote a 24-page opinion in the cases and, as stated, the Supreme Court adopted it almost verbatim as its opinion. In my opinion, students of law, in particular, will find the opinion profitable reading.

Another important case, and one that placed me into a somewhat embarrassing situation, was the case of Girard vs. Defenbach, 61 Idaho 702, 106 Pac. 2nd 1010. It involved the question whether judges and other elective State officers were required to pay income taxes on their salaries. Thus, I had to pass upon the question whether my own salary was subject to such taxes. I held that it was not. On appeal to the Supreme Court it found the Justices of that Court in the same boat. They promptly affirmed my decision! The statutes have since been amended, and all Judges and State elective officers are required to pay income taxes on their salaries.

Graham vs. Enking, 82 Pac. 2nd 649 (Fruit and Veg. Adv. Act, Constitutionality of (Laws 1937, Ch. 252)) was a difficult case—doubly so because of slovenly language in which written. Concerning the latter criticism, I said:

> "It must be conceded that the language of the act is so slovenly and carelessly written as to evince a lack of study and to justify censure of the legislature for dumping so poorly constructed a statute into the lap of the Courts. It is an illustration of the result of the hurly-burly manner in which the legislature enacts many of our laws."

Anderson Stores Co. vs. Diefendorf: In this case the Supreme Court affirmed my holding the sales tax a valid tax, but reversed my holding that the Sales Tax Act was not subject to referendum vote by the people. It was so submitted with the expected result. The Act was repealed.

Balderston vs. United Mercury Mine: Involving the validity of a tax upon the privilege of mining in Idaho.

Baker vs. Roberts: (Not appealed). Involving the constitutionality of the Small Claims Court.

Assessment of Neon Signs: In 1941 or '42, there came before me a case, not involving a constitutional question or even a deep question of statutory law; in fact, it was more of a question of arithmetic than of law. Science has constructed a very useful species of property that the assessors of the country found difficult to assess equitably. I refer to our Neon signs. No two assessors assessed these lights in like manner.

Neon signs are not sold, but rented or leased, generally at a stipulated monthly rental and for a stipulated term—from three to five years. Often they are designed for the particular business, or name of the owner of the business, e.g., Hotel Boise, Owyee Hotel, or Carl's Market. Hence, at expiration of term, if not renewed, signs are worth only a little salvage. Our assessor Leonardson's formula was not satisfactory. The company sued to recover taxes paid. I worked out a formula which has been adopted by the Assessors' Association of the United States.

I have already stated that we of the Third District Court believe that the Court in its work should, when the opportunity comes its way to further the sociological welfare of the State, do so. On the 21st day of September, 1947, a man by the name of McClure entered his plea of guilty to an Information charging him with the crime of manslaughter. The facts, briefly stated, were that he shot at a robin that was stealing cherries off his tree, with a .22 caliber rifle. The robin was in the top of the tree, and it did not appear whether it was hit or not, but the bullet, in its trajectory flight, came down just as a 14-year-old boy came along on his bicycle delivering newspapers. Evidently the boy was stooping over the handle bars of his bicycle, for the bullet entered his back and pierced his heart. He died instantly.

This boy was the oldest of several children and, because the father was not overly thrifty, the boy was, if not the mainstay, at least a contributor to the support of the family. Therefore, instead of pronouncing judgment of imprisonment against

the defendant, I proposed that he pay an amount to be agreed upon, to the family of his victim. After some negotiations, an agreement was entered into under which the defendant paid $2,500.00 in cash, and agreed to pay $100.00 per month for the next 18 months. This he did. I look back upon the disposal of that case in that manner with a great deal of satisfaction. There is no law permitting such a settlement, nor do I know of any law prohibiting it.

A young couple living in Owyhee County, and having a child two years old, fell apart. The husband left, taking the two-year-old girl with him. About two years later he prosecuted a divorce action in California, to an interlocutory judgment, which awarded the child to him. Through fortuitous circumstances the interlocutory judgment was never followed by a final decree. The evidence justified the finding that the mother never abandoned the child. For a long time she did not know the child's whereabouts. So soon as she learned of it she kept in constant communication with her, and sent her gifts and remembrances. The father, though not qualified to do so, because his divorce decree had not become final, remarried in California. The mother remarried in Idaho. Thereafter, and when the little girl was just about ten years of age, the father came back from California and again took up his residence in Owyhee County.

In February, 1948, the mother made application to me for a writ of habeas corpus, to which the father filed a return, and to this return the mother made answer. At the hearing I learned that each of the parties was competent and qualified to have the child. By reason of the circumstances, and under Sec. 31-1005, I. C. A. (now Sec. 32-1005, I. C.), I concluded to divide the custody of the child equally between the parties, giving her to the father for a whole year, and to the mother during the next. This was done so the girl could attend a full term of school each year, instead of commencing attendance at one school and completing the remainder of the year at another. But, I based this proposed equal division of custody upon an important condition: That each of the parents contribute the sum of $10.00 per month to a trust fund for the girl in the Idaho First National Bank at Boise, until the girl attains the age of 18 years, such fund not to be drawn on except in case of emergency, and except for expenses in case the girl attends a school of higher education. The parents have both so far faithfully made the contributions.

Thus briefly, yet sketchily, I have given some of the high points of the record of my over 21 years of service. Obviously, this record is the culmination of my career. In it lies the achievement of all my preparation; the answer to all my hopes, my ambitions, and to the dreams of my youth.

There are, of course, many matters in it that I would change; many words I uttered that I would recall—but regrets are vain:

"The moving finger writes, and having writ
Moves on; nor all your piety nor wit
Shall lure it back to cancel half a line;
Nor all your tears wash out a word of it."

PRES.: Judge Koelsch, we thank you sincerely. The Chair will now recognize the Chairman of the Resolutions Committee, Mr. George Van de Steeg.

MR. VAN DE STEEG: Mr. President, We, your Committee on Resolutions, hereby make the following report and submit the following recommended resolutions.

This report is signed by myself and the other members of the Committee—R. D. Merrill, J. Morey O'Donnell and Graydon W. Smith. Judge Martin was obliged to return to Idaho Falls, and he was not able to sign this, although he read eight of the resolutions which had been submitted.

RESOLUTION NO. 1

WHEREAS, the success of this, the 1950 Idaho State Bar Convention is due to the untiring efforts of its officers and those who have lent their unstinting time and efforts in the interests of the Bar, and to the excellent services and entertainment provided by the management of Sun Valley;

NOW, THEREFORE, BE IT RESOLVED that the Idaho State Bar hereby extends its deep appreciation to its officers and to all those who have so unselfishly contributed to and participated in the programs of this convention, and to all others who have so generously contributed of their time and talents in the interests of the Bar.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 2

WHEREAS Henry P. Cummock, senior District Court reporter of the State of Idaho and veteran reporter of the Seventh District, has been retired by untimely death:

NOW, BE IT RESOLVED that the Idaho State Bar and Judiciary Section of the Idaho State Bar do express to the family of Mr. Cummock the heartfelt sympathy of the Bench and Bar in his untimely passing and also the appreciation of the Bench and Bar for his long and valuable services as court reporter.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 3

WHEREAS, It is the consensus of opinion of the Idaho State Bar that study and proceedings should be undertaken to clarify certain matters and questions relating to the subject matter of the illegal practice of law;

NOW, THEREFORE, BE IT RESOLVED, that the recommendations made by and contained in the excellent paper presented to this convention by Hon. Frank E. Meek, be implemented by and through a committee or committees appointed by the Commissioners of the Idaho State Bar.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 4

WHEREAS, the law provides that the County Commissioners shall select the jury list at their first meeting in January; and further provides that prospective women jurors shall have fifteen (15) days within which to decline to serve; and,

WHEREAS, the foregoing provisions of law make it impractical to hold jury trials during the month of January except by special venire;

NOW, THEREFORE, BE IT RESOLVED, that legislation be recommended to the Legislature making the jury list available by December 31 for the ensuing year.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 5

The Bar should study the advisability of organizing and providing for the administration of the Idaho State Bar by court rule instead of by statute,

NOW, THEREFORE, IT IS RESOLVED that a committee shall be appointed

to study this question and report with recommendations to the next Convention of the Idaho State Bar.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 6

It is the consensus of opinion of the Idaho State Bar that the presently authorized method of acquiring legal education by law office study to qualify an applicant to apply and take examination for admission to the practice of law, should be abolished;

NOW, THEREFORE, BE IT RESOLVED that the Idaho State Bar go on record as recommending that such standard of qualification to apply for and take the bar examination for admission to the practice of law be abolished, and that the Commissioners of the Idaho State Bar draft and present to the Supreme Court requisite proposed rule of the Supreme Court designed and intended to put into effect the proposal contained in this resolution, PROVIDED, that the rights of persons who have already commenced their course of study under existing rules be recognized and protected.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 7

BE IT RESOLVED: That the President of this association appoint a committee of three members to work with the State Uniform Laws Commission of the State of Idaho and to study, and make recommendations relative to, legislative action upon various uniform laws, and, particularly the Administrative Procedure Act and the Uniform Commercial Code and such other acts as may be suggested by said Commission.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 8

WHEREAS, Necessity appearing for uniform administrative procedure in the State of Idaho,

NOW, THEREFORE, BE IT RESOLVED, that the commissioners of the Idaho State Bar appoint a committee to study the matter of administrative procedure in this state, and to embody their recommendations in a proposed legislative enactment to be prepared and presented to the legislative committee not later than December 1, 1950.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 8-A

BE IT RESOLVED, that the Idaho State Bar reaffirm its action heretofore taken in relation to changing the status of probate and justice's courts from courts provided for by the Constitution of the State, to legislative courts, and that the Idaho State Bar by appropriate committee again cause to be prepared and submitted to the legislative committee, not later than December 1st, 1950, proposed constitutional amendments designed to effect such proposed changes, the same being designed and intended to lay the foundation for proposed court reorganization.

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

RESOLUTION NO. 9

BE IT RESOLVED, by the Idaho State Bar that we reaffirm and re-adopt Resolution No. 9 adopted by the 1948 State Bar Convention save and except the clause in said resolution contained requesting an appropriation from the legislature to meet the expenses of such judicial council for the time therein set forth.

(Note: Resolution No. 9 of the 1948 meeting, after deletion of the clause above mentioned reads as follows:

"WHEREAS, the current codification of the laws of Idaho has demonstrated the need of code revision for the purpose of elimination of obsolete and duplicate laws, the need for continuous study of the substantive law of the state, and the organization, rules, and methods of procedure and practice of the judicial system of the state, the work accomplished by that system and its various parts,

"THEREFORE, BE IT RESOLVED by the State Bar of Idaho that the State Legislature be requested to establish a Judicial Council to be composed of all Justices of the State Supreme Court, all Judges of the various District Courts of the state, and three practicing lawyers of the state to be selected annually by the Commissioners of the Idaho State Bar, one from each Commissioner's District of the Idaho State Bar; that such Judicial Council shall meet annually, but shall provide an Executive Committee of not over seven members to conduct the affairs of the council between meetings, such Executive Committee to consist of the Chief Justice of the Supreme Court, one District Judge from each Commissioner's District, and also the three lawyer members of the council.

BE IT RESOLVED FURTHER that the office of the council shall be in the Supreme Court of the State of Idaho at Boise, Idaho, and that the Executive Secretary of the Council shall be the Clerk of the Supreme Court.

* * *

BE IT FURTHER RESOLVED, that the Legislative Committee of the State be directed to present a bill to the Legislature for consideration, such bill to embody the objectives herein expressed as nearly as may be deemed practicable."

I move the adoption of this resolution. (Upon a vote the motion was carried unanimously.)

MR. VAN DE STEEG: Now that resolution No. 9 is found in the '48 proceedings, and that was the resolution in general providing for the organization of a Judicial Council, and in that resolution, this is one of the clauses: "Be It Further Resolved that the 30th Legislature be requested to appropriate the sum of $10,000.00 to effectuate such Council and to meet its expnses during the period from the effective date of the Act and until the end of the state fiscal year, June 30, 1951." We deleted that for the reason that there was some objection to that made in the Legislature, and the Committee thought that our own State Bar probably would be able to take care of that expense. But otherwise this resolution adopts the one that was adopted by this Association in 1948.

Is there any discussion?

E. B. SMITH: I move that the resolution that you have just read be amended by adding a clause to the effect that the Committee appointed to carry out the resolution make its report to the Legislative Committee together with its proposed legislative draft not later than December 1, 1950. (Seconded. Whereupon the motion was put to a vote and carried unanimously.)

(Whereupon the motion for the adoption of resolution No. 9 as amended was put to a vote and carried unanimously.)

RESOLUTION NO. 10

WHEREAS, A necessity therefore being presently obvious:

NOW, THEREFORE, BE IT RESOLVED, That the legislative committee of the Idaho State Bar draft, and propose to the Legislature of the State of Idaho at its next session and exert its best efforts to obtain passage of an amendment to our present non-partisan judiciary law by requiring that each candidate for the office of Justice of the Supreme Court or of Judge of the District Court definitely state and specify in his nominating petition the particular office to which he aspires by setting forth the name of the encumbent he seeks to succeed and changing the form of the official ballot to conform thereto.

I move the adoption of this resolution (Seconded.). The Committee had in mind the situation as it now is in my district, the Seventh District. Two Judges are to be elected, and anybody can file by getting a sufficient number of signers on his nominating petition. I think that all of us in our district, without exception, desire that Judge Sutton, who is the only present incumbent running, goes back. But as it is now, he has to take his chances and run in a field of candidates for the two judgeships, and it is possible that he might be defeated for that reason alone. The thought we had in mind was that anybody seeking to succeed Judge Sutton would have to set forth in his nominating petition that it was Judge Sutton's office he was trying to be elected to. In all probability nobody would run against Judge Sutton if he knew he had to run specifically and definitely against Judge Sutton. The same thing is probably true in the Third Judicial District as far as Judge Winstead is concerned and in other districts. When we have a good judge that we want to retain, he should not have to run against a whole field.

SAM S. GRIFFIN: Mr. Van De Steeg, that brings up the whole question of selection of judges, it seems to me. Do you have a resolution covering that?

MR. VAN DE STEEG: Yes. The next resolution suggests that a committee be appointed to study the matter.

MR. GRIFFIN: May I suggest that you read the succeeding resolution and then consider them both at the same time.

RESOLUTION NO. 11

WHEREAS, The people of the State of Idaho and especially the Bar of the State are, and should be, vitally concerned in the improvement of methods of selection of Justices of the Supreme Court and Judges of the District Courts; and,

WHEREAS, Provisions and limitations of the Idaho Constitution prevent or may prevent the adoption in Idaho of superior methods now in force or suggested in other states for the selection of judges,

NOW, THEREFORE, BE IT RESOLVED, that the President and he is hereby directed to appoint a permanent committee of the Idaho State Bar of not less than three members with instructions fully to study and consider methods other than now in force in Idaho for the selection of Justices of the Supreme Court and Judges of the District Court and to make its first report and recommendation with draft of proposed legislation deemed necessary to effectuate its recommendations at the 1951 convention of the Bar; that the committee be further directed to advise, by mail, each member of the Bar of this state at least thirty days prior to said convention of the recommendations it proposes to make together with outline of reasons therefor.

MR. VAN DE STEEG: I might say that our committee is indebted to Judge Hugh Baker for these two resolutions. He met with us, and drafted them. Most of you know Judge Baker has given a lot of study and thought to this question.

MR. GRIFFIN: Suppose our general committee, under your resolution No. 11, sets up a scheme which may or may not encompass your resolution No. 10. It can still go to the Legislature before another election of District Judges in 1953. Why not just pass No. 11 and let No. 10 go and let this committee take care of that situation covered by this recommendation at the next Bar meeting?

JOHN CARVER, JR.: It comes up in two years, Mr. Griffin, for the Supreme Court.

MR. GRIFFIN: I had forgotten that. You are right.

MR. VAN DE STEEG: Judge Baker had that figured out. On the Supreme Court there is just one candidate up next time, so that wouldn't make any difference anyway.

RALPH R. BRESHEARS: Well, you can't tell about that.

MR. VAN DE STEEG: No, you can't tell for sure.

E. B. SMITH: I am in favor of both the resolutions because the machinery of carrying into effect No. 11 may require a Constitutional amendment. The problem designed and intended to be remedied by No. 10 could be carried into effect by the next Legislature.

MR. VAN DE STEEG: That is why we separated the two.

PRES.: Any member could require voting by divisions as our rules require on anything relating to statutes. If any member wishes to have the voting conducted that way, he would have a right to request that we do so.

(Whereupon a standing vote was taken, and resolution No. 10 was declared adopted.)

JOHN CARVER, JR.: Has there been any consideration of adding the office of Probate Judge in resolution No. 11?

MR. VAN DE STEEG: No consideration has been given to that.

MR. CARVER: I suggest as an amendment that the method of selecting Probate Judges be included.

JUSTICE GIVENS: I call your attention to the fact you have already adopted a resolution which provides for a change of the Probate and Justice Courts, and I would think that would obviate the necessity of having it in this.

MR. CARVER: I had that in mind, Judge Givens, but I felt that the business of changing the Probate Courts has been a long-time stumbling block, and we may do something about the situations we have in some counties by changing the method of selection even if we can't reorganize the courts.

(Upon a vote the resolution No. 11 was carried unanimously.)

MR. CARVER: Was there any vote on my amendment?

MR. VAN DE STEEG: There was no second to any amendment.

FROM THE FLOOR: Well, I will second the amendment.

MR. VAN DE STEEG: I think you are now out of order.

RESOLUTION NO. 12

WHEREAS, the Judges of the Supreme and District Courts of Idaho should as part of their official duties meet at least annually for the interchange of procedural and administrative information, the determination of improvements in procedure

and disposition of causes, and the preservation of the American system of government through the Courts, the independence of the Judicial department, the observance of judicial ethics, unification of general and local rules, and other purposes; and,

WHEREAS, it is highly desirable, and profitable to the State, that Idaho Counts be represented at the annual conference of Chief Justices of the Courts of the United States and at the annual meeting of the American Bar Association;

NOW, THEREFORE, BE IT RESOLVED, that each of such Courts provide in its annual budget request an amount for the payment to each Judge his actual and necessary expenses (exempt from standard travel act limitations) in attending such annual meeting of Idaho Judges and that each Judge, unless prevented by illness or otherwise, attend such a meeting; and,

BE IT FURTHER RESOLVED, that the Judges hold such annual meeting at a time and place which will permit attendance also at the annual meeting of the Idaho State Bar, and consultation and joint action between the Courts and the Bar;

AND BE IT FURTHER RESOLVED, that the Supreme Court include in its budget requests to the Idaho Legislature, sufficient travel funds for the attendance of the Chief Justice or his nominee at the annual National Conference of Chief Justices, and also at the annual meeting of the American Bar Association, and that the Legislative Committee of the Idaho State Bar by all proper means seek to secure the passage of an appropriation including such items.

I move its adoption. (Upon a vote the resolution carried unanimously.)

RESOLUTION NO. 13

WHEREAS, the 30th Canon of Professional and Judicial ethics of the American Bar Association which has been adopted by the Supreme Court of the State of Idaho and by the Commissioners of the Idaho State Bar as one of the Canons of Ethics of the Idaho State Bar reads as follows:

"While holding a judicial position he (a judge) should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party." And,

WHEREAS, the rules of the Supreme Court of Idaho and of the Commissioners of the Idaho State Bar provide that any violation of the "rules of conduct or Canons of Ethics as prescribed by these rules or failure to perform duties imposed by, or by reason of, rules relating to the Idaho State Bar shall render the offending person subject to disciplinary proceedings."

NOW, THEREFORE, BE IT RESOLVED, That the members of the Idaho State Bar in convention assembled do condemn any violations of said 30th Canon and do hereby direct the Commissioners of the Idaho State Bar to institute disciplinary proceedings under the rules of the Supreme Court and of the Bar Commission against any person who violates said 30th Canon of Ethics and cause the same to be prosecuted in the regular manner and in accordance with the procedure prescribed by the rules of the Court and of the Commission.

E. B. SMITH: I move the adoption of the resolution.

RALPH R. BRESHEARS: I second the motion.

JOHN CARVER JR.: Mr. President, I suggest polling by local associations.

(Whereupon the local associations were polled. For the resolution: Clearwater Bar Association, Third District Bar Association, Eighth District Bar Association and Eleventh and Fourth Districts Bar Association. Against the resolution: Ninth District Bar Association. One-half for and one-half against the resolution: Fifth District Bar Association and Seventh District Bar Association. Shoshone Bar Association cast no vote.)

PRES.: The result of the vote as tabulated by the Secretary is 391 for to 115 against. Resolution No. 13 is adopted.

MR. VAN DE STEEG: It seems that one resolution got lost in the shuffle, but I can state it to you in substance: It was to the effect that the Legislative Committee be directed to endeavor to obtain from the Legislaure an appropriation for the Supreme Court to enable the Supreme Court to adopt rules of civil procedure

E. B. SMITH: It seems to me that you are putting the cart before the horse with that resolution at this time. We have been supporting that objective for a good many years as a Bar. If we have some support from the Supreme Court by one year from now, that would be the time when the resolution should come before the convention. But until that time we are wasting our time.

SAM S. GRIFFIN: I am wondering if Mr. Smith doesn't misunderstand the purport of the proposed resolution. It is merely that we get some money for the Supreme Court to do what Utah did. If they don't get the money during the next session, it will have to wait two more years until they do get the money.

DALE MORGAN: Is not this general subject covered in one of these resolutions by a committee to be appointed?

MR. VAN DE STEEG: I don't think so.

DALE MORGAN: I don't see where any money would be necessary except for printing costs after the actual work had been done.

MR. GRIFFIN: I still think there is a misunderstanding. The work has not been done. As Mr. Nielsen told you yesterday, Utah had to appropriate money and hire a man to help get the thing done and get this committee to work to help the Court. All we are asking for is some money. The Bar has time and time again asked the Court to adopt rules of procedure, and this is merely giving them the funds with which to do it.

OLIVER KOELSCH: I move the adoption of the resolution.

(Upon a vote the resolution carried unanimously.)

PRES.: We sincerely thank you and your committee for a job well done. At this time we will open the meeting for any other resolutions or business that any individual member may have.

J. H. FELTON: The evening I left Lewiston, we had a local Bar meeting. At it we discussed the matter of the election of judges. We felt it was a matter for local Bars and not for the State Bar, but the members there (and a considerable portion of our membership was there) had gone out on the streets to determine how many people knew anything about the present or prospective membership of the Supreme Court. Vern Clements told a story of asking important clients, over a period of a couple of weeks, about the membership of the Supreme Court, and he found vast ignorance. His story was of a man that had accumulated something over half a million dollars and was a good business man, and he kept asking the man about the Supreme Court, and he finally ended up by saying he one time heard the name of Judge Budge.

Prior to that time we had gone ahead and circularized our complete membership, and we thought it proper to report our findings to the voters. We gave the names of the two candidates that we believed were best qualified for the office of Justice of the Supreme Court. We did that also because we found one candidate for the Supreme Court going through our country and making promises of what he would do, if elected, especially for labor, when he got on the Supreme Court. That was criticized a good deal at our Bar meeting and seems clearly to violate another provision of the Canon 30 of Ethics adopted by the Supreme Court and this Bar, and reading: "A candidate for judicial office should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination."

The Bar then asked me to bring to the attention of the other Bar Associations the fact that we deem it necessary, for the information of our voters in the Clearwater District, that the two names that we have recommended be brought to the attention of the people in our district by newspaper advertising, by radio advertising and by authorizing the two persons named to put on their cards the fact that they have been recommended by the Clearwater Bar comprising our counties and to circularize these cards in order to get a decent vote upon the question of who shall be our future Justices of the Supreme Court. I bring you this word from the Clearwater Bar as a recommendation to other Bar Associations that they take some steps deemed proper by themselves to acquaint their voters with the qualifications of the persons who are running for Justices of the Supreme Court and what the Bar thinks of those people.

PRES.: Henry, did you wish to present anything in the way of a motion?

MR. FELTON: That is just information to the other Bars. I was asked to do that by others at the meeting.

PRES.: Do any other persons have anything to present to the convention or any observations or discussion? Take all the time you want to. Would you like to say anything about where we should have the next annual convention? That is quite a problem to the Commission, and we always appreciate any recommendations or observations that you fellows may have.

JOHN CARVER, JR.: I move we have it permanently at Sun Valley (laughter). Well, for 1951.

SAMUEL KAUFMAN: I would like to make one inquiry. I wonder if Mr. Carver has any financial interest in this institution (laughter).

PRES.: I understand he has been spending time around Hailey lately.

MR. CARVER: Sun Valley has a financial interest in me now (laughter).

MR. HAMILTON: Are there accommodations at Shore Lodge during this time of year?

PRES.: Here is what we ran into. The last dates they could give us were in the middle of June. It is pretty cold up there at that time. I understand they will not hold conventions in July or August and those seemed to be the best months for meetings. If any of you fellows feel otherwise, we would like to hear from you. Does anyone have any discussion on the motion?

JACK MUSSER: I am sure that if this institution arranges to have some water skiing in the duck pond Mr. Hamilton will be quite satisfied (laughter).

PRES.: On the whole, certainly Sun Valley handles these conventions beautifully. I might tell you that we are sort of making a list of beefs and complaints, and we are going to take those up with Mr. McCrea after this meeting and see if we can't improve a few things. Is there any further discussion?

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

PRES.: I will present Mr. Griffin who will give the sad news about your coming officers.

SAM S. GRIFFIN: That puts me in a spot, doesn't it? I am Secretary, and I have to announce my own boss, and that is sad news! (laughter). As a matter of fact it is pleasant news for me and for the Commission, all of whom have worked together this last year, to announce that Mr. Marcus, whose term continues for one more year, will again serve as President of the Idaho State Bar. Mr. Litton from St. Anthony will be Vice President. And there seems to be no method by which you can get rid of your Secretary, and the Commission directs me to announce that, God willing, I will still be it (Applause.).

PRES.: If you can bear with these old broken down officers for another year, we will certainly pledge our best efforts in your behalf. Again I want to say that it has really been wonderful to meet with everybody and to have such a successful convention. We hope that the word will be spread around so that next year we can have a greatly increased attendance. If there is no further business, the meeting will stand adjourned.

INDEX

A

B

C

D

E

G

I

J

K

L

M

N

O

P

T

U

V

W