Idaho State Bar

PROCEEDINGS

of the

Idaho State Bar

VOLUME XXV, 1951

Twenty-Fifth Annual Meeting

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SUN VALLEY, IDAHO

July 1, 2, 3, 1951

IDAHO STATE BAR COMMISSION

By_____,Secretary

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Commissioners

WESTERN DIVISION ---------- T. M. ROBERTSON, Twin Falls, 1951-53
EASTERN DIVISION ---------- RALPH LITTON, St. Anthony, 1949-52
NORTHERN DIVISION ----------ROBERT E. BROWN, Kellogg, 1949-53

Officers—1951-52

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

Local Bar Associations

Shoshone County – Paul B. Jessup, President, Wallace; Sennett Taylor, Secretary, Wallace.

Clearwater (2nd and 10th Judicial Districts) – Elbert Stellmon, President, Lewiston; Thomas W. Feeney, Secretary, Lewiston.

Third Judicial District – Willis Sullivan, President, Boise; George Greenfield, Secretary, Boise.

Fifth District (5th and 6th Judicial Districts) – Darwin Brown, President, Pocatello; Mark B. Clark, Secretary, Pocatello.

Seventh District – Robt. L. Alexanderson, President, Caldwell; Dean Miller, Secretary, Caldwell.

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

Ninth District–Robert W. St. Claire, 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.

Are You Proud of Your Profession?

If you have pride in being a member of our profession, then we invite you to apply for membership in the American Bar Association. It needs active manpower. It needs you.

The question is not what the American Bar Association can do for you. It can and will do more things for you than can be enumerated here. For example, its members make twice as much money as non-members.

But, our profession exists not primarily for any selfish gain of its members. Its justification is that it is dedicated to public service. Ask your heart if you have done your part.

In the name of our profession, of its public duty and of our beloved free country, we call upon all lawyers to become active members of their community, state and national bar associations, to give of their time and talent to bring themselves and their organized bar to the public influence and leadership of this country in its time of crisis. Those who have neglected any part of this high duty must never neglect it again, if they would be fully respected and honored by their brothers.

We urge all lawyers to fulfill their obligations by becoming or by getting members in the bar associations, by faithfully reading their journals, by finding their fields of greatest interest where they are most needed and by rolling up their sleeves and doing their share of the work that waits for them.

Won't you join with us in the greatest work you could do? The Headquarters of the American Bar Association, 1140 North Dearborn Street, Chicago, Illinois, will be glad to supply you with as many membership blanks as you may desire.

CODY FOWLER, President
A. L. MERRILL, State Delegate for
Idaho, American Bar Association

PROCEEDINGS

Volume XXV

TWENTY-FIFTH ANNUAL MEETING
of the
IDAHO STATE BAR
1951

COMMISSIONERS OF THE IDAHO STATE BAR

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

SUNDAY, JULY 1, 1951
2:00 P. M.

PRESIDENT MARCUS: Gentlemen, this is the twenty-fifth annual meeting of the Idaho State Bar. We are to have a lot of fun at this convention and very little business. And if you are like I am, you want to hear first about the fun. So at this time I will introduce Mr. Taylor who will tell you something about that.

E. B. TAYLOR: Ladies and Gentlemen: The members of the Blaine County Bar and the management of Sun Valley, with a great deal of pleasure welcome you to this convention.

This is the tenth anniversary of the first meeting of the Idaho Bar at Sun Valley, and the Idaho Bar has met here every year since that time except during the war when Sun Valley played host to the Navy and one year when we strayed off the reservation. The management takes a great deal of pleasure in entertaining the members of the Bar. As one of the oldest living inhabitants of Sun Valley, it is my privilege to see conventions come and go. We must have at least 25 or 30 conventions during the course of a year here at Sun Valley, doctors, dentists, shippers, growers and so on. But I want to say this, and I am not prejudiced at all, I think this group really is the cream of the crop. And I can have that subscribed and sworn to by Mr. W. P. Rogers, who is the manager of Sun Valley. He has expressed the same opinion many times.

According to the program you will find a lot of fun mapped out which is going to be interesting and also some portions that will be very informative. Outside of the serious part of the convention, the management has planned something for your own enjoyment and entertainment. Tonight is the barbecue at Trail Creek, and you will not want to miss that. The buses will leave from in front of the Lodge at 6:15. Harl Smith will be there with his orchestra, and there will be dancing and very good food. This being Sunday, the bar will not be open except for beer.

Tomorrow the ladies are having a luncheon—the barmaids, as our friend Sam Griffin called them—at Trail Creek at 12:00 o'clock, and the buses will leave both from the Challenger Inn and the Lodge at 12:00 o'clock. After luncheon there will be cards in the Redwood Room and prizes for the winners of the bridge and canasta games. But I want to warn the ladies that the President of the American Bar Association is with us, and he is going to speak tomorrow afternoon at about 2:00 o'clock, so you may want to cut your card games short. I don't think you will want to miss his address.

After the barbecue tonight there will be a dance in the Duchin Room and also

in the Ram. Remember that this is Sunday, and we obey the laws here in Blaine County, and there will be only beer and soft drinks served during the dancing.

Tomorrow evening we will have a cocktail party in the Redwood Room and on the second floor terrace of the Lodge. That commences at 6:45 and lasts until 7:45 when the banquet begins.

After the banquet, at 9:30, there will be the skating exhibition in front of the Lodge, and you certainly don't want to miss that, because we have some very lovely skaters here this year. After the skating there will be dancing in the Duchin Room.

The management is doing everything in their power to make your stay enjoyable here at Sun Valley, and we hope that you have a grand time and that you will come again soon. Thank you.

PRES.: Last year I said that Sam S. Griffin had been making the Secretary's Report to the Bar for 100 years, and I have had trouble about that all year. He objected that might get him in bad with some of the ladies. So I will be a little accurate this year. I checked the record, and that is wrong. He has only been making the report for the last 95 years. (laughter)

I know you will all be pleased to hear that our Secretary is enjoying better health than he has for many years, and he is with us this year. I brought him over here yesterday with his lovely wife. We had a little trouble after we got here. He was concentrating so much of the time on a figure. But I finally got him away and back to his Bar work. He has prepared his report and if you see some mistakes in it, just overlook it, because, after all, he is a little bit inexperienced.

SECRETARY GRIFFIN: Last year I said that the President was having me celebrate a centennial, and I didn't feel quite that old. And this year I don't feel as old as I did last year, but he has cut me down only five years. I regret that the figures I was having trouble with weren't the kind he intimated. They were figures involved in making my books balance.

The statistical part of my report follows:

APPROPRIATION FUNDS

July 1, 1950 Balance in Fund		$ 8,831.00
Receipts—License Fees		8,710.00
Examination Fees		1,225.00
Costs Collected		1.00
June 1, 1951 Total Balance and Receipts		$18,767.00
Expenditures—Personal Services (Secretary, Stenographer, Examination, Readers, Reporters, Speakers)	$ 3,488.02	
Travel	1,491.03	
Miscellaneous Expense (Printing, Postage, Telephone, Rent, Supplies)	2,349.84	
Capital Outlay	125.55	
Refunds	25.00	
Social Security	15.47	
Total		$ 7,494.91
June 1, 1951 Cash Balance in Fund		$11,272.09

The distribution of licensed lawyers (and Judges) in Idaho by Divisions, and the number compared with last year are:

	1951	1950	% Increase
Northern Division	125	118	6.0%
Western Division	301	288	4.3%
Eastern Division	132	125	5.6%
Out of State	24	22	9.0%
Military Service	5	---	----
TOTAL	587	553	6.0%

The distribution by Local Bar Associations (and hence the number of votes assignable to each local Bar in voting under Rule 185 at this meeting) is:

Shoshone County Bar Association (First District)	25
Clearwater Bar Association (Second and Tenth Districts)	59
Third District Bar Association	157
Fifth (and Sixth—Southeastern) Bar Association	88
Seventh District Bar Association	61
Eighth District Bar Association	44
Ninth District Bar Association	42
Eleventh (and Fourth) Judicial District Bar Association	82
TOTAL	558

The following deaths have been reported since the last annual meeting of the Bar:

Alfred Budge, Boise
E. R. Coulter, Weiser
Walter R. Cupp, Caldwell
Wm. C. Dunbar, Boise
A. F. James, Gooding
Arthur E. Johnson, Montpelier
B. E. Stoutemeyer, Portland, Ore.
George L. Ambrose, Meridian

The Board of Commissioners of the Idaho State Bar, Claude V. Marcus, President, Ralph Litton, Vice President, and Robert Brown, held six formal meetings, two of which were for grading of the September, 1950, and April, 1951, examinations, attended also by the members of the Examining Committee. The latter Committee consists of Willis Sullivan, Boise, T. M. Robertson, Twin Falls, Louis Racine, Pocatello, Kent Naylor, Idaho Falls, Russell Randall, Lewiston, and Clay Spear, Coeur d'Alene, plus on occasion other attorneys drafted into service for a particular grading.

Several meetings spent considerable time on revising the Rules governing Admission to Practice, consulting with the Supreme Court thereon and finally the securing of the Court's approval. A number of minor clarifying changes were made, but the principal ones related to the qualifications to be required of applicants, the determination of questions for examination and the review of grading valuations by the Court.

As to qualifications the Board urged, in accordance with the resolution adopted by this Bar, that law office study be abolished. The Court did not agree, and such study of law is still permissible. The Court did, however, require students and lawyer instructors to register with the Board before beginning study, otherwise no

credit would be allowable, and also approved regulations which require such students to have attained pre-law education before law study, and to pursue a course of law study for the time and, as nearly as practical, in the manner as to study, recitations and examinations, as required of subjects pursued in an approved resident law school. The Board requested abolishing that part of the rule which permits showing of an equivalency of 2 years of pre-law college study on the ground that showings were generally very unsatisfactory. The Court, however, retained the provision.

Heretofore the members of the Board and the Examining Committee prepared questions and suggestive answers supported by authority. The Board finally selected questions to be given. Now the Court has undertaken the final selection of questions so that examinations are truly those of the Court and grading is upon the basis of the answers suggested by the Court.

The third major change related to review of the grades determined by the Board and Committee. You will recall that before 1936 the Rules allowed an applicant who failed to receive a passing grade to appeal to the Court which then regraded, and, in practice, passed such applicant. The matter was quite thoroughly discussed at a meeting of the Bar at McCall in 1936, resulting in a resolution requesting the Court to make the decision of the Board final and later the Court amended the Rule to that effect.

In the recent revision, the Court, over the Board's objection, provided for a review and regrading by the Court where an applicant had been failed twice by the Board and Examiners. Under this rule the Court granted one review following the September, 1950, examination and one following the April, 1951, examination. No ground for review except failure was alleged. The Court regraded and in both instances passed the applicant and he was admitted to practice.

The Court has now again amended the Rule, the pertinent change reading:

> "The action of the Board shall be final unless the Supreme Court grants a review upon a petition which the Court deems shows good and sufficient cause therefor. Mere failure to receive a passing examination grade will not ordinarily be considered sufficient cause for review."

At the September, 1950 examination, 36 applicants passed, 7 failed; at the April, 1951 examination, 17 passed and 6 failed. Some of these were duplicates, ie., had taken previous examinations.

The annual meeting by resolution had directed the Board to investigate possible violations of the Judicial Ethics which the Supreme Court had adopted, particularly with respect to candidacy of judges for party-sponsored offices without resigning judgeship (Judicial Canon No. 30). Pursuant thereto the Board made an investigation and found that such a situation existed in one case; it also found that the judge had failed promptly to resign in order to close up matters pending before him; that thereupon, and in fact before the investigation was actually instituted, he resigned. In view thereof the Board considered that no good would be accomplished by further action, although it did not condone the Judge's action. In accord with the direction of the Bar a copy of the judicial ethics was mailed to each judge and candidate for judicial office.

Only four complaints engaged the Board's attention. In one, that of Homer C. Mills, formerly an Idaho resident, but presently residing in Nevada, the result, after hearing, was disbarment by the Supreme Court upon the ground that he had been both suspended and disbarred in California and had also been convicted of a felony in California.

One complaint was investigated, settled and dismissed; one is now being investigated, and in one issues have been framed and trial will shortly be had. As usual the Secretary's office has disposed of several informal complaints.

As directed by the 1950 meeting, the Board has appointed Committees which will report at this meeting, namely, Judges Selection Committee (a copy of the report of which committee was mailed to every Idaho lawyer); Uniform Commercial Code Committee; Committee on Administrative Procedure which was to report to the Legislative Committee, and a Committee on Constitutional Amendments Respecting Probate and Justice Courts, which also was to report to the Legislative Committee.

A Legislative Committee was appointed with Willis Moffatt of Boise as Chairman. He will report the actions of the Committee to you.

Some study was made of Group Insurance and John Black of Pocatello requested to present the matter to this meeting.

The Board spent considerable time upon the program for this meeting; in conferences with the Supreme Court concerning rules of Admission, appropriations, examinations, rules of procedure, judicial council, meetings of judges, etc.; with the Legislative Committee; with the faculty of the College of Law, and with the annual meeting of Idaho judges.

PRES.: Do you have any questions concerning the report of the Secretary? Hearing none the report will be ordered filed.

This year we are having an election for a new Commissioner in the Western Division. The candidates are George Van de Steeg of Nampa and T. M. Robertson of Twin Falls. To canvass that election and determine the results, I will appoint as a Committee Fred Snook of Salmon as Chairman, Hugh Maguire and Sam Swayne. The Committee will tell us the result tomorrow morning.

HARRY BENOIT: May those who have not voted still cast a ballot?

PRES.: The rules close the election at noon and the ballots had to be in by noon today.

I will appoint the Resolutions Committee which will report Tuesday morning. I urge any of you who have proposals or resolutions to make, get them in the hands of the Committee as soon as possible today so that the Committee may give them attention and study. I had a little trouble in figuring out who would be a good man to be Chairman of the Resolutions Commitee. I know that the rest of us wanted to have some fun at this meeting, so we tried to pick out somebody who already had had some fun. We happened to run into former State Senator Fred Taylor from Boise and found out that he had been up here attending a convention of small loan men, so he is our boy. We are going to appoint him as Chairman of the Resolutions Committee. Incidentally, if it gets any tougher to collect fees, he might be a pretty good spokesman for the Bar. (laughter) On that same Committee we will appoint Judge Porter, Robert Remaklus of Cascade, Elbert Stellmon of Lewiston and Gus Anderson of Pocatello. We will have a special room at the Lodge where you can meet and deliberate.

Ladies and Gentlemen, I sought the advice of my colleagues on the Commission and Mr. Griffin about the subject of a talk, and they said to talk about what the Bar Commission has done during the past year. Thinking about it, I decided I could probably talk a great deal longer on what we have not done during the past year.

No doubt you have noticed that the retiring chairman of an organization usually

has two lines of thought—one to review with pride the accomplishments during his chairmanship, and the other to be free with advice on what should be done in the future. If you have listened very closely this usually turns out to be what should have been done in the past if the chairman had been doing his job. Thus my observations may well be turned upon me—at least to some degree.

So far as accomplishments are concerned, I shall attempt to be realistic in these remarks—but, on giving advice, I can promise no great departure from the ordinary.

I hasten to place myself on record in acknowledging that what constructive work has been accomplished during the past year can be credited in large measure to the fine cooperation we have had from the entire profession. Working on the Commission with Mr. Brown and Mr. Litton and with our able Secretary has been a distinct pleasure. May I also pay tribute to our Examining Committee who have all worked diligently and loyally throughout the past two years—and during this period the load of examinations has steadily increased; to all members of the Supreme Court; to our local Bars and to the many individual lawyers who have been called upon and without exception, responded. I wish time would allow me to introduce each one of them for your applause which they so richly deserve. Even that would not render them full credit.

IDAHO BAR ORGANIZED

The Idaho Bar has been organized under legislative enactment since 1923. It will not be news to our older members but may be of interest to our younger men, and perhaps to our guests, to know that Idaho was one of the first two or three state bars so organized, the others being Alabama and North Dakota. We are pioneers in that respect. Many of the other state Bars have used our act as a guide in organizing their own. I do not believe it can be denied that our organized Bar has proven its worth, both to the profession and to the public.

Throughout the years of our organization we have talked about and worked on many projects concerned with judicial reform and improvement. Thinking that past experience would be some indication of what should concern us in the future, I scanned through our Bar proceedings for the past twenty years. During those years I would estimate that more than two-thirds of our organized study and effort has been directed to three subjects:

(1) Improved court rules of practice and procedure;
(2) An improved method for the selection of judges; and,
(3) Court reorganization.

Therefore, in starting this past year of Bar work with two main objectives in mind, first, achieving some progress with rules of practice, and second, obtaining a concrete plan for an improved method of selection of judges, we were consistent with past study and experience and carrying along work already started. We think that substantial progress has been made in both of these fields.

RULES OF PRACTICE AND PROCEDURE

You will recall that the 1950 convention directed the Commission to assist the Supreme Court in obtaining some legislative appropriation for necessary expenses in getting out new court rules of practice and procedure. Our Legislative Committee worked hard to do this but as Mr. Moffatt, our Legislative Chairman will no doubt tell you in his report to the convention, we did not succeed. We then concluded our best hope for effective action would be a resolution by the Legislature authorizing

court rules to be printed in the 1951 and succeeding Session Laws. Despite some narrow escapes this was finally approved and passed by the Legislature. The Court then prepared and submitted the court rules presently contained in the Appendix to the 1951 Session Laws. This procedure allowed something to be done without a separate appropriation and allowed the court to take some immediate action on the problem.

We may be disappointed that certain features of the Federal rules, such as discovery, were not included in this order of the Court, but nevertheless it is a step forward and opens the door for quick study and completion. The Court is entitled to our praise for beginning this work which has been strongly urged for so many years, and is likewise entitled to our offer of whole-hearted assistance in getting the job completed. Bar funds which we might have to give to the court for the purpose of meeting such expenses are very limited; but we *can* brief, consult, advise and assist in the segregation of the procedural matters from the substantive and in the preparation of additional rules. I hope that the court will continue its initiative in analyzing the subject matter and submit such of it to us for help as it may desire. Then, instead of being turned over to one committee or group, I would urge that the subject matter be broken down and turned over to different small committees in the local Bars. This will lighten the work load, avoid an overwhelming amount of work for one committee and avoid the difficulty and expense of arranging meetings of lawyers living far apart. The reports and recommendations of these groups should then be submitted to the Court so that whatever legislation is necessary to clarify and segregate the procedural statutes can be submitted to the 1953 Legislature and permit all additionally approved rules to be printed in the 1953 Session Laws if a better method of printing them cannot be found. This will then complete the first phase of this most necessary work. We may not do a perfect job but in that manner will make systematic progress.

SELECTION OF JUDGES

The convention last year authorized the appointment of a committee to prepare an improved plan for the selection of judges in Idaho. Accordingly, Robert St. Clair, Chairman, Judge Hugh A. Baker, Paul W. Hyatt, Oscar Worthwine and Ralph H. Jones were appointed such committee. They have met at different times and have done a thorough and conscientious job and we will have the benefit of their report later in the convention. Whether we adopt their recommendations in toto or in part, they deserve our hearty appreciation. The matter of selection of judges is of utmost importance. Our courts are only as able, wise and just as the men who preside over them. Reluctantly I say that, in my opinion, our present so-called non-partisan judiciary is no great improvement over political selection. It is still necessary for our judicial candidates to follow traditional methods of political campaigning. It is true that during the past campaign the Bar took an active voice in the judicial races. That is a healthy condition. It tends to the selection of the best qualified and in exercising this privilege we serve the public good by letting the public know our opinion of the ability of judicial candidates. We are in a better position to know their qualifications. Even after electon although we entertain high regard for our elected judges we must be as vigilant to criticize departures from judicial ethics as we are to discipline members of the profession for violations of our code of ethics. Certainly there is an immediate need for a better method for the selection of judges and it is our duty to get such plan enacted into law.

These two projects—court rules of practice and a better method of selection of judges must remain at the very top of our calendar until achieved.

A UNIFIED COURT SYSTEM

Turning our attention to court reorganization I would refer you to the paper by Mr. Randall Wallis in last year's Bar proceedings. This study outlines part of the problem and concludes that the changes which the Bar have generally approved will require constitutional amendment or amendments. As I recall, the Legislature has rejected two proposed amendments designed to carry this out. The arguments pro and con have brought forth very little logic or reason against making all of our inferior courts subject to administration and procedural direction by our Supreme Court, nor to the conversion of justice and probate courts into County Courts of county-wide jurisdiction, staffed with personnel having at least some legal training, and with greater civil and criminal jurisdiction.

Despite all disappointments and set-backs which we may encounter we must continue pushing these reforms from year to year until we succeed in getting them established.

LAYMEN'S COMMITTEE

Our profession is often charged with being medieval and reactionary but let me emphasize that judicial reforms are usually blocked—not by the legal fraternity—but by an uninformed or misinformed public. That has and continues to be a problem difficult for us to solve. One often hears the expression "lawyers cannot agree on anything." I take violent exception to that unwarranted slur. If a proposal stands the fire of analysis, logic and clarity we have no trouble in presenting a united front—but selling it to the public and Legislature is quite another thing. In attempting to carry out our reforms we lawyers have certainly not done an outstanding job of selling—and this is a deliberate understatement. Therefore, new methods must be tried.

I propose, for your study and consideration, that our Bar should immediately organize or promote the organization of a Laymen's Committee to join hands with us in understanding and assisting us in carrying out and completing the judicial reforms we advocate.

Merely as one individual's opinion, such a committee might well be composed of a representative from the Idaho Editorial Association, the Chairmen of the House and Senate Judiciary Committees, and a representative of the state Chamber of Commerce. This sort of an arrangement has been put into practice in Washington, D. C., with considerable benefit, and a similar committee has become a permanent and worthwhile part of the section of Judicial Administration of the American Bar Association. The Bar could well afford to pay the expenses of such committee to insure at least one meeting per year or more if possible and invite such committee to attend our convention at our expense. Such an arrangement might be the bridge we need to better public relations and more favorable public opinion and action.

It is a pleasure to report to you that our routine Bar work is in good condition. Lack of sufficient money prevents us from doing many things we should be doing for our individual lawyers. We should give careful thought to raising our Bar dues to at least $25.00 per year. Many of the occupational licenses are higher than this. With additional funds we might be able to do much more in the way of placement of lawyers, do something about the deplorable law book problem, and pay the expense of traveling schools of instruction for local Bar seminars.

These are all what we might label family troubles—everyday problems of our professional family, but beyond our own small world, forces are at work which raise momentous questions that will affect us and affect those who follow us. As one

example, note that during the past few years we have rather smugly watched our honored friends in the medical profession take up the battle to block socialized medicine and at the same time, if we had taken the trouble to look, we could have observed the pink cloud of socialized law slowly appear over the English horizon. Its beginning is contained in the British Legal Aid and Advice Act of 1949. Articles concerning it have recently appeared in Bar Journals in this country. One of the very distinguished members of our profession, Dean Storey, has recently labeled this law as "an inroad of governmental regimentation upon the legal profession." The temper of our age will not allow us to stand idly by and play ostrich with this threatening development in a sister nation, which has standards and ideals similar to our own. We should not deceive ourselves with the thought that this disease is headed the other way. If the legal profession capitulates to the guiles of communism's delusive step-child our country will capitulate because our profession has always been and continues to be the leader of public expression and conviction.

The world changes from day to day and our Bar must do its part in meeting the need for change. Our chief concern must be public service. In being sensitive to public need and service, in improving our ways and means of insuring more nearly perfect justice for all, we are reaching for the very highest goals of our honored profession.

During the past two or three Bar conventions we have had section discussions, and these have proven very entertaining, interesting and successful. This afternoon we are going to have another such section discussion. The subject of the discussion this afternoon is "Office Practice and Procedure."

It is amazing how little most of us really know about running our office. But we did find two very distinguished members of the profession who do know something about it, and they are up here to prove it. We are going to turn the meeting over to our section leaders, William Nixon from Bonners Ferry and Harry Benoit of Twin Falls.

HARRY BENOIT: Mr. President and members of the Idaho Bar: It is still a mystery to me why I should be asked to lead a discussion on office procedure and the fixing and collection of attorney fees. I have practiced law for 32 years, and when my friends ask me where my home is, I still tell them to go up Shoshone street, turn to the right and the house with the big mortgage on it is mine (laughter). I might be in a position to say how you can charge the fee, but I can't tell you how to collect them (laughter), nor how to save it after you get it.

This is an important discussion, especially to the younger members of the Bar. I say frankly that as far as I am concerned, in the years I have practiced law, if I could always have been in a position where I wouldn't even have to talk to a client about the fee and how much it was going to be, and if I didn't have to endeavor to collect the fee, the practice of law would have been heavenly. But I think that the toughest problem that any lawyer has who practices law like most of us do, for the joy we get out of it, realizing full well we have got to make a living for ourselves and our families, is a discussion with our clients on the question of the fee, how much it is going to be and an attempt to convince him that we are not overcharging him. And that is the purpose of this discussion.

Bill Nixon and I have agreed that he would lead that part of the discussion pertaining to overhead, time records, account books, forms and so forth, and that I would lead a discussion on the question of fixing fees and minimum fee schedules. At this time Bill will take the matter over on his particular part of the section.

WILLIAM J. NIXON: Business administration of the office I thought was

a rather large assignment for me, stuck off in a little office way up in the most northerly county of the state. I talked with one leading member of the Bar today, and I asked him about business adminsitration of an office and how the business of the law office should run. "Well," he said, "you can't be a businessman and a lawyer at the same time." That isn't entirely true. I am going to give you a few things that have come to my mind. First is a bookkeeping system.

Your Secretary, Sam S. Griffin, sent me a copy of a pamphlet written by William W. Brady of the Illinois Bar. It is entitled "A Law Office Bookkeeping System." It is a very small pamphlet, but he does go into a discussion of double entry bookkeeping with which I am not too familiar. But I would like to suggest that anyone interested in setting up a set of books for a law office obtain this pamphlet. I will read the forward. "A publication of this scope is long overdue. The idea was born and matured by members of the Illinois State Association who sought suggestions on bookkeeping systems for small law offices. Although adequate material was available for larger offices, little, if nothing, was found for the one-man or two-men offices. Few lawyers have received the necessary formal education or training in accounting procedure. Fewer still have available time for digging out information and knowledge essential in setting up the administration of an adequate set of books. The author, realizing this, has explained accounting theory and terminology in the first part of the article. Following this introduction he describes a minimum set of books and accounts, explains their operation and then leads the reader through the familiar daily transactions."

The author says there are three reasons, and I think we will all agree, why there should be an adequate set of books. We attorneys realize more than anyone else the necessity of having a record. And he explains it in this way: First, to be able to prepare a statement of income and expenses to comply with the requirements of the Internal Revenue Code in filing an annual income tax return. Second, to maintain an accurate accounting of money received from and advanced on behalf of clients, particularly in so far as trust fund receipts are concerned. Third, to provide personal information as to office income and outgo aside from income tax requirements, particularly as to accounts of various types of expenses and the amount invested in different assets such as library, furniture and office equipment.

He goes into this system in detail here, and anyone interested can obtain a copy of this system by writing to the Illinois Bar Journal at the First National Bank Building in Springfield, Illinois.

There are some members here who have consented to tell us, before we move on to something else, about some of their methods used in a law office. Mr. Daly of Twin Falls.

JOHN DALY: Thank you, Mr. Nixon. Harry asked me if I would bring with me to this discussion some of the forms which we have worked out in our office in Twin Falls for several things. We by no means feel that we have worked out a good system, but we have, by the use of certain procedures, wondered how it was that we ever got along without them.

It is perhaps impossible completely to separate the bookkeeping from the fees, which apparently is a part of a later discussion. But I will show you what forms we have worked out in an effort to put ourselves in a position of charging a fair fee and finding out for our own information how much money we are losing on every piece of business that we handle (laughter).

In the first place, any office in which more than one lawyer is practicing—and I think it is a problem that should be avoided—the situation may arise where

lawyers in the office may give contrary advice to one party over against the advice which somebody else in the same office has given to his adversary. In an effort to get at that we have designed a little form which we call a new business report. I realize that it does me no good to hold this up in front of you, and certainly it does you no good. However, I will tell you generally what information is asked for on this form and say to you that its purpose is two-fold. One is to get a certain amount of information on the first contact between the lawyer and the client, and the second is to avoid the situation which I mentioned earlier where a conflict of interests unknowingly arises in the same office. This new business report contains, of course, the date and by whom the matter is received in the office. There is a place on here for the estimated value of the case or the item and an answer to whether or not the business is that of a new or old client, the method the matter—in so far as it is apparent on the first visit—will be billed. In other words, whether it is a single case which is in litigation or whether it is a continuing matter or whether it is a matter which is being handled for a client who is on a retainer basis. The general nature of the case is called for, the name of the client, his address, and if the matter is in litigation, the title of the case, the opposing party and opposing counsel and addresses for each, addittional names which are pertinent to particular matters and any filing instructions—that is whether it is to be a case file or a general file or whether it is a matter to be filed in a miscellaneous file of some sort—any remarks that the person receiving it may have. And in that place we normally include any items which need to be done immediately or the opinion of someone else in the office that is requested by the person receiving this piece of business. And then we have another item here, and that is to whom the case is assigned, if that is apparent at that time.

This next form is the most important one and the one that we can't figure out how we got along without. It is merely a time sheet, and the form provides for the name of the person who is reporting on time spent, the particular date, and the day is divided from 7:40—there is some space that can be used if we are there before then (laughter)—in ten-minute intervals throughout the day to 5:50, when we go out for dinner. Then there is a place for evening work. It has been necessary for us in our own thinking to realize that this time sheet isn't an effort on anybody's part to determine whether the person who is filling it out is properly using every ten-minute period during the day. The principal blessing to us—and the only reason it hasn't been more of a blessing is because the matter of filling it out is one of self discipline and is generally hard to impose—has been that when we get through with the matter, we are able, as a result of these time sheets, to determine with at least some degree of accuracy how much time we have put in on a particular matter. Having it divided up into ten-minute intervals permitted us to show the little things that I am sure are forgotten when a year later the value of the case from a billing standpoint is being determined—things such as telephone calls and those times you meet somebody on the street where you dispense the largest amount of legal advice. We have made an effort here to keep track of those little things which don't amount to anything by themselves but which, if they are put together, probably occupy a substantial amount of time for all the members of the Bar.

Using this as a basis, we go to a card-sized slip of paper upon which is placed, from the time sheet, by one of the stenographers, this information: The person to whom the work which is shown on the time sheet is to be charged, a reference to the particular phase of the work done and the date that it is accomplished.

Upon the time sheet we place information that will show the client to whom the business is to be charged, the nature of what is done. And in that connection we have determined that we should use some abreviations to show a telephone

conversation, to show a conference, to show time spent in trial preparation and to show the time spent in the various other items in so far as they can be generalized.

The nature of the work is put on this little sheet, and these sheets are then filed alphabetically in a card file so that if it is necessary—if it is determined that a client is about to leave town—these can be pulled from the file. They are grouped together, due to their alphabetical filing, and from these can be determined the total amount of work which has been put upon either the whole of the client's work or a particular phase of the client's work.

Our practice has been—and this again goes to the matter of fees—to have the information contained in these set up on just a sheet of paper to show the date, the person who spent his time, the amount of time spent on that particular day. When we get that total, and if there is any semblance of cost accounting feasible for a law office, and I think there is, we can then determine in fairness to ourselves what the business must return, and with that information we are better able to discuss with the client what the fee should be or the justification for the fee which has already been determined. However, those groupings are for our own discussions, and determinations on the amount of the fee are not really a part of our records.

The next step in our records, and the last one, is just a plain ledger sheet upon which is placed the information contained on these small cards to show the work which was done for the individual clients.

Now that is the extent of the forms which we have designed to get at this particular phase of the general office procedure problem. If any of you want copies of any of these forms, we will be glad to send them to you.

We don't think these forms are perfect, nor that they answer all or even a great many of the problems of office procedure. But we do think that they are a step in the right direction, and we intend to work on these to improve our own method.

In addition I have brought with me three other small items which we find of help to us. They are not items that you do not already use in some form or other in your own offices, but we have found that it has been time saving to have them printed upon particular forms to be used in the office.

The first is just a little telephone memorandum. We put a hole in the top of ours, because on a good many of the desks in our office there is a pen over which we can hook them so a person who comes in doesn't have to search his desk to find out whether or not he has had any telephone calls while he has been gone. The information called for on this form is who was called, the time of the call, the date, the telephone number and then there is a series of things to be checked if they are pertinent—telephoned, called to see you, wants to see you, please call him, will call again, rush, and then any message that is to be conveyed.

The other is an office memorandum. It says "subject to and from." It sounds like the Navy (laughter). The memorandum calls for the date, and, as I said, the subject, to whom it was directed and from whom it comes. This we have used for short memorandums which should be given to a particular individual and which should find its way into the file and be made a part of it so the information is not lost.

The last one probably is as important as any. We call it a docket slip. A stenographer who prepares any pleadings in any pending matter is supposed to fill out this docket slip so that we are advised in advance and warned as to dates which we shouldn't forget. I don't know how meaningful it will be to you. There is an item here called "date book" and a place to check. In other words, if there is

something that should go into a date book for the office so that a date is not overlooked, that is checked. If it is merely to be put in what we call our docket book, which lists various pleadings in a particular matter, that is checked. The title of the case is called for, the date on which the instrument was prepared and the entry. In other words, whether or not the pleading or instrument has actually been filed. Then if there is a day's warning ahead, that is also provided for on this form.

PAUL W. HYATT: How do you communicate with each other on the business so somebody is not getting on the other side of the fence? I had that trouble once, too.

MR. DALY: That trouble occurred down in Twin Falls, and that is the primary reason we designed this new business report.

MR. HYATT: Does that go on everybody's desk?

MR. DALY: Yes, we have a rubber stamp with the initials of all the lawyers in the office. The employment situation hasn't entirely permitted it, but we try to have a stenographer for each lawyer in the office. The duty is upon the stenographer who does work for the particular lawyer to see, at the first opportunity during the day, that the people whose initials are stamped on this new business report have seen it and have checked it off. She is not to wait until the end of the day or the beginning of the next day. Now there is probably a better way to get at it, but this is better than when we didn't have any.

ROBERT KERR: What is the purpose of the time card instead of posting that time directly to the ledger? Is that one that is made out each day.

MR. DALY: We take those from our time sheet to show in more detail the nature of the work which is done.

MR. KERR: Does the attorney fill that out?

MR. DALY: No, the only thing which the attorney fills out is this daily time sheet. But the principal purpose of having this card in addition to posting in the ledger is that it refreshes our memory and allows us to more intelligently discuss with a client the exact nature of the work which was done during that period. I am sure that after a year or eighteen months go by and you are trying to figure out what work you did on a particular client's case you can't remember what it was that you had a conference with Mr. Smith on relating to this case. That is the only purpose that it serves.

MR. BENOIT: When you bill a client, do you bill him a flat fee, or do you set forth an itemized statement?

MR. DALY: Our practice is not uniform on that, and it is somewhat determined by whether or not we feel the client understands and has been following the work that has been done. Some matters, by their very nature, demand a close association with the client so that the client is aware, in at least a general way, of what you have done in his interest. In other situations, and particularly out of town clients, the client is unfamiliar entirely with what has been done in his interest, and in those cases if we feel that there will be a question in the mind of the client as to the amount of time spent or the nature of the work which was done, we attach to our statement an itemized account of the items performed in his interest. But our practice is not uniform. We don't always do it.

DEAN STIMSON: I still don't understand the difference between that little charge card and the big one. Is the difference the little one has all the charges on

one matter whereas the big one has everything that a fellow does during the day on different cases. Is that the difference?

MR. DALY: That is the difference. This daily time sheet is an individual matter, and it is filled out by the individual lawyer which shows all the items that he worked on in the course of the day. The other is in order to centralize what may have been done on different days by taking each item and putting it on a separate card and filing those cards together.

DEAN STIMSON: You have a small card for each case and all the items for that one case on several large sheets go into that one item?

MR. DALY: No, I see I haven't explained it properly. We have the time sheets straightened out now. In an effort to get that information in a position where it can be intelligently used, it has got to be taken from the various time sheets on various days and put together relating to the client. I think probably what I didn't explain properly was that each item on the time sheet—that is any work done in any day by one lawyer for one client on a particular matter—goes on one of these cards. Then these cards are filed alphabetically. If it is necessary to determine how much time has been spent upon that particular matter for that client, all those cards can be pulled out.

DEAN STIMSON: All you do is break up the information for filing purposes?

MR. DALY: That is right. For in our way of thinking, it is only good or of any value if, with a minimum of time on the part of the office and the lawyers, it can be made available and used.

FRANK MEEK: I like the idea of a time sheet, but how long did it take to force yourselves into using it?

MR. DALY: Well, we have used the time sheet maybe a year and a half. I expect that the time necessary to force yourself to conscientiously use it is somewhere in excess of a year and a half—probably about five years (laughter).

MR. MEEK: Seriously, do you find you use it?

MR. DALY: Absolutely. We use it, and we don't know how we functioned without it.

SAM S. GRIFFIN: I have used time sheets about 37 years, and I am not entirely broken in yet. But Oscar Worthwine will remember that when we went into Hawley's office way back in 1914 we kept time sheets. And I keep them yet, and I guess Oscar does too. I am not too sure you have made it clear, John. You say it is broken down into ten-minute intervals. Suppose John Daly comes to my office at 9:10 and stays until 9:30. On my time sheet I simply make a mark at 9:10 and one at 9:30 and write "John Daly" and what we talked about and what I worked on. Then Oscar Worthwine comes in, and I put a mark when he comes in and then write "Oscar Worthwine" and another mark when he leaves. I don't do it when he is there, but that is what happens. Then if I brief something for Worthwine, say in the afternoon, I put "Worthwine" again. My girl takes these sheets at the end of the week, and everything that says "Oscar Worthwine" on it is put on that second card you are talking about so that I know that on the 1st of July I worked for Oscar Worthwine ten minutes, on the 3rd of July 30 minutes and on the 16th of August 45 minutes. When the work is complete, I am ready to charge him, and I know I have worked a total of ten hours for him. Is that the system you have?

MR. DALY: Yes.

MR. GRIFFIN: Then I figure what my overhead ought to be approximately

and what I ought to get on a time basis, and then I consider the other factors that are considered in fixing fees which Harry will probably discuss, the importance of the case and so forth. But that helps me when I know how much time I have spent on Mr. Worthwine's business. Is that the way you do it?

MR. DALY: Yes. One column runs until 12:30 and another column runs until after 5:00 o'clock. We do the same thing you do. The principal difference between what we do with these little daily charge cards and your procedure is that you have the same thing done once a week.

MR. GRIFFIN: May I say this: The Klipto Loose Leaf Co., Mason City, Iowa, prints these time sheets and you can get a year's supply at a time from them, so you don't have to have them printed yourself.

MR. DALY: I am glad to know that. We designed these and have them printed ourselves, but undoubtedly there could be some improvements.

MR. KERR: I might add one suggestion. We changed ours from ten minutes to six minutes, because that divides it into even tenths so it is easy to make accumulative totals.

E. B. SMITH: Mr. Daly, you say that when you make out a detailed bill, where it is necessary to bill a client in such a manner, you give him an itemization. You don't put down the hours or the price, do you?

MR. DALY: We have in some instances.

MR. SMITH: Personally, I bill a great many bills in great detail, and I have followed the suggestions in McCarthy's "Law Office Practice" never to do it that way. You can get in trouble awfully fast if you do.

MR. DALY: Well, we have been in trouble, too.

MR. NIXON: Is there someone else who would like to discuss their method of office procedure?

MR. GRIFFIN: Mr. Nixon, I know several of the Boise lawyers have what they call a fixed time charge. It isn't an actual charge in the sense that it is what is ultimately charged to the client, but it is a basic guide charge for every hour of service, and on this consolidated card, the small card he showed you, the girl puts down not only that you spent 30 minutes on that work, but she put down a half hour basic charge. That doesn't go into your books, and it doesn't go to your client. But suppose you put in ten hours of time so charged at $7.50 an hour or whatever amount you have fixed. Right away you can see $75.00 worth of time at the basic guide rate. You may adjust that up or down depending on the other factors of the case, but it gives you some idea of how much you have at stake in time you have put in.

MR. NIXON: I think that is the purpose of these time sheets. It is for your own use in billing your clients.

A. H. NEILSON: I want to ask John how he gets around to practice law with all these records.

MR. DALY: I don't know that the practice of law is a necessary part of office procedure that we are discussing here (laughter).

MR. NIXON: Have you all been supplied with copies of these deed forms? A committee in the Third District reported on the shortening up of the forms of deeds and mortgages. I know I got a copy of them from Mr. Griffin, and I also received

a copy from the President of our local Association. We might just take a few minutes going over those.

I had a note from Judge Hunt stating that he had used a short form of quit claim deed in Bonner County for several years, and he also stated that they used short forms of deeds in Latah County. I will read these and maybe we will get a little discussion.

This is a report made to Carl Burke, President of the Third District Bar Association. "In submitting this report your Committee does not wish to be understood that there is a complete unanimity of opinion among us, but it was felt at this point in the agreement continued from last year it would be advisable to invite comment from the whole Bar. At least a beginning has been made, and if the work is to continue, it is time we took counsel.

"No mortgage form is submitted. One could be drawn but it would be essentially a compromise and apparently completely satisfactory to no one. The several forms submitted were prepared with a basic idea in mind.

"Purpose: Simplify and shorten.

"(1) Eliminate archaic language. Eliminate unnecessary words and phrases. Save recording space and costs."

(They certainly do that.)

"(2) Improve form and simplify mechanics of completion. Arrive at a one-page form. Easier on stenographers. Much better for photographic procedure."

And then he discusses the forms. There is a box in the upper left hand corner for revenue stamps, and wherever possible at least a full line is left where there is a fill-in. There is ample space for description.

"Law questions involved:

"(1) For value received rather than for and in consideration of. Very doubtful consideration necessary. If necessary, can relate only to executory contractual elements and recital is sufficient if a consideration passes. If not, no recital of any sort would be effective. If sufficient, it is deemed so in California and certainly has the advantage of brevity in mechanics.

"(2) No reason in law why parties should not be referred to as grantor and grantee rather than repeating names.

"(3) Because apparently appurtenant clause is necessary under Idaho law to pass water rights, it was included.

"(4) Some members of the committee want address of parties included. Omitted because of doubtful value. Better ways of finding persons. Add cost to completing. Usually unnecessary."

Then he gives a proposed form of warranty deed as follows:

"Warranty Deed

"For value received _____ name _____, the grantor, does hereby grant, bargain and sell and convey unto _____ the grantee the following described premises, to-wit:

to have and to hold the said premises with their appurtenances unto the grantee, his heirs and assigns forever. And the grantor___ do____ hereby covenant to and with the said grantee that __he__ is the owner in fee simple of said premises and that they are free from all encumbrances and that __he__ will warrant and defend the same from all lawful claims whatsoever."

And there is a place for signature and acknowledgement.

Here is the form of deed on one page with a great deal of space left to fill in the blanks. The form of warranty deed that we use is very much longer and requires a lot more recording space.

Here is a quit claim deed proposed form:

"For value received so and so do hereby convey, release, remise and forever quite claim unto so and so the following described premises, to-wit:

together with their appurtenances."

And there is a place for date, signature and acknowledgment.

And here is a grant deed form:

"For value received _____ name _____, grants unto so and so the following described premises together with their appurtenances."

There is a place for signature and acknowledgment. I don't think we will need the gift deed. There is an assignment of a mortgage:

"For value received so and so hereby sells, assigns and transfers to so and so that certain mortgage executed by so and so to so and so to secure the payment of $_____ and interest recorded in book _____, volume _____, page ____ of the records of such and such County, together with the note or notes thereby secured and the money due and to become due thereon with interest."

And there is a space for the date, signature and acknowledgment.

Now if there is somebody here who has made a study of these short forms and has used them to any extent, I would be glad to hear some discussion.

We have continued to use the old forms, and I often wonder who it was that made those things up to start with. The phraseology, I think, is out of date.

A. L. MERRILL: Why use the word "convey" in a quit claim deed? It is proper in a deed of conveyance, but why in a quit claim deed?

MR. GRIFFIN: Strictly speaking I don't think a quit claim deed does convey, and yet it has been used in Idaho as a conveyance. Strictly speaking it only releases, doesn't it?

MR. MERRILL: That is what it is for.

MR. GRIFFIN: And yet in Idaho it has been used for years as a conveyance. In every abstract you pick up you will find a quit claim deed. I don't know whether you do, but most attorneys will pass them as a conveyance, and I think that was the reason the Third District Bar Committee put the word "convey" in. As a practical matter, that is what they were using them for. They used a quit claim deed as a deed without a warranty. I believe that was the reason, although I didn't draw them.

ROBERT MILLER: I have not seen the quit claim form restricted to the purpose of releasing. It has been used to convey a doubtful interest or alternatively it has been used as something short of a warranty deed. It is an intention to convey without any warranty. I think that is probably the answer.

OSCAR WORTHWINE: I was present at the discussions, and the point was raised that the quit claim does not reach the point that some people want without the word "convey" in it. This strengthened it. And I believe in some states the form of quit claim deed we use, is held not to convey anything. It might release claims.

Going to the warranty deed, you will observe that it is much more complete than the form that we use in Boise. I am not familiar with forms elsewhere. With the forms we have been using for the last 40 years, there would have to be an ouster before the purchaser would have any recourse. I think that is what you warrant against and have for many years. And I decided this weighty problem in this manner. If I represent the purchaser, I shall use this form here. If I represent the seller, I shall use the old form (laughter).

We have discussed this, and the result of three or four discussions by the Third District Bar was that as individuals we use whichever form we want, the old ones or these. There is a point that the attorneys in Canyon County might object to these forms, and I take it that the purpose for bringing them up here is to secure unanimity of opinion so that we don't use one in Boise that will be turned down in Canyon County.

DEAN MILLER: In that regard the lawyers in Canyon County, in addition to the lawyers in the Seventh District, at our meetings prior to this meeting, discussed these forms and went on record as being opposed to all of them. I think there were two reasons. One was that many of the older lawyers were fearful of not having a lot of restrictions and covenants and words in the conveyances that some of the younger lawyers didn't understand. The second was that the tendency to shorten forms has come out of California, and the lawyers of our district felt it was a direct program of the title insurance companies to further encroach upon the lawyers' abstract business. And for that reason the Seventh Judicial District Bar instructed us to inform the assembly here that we were opposed as a district to these short form deeds.

EARL MORGAN: As a matter of curiousity may I ask Mr. Miller how the use of specific language in a deed would enable a lawyer to compete more successfully or less successfully with an abstractor or title insurance company?

MR. MILLER: You answer it.

FROM THE FLOOR: May I answer Mr. Morgan by stating that it is generally well known within my particular county that they don't use lawyers for the examination of or the approval of titles. They use someone unlearned in the law who is pretty good about keeping books, and if we don't have all these peculiar little words we have thrown in—and I don't know why they are there—maybe we would be making it a little too easy for him (laughter).

ROBERT ST. CLAIR: The matter was taken up at a meeting of our Ninth District Bar Association and was flatly turned down. There were several reasons. One attorney had an objection to the warranty deed form because there was not enough room for revenue stamps (laughter). And various reasons were given. Mainly they were of the opinion that if lawyers would continue to make things brief that perhaps they would be cutting themselves out of business. And over our way, and I guess in other parts of the state as well, it is particularly true that the more we tend to shorten things up so that it looks so very simple to the client, the

more we are going to do ourselves out of fees. That seemed to be the biggest complaint over there.

E. B. SMITH: Mr. Chairman, This project originated in the Third Judicial District following a very excellent report that Mr. Griffin gave before the Idaho State Bar some three or four years ago. I am very highly in favor of shortening these forms. I suggest that the matter be referred to the Resolutions Committee to recommend something concrete in order that this thing may be carried out all over the State of Idaho and that some uniform practice be adopted.

F. C. SHENEBERGER: If we are really interested in shortening forms of warranty deeds and quit claim deeds and mortgages and streamlining this practice, why wouldn't it be possible to record in the several counties a form which we have adopted for a deed, give it a number and then by a deed of our own simply refer to the recorded one by number and gives the names of the grantors and grantees and a description of the property and refer to the recorded instrument for further particulars? (laughter)

MR. SMITH: Mr. Chairman, as a matter of fact I find myself in agreement with the sarcastic remark of the last speaker.

HARRY BENOIT: Why couldn't there be an Act passed by the Legislature stating what should be in a warranty deed and what it covers in very few words, and the same would also be true for a quit claim deed. In that way, if you have a short form of warranty deed, you would know you have everything in it that the law requires, and if you have a short form of a quit claim deed, you know you have everything in that that is required by law. I think the State of Utah has such an Act, if I remember correctly.

PAUL E. HYATT: I think that would be the answer. Legislation could be adopted to solve the problem. And as far as fees are concerned, we will get just as much drawing a short one as a long one up our way. They come in and pay you $5.00 or $10.00 for the short one just as easily as for the long one.

MR. NIXON: I know in our county the banks make all the deeds, so I am not bothered with that.

MR. BENOIT: The real estate men draw the deeds down our way.

WILLIAM SMITH: Mr. Chairman, may I take issue with some of the members here from some of the smaller communities who are against this and particularly the Ninth Judicial District. Some states, I believe one is Minnesota, have done away entirely with deeds. They have the Torrens System. Their title transfers are handled very similar to the way we handle the sale of a car here in Idaho. That is to say you flip your deed over on the back, sign it and hand it to the grantee, and he takes it up to the State House and records it and another one is issued in his name. It may meet with disapproval by some of the lawyers here who don't particularly care to see business going elsewhere, namely a 50c recording fee. But what the legal profession is after, as I understand it, is to simplify things for the public in general and to protect them and not to make it complicated for them. If we can take a step forward in this instance and shorten these forms here and get uniform forms, we are taking a step towards protecting the public and not satisfying our own individual pocketbooks or very small egoism.

You can leave out all of the last half of the warranty deed form by referring to the statutry definition of the word "grant."

I am highly in favor of the Torrens System myself in view of the fact that I

have taken an oath to protect the public and look for the public's general welfare and not for my own satisfaction. I endorse the short forms and hope that it is a step towards the Torrens System.

ROBERT McLAUGHLIN: On the matter of protecting the public, I find that most litigation results from failure to consult an attorney at the time of the transaction. If, by shortening the form, you take the individual out of the attorney's offices, the result will be generally more expensive to the individual. I believe that we are more than fulfilling our oath in maintaining advice on legal transactions, and if the forms are such that will tend to bring those interested into the office, they are actually saving money in the long run.

MR. GRIFFIN: The trouble with that argument is that you don't get them in your office because the forms are short or long. That isn't why they come to your office. They can buy one, long or short, for 25c at a printer's office.

T. E. McDONALD: Mr. Chairman, I have probably attended more State Bar meetings than most of you, and this is the first time I have ever tried to say anything. I want to make an apology to Colonel Meek. When I first went to Arco a little more than a year ago, I wrote Colonel Meek something about his very fine paper given a year ago and asked to have him investigate the situation up there. I now want to apologize. I think that the real estate men and others drawing legal papers are the lawyers' best friend. Lo, may their tribe increase (laughter).

PAUL W. HYATT: I move that this matter be referred to the Resolutions Committee with instructions to bring out a proposal for legislation on the short forms of deeds.

(The motion was seconded.)

E. B. SMITH: No legislation is needed. I will give you an example or two. We all know what the word "grant" means in the statute. We all know what a warranty means. We all know what the term "mortgage" means. It is our practice to say John Dee mortgages to Richard Roe. And we do not say that John Doe grants and conveys unto Richard Roe and that this is intended as a mortgage. That is archaic language. Why in the devil do we need any legislation on something that is so self evident as some of these things. That is the only point I am making.

(Whereupon the motion was put to a vote and carried.)

MR. BENOIT: The next part of our discussion will cover the fixing of fees and minimum fee schedules.

First I think it would be interesting for those who are not familiar with it in so far as the fixing of fees are concerned, to refer to the canons of professional ethics of the American Bar Association and of the Idaho State Bar. I am reading the preamble and the part as to the amount of fees to be fixed:

"In America, where the stability of contracts and all developments of government rests upon the approval of the people, it is peculiarly essential to the system that the establishment and dispensing of justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit approval of all just men.

"No code or set of rules can be framed which will particularize all the duties of the lawyers in the various phases of litigation or all the relations of professional

life. The following Canons of Ethics are adopted by the American Bar Association as a general guide. Yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative though not specifically mentioned."

Then under the heading of "Fixing the Amount of the Fee' we find:

"In fixing fees lawyers should avoid charges which overestimate their advice and services as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge or even none at all. The reasonable requests of brother lawyers and of their widows and orphans without ample means should receive special and kindly consideration.

"In determining the amount of the fee, it is proper to consider:

"1) the time and labor required. The novelty and difficulty of the questions involved and the skill requisite to properly conduct the cause.

"2) Whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in causes likely to arise out of the transaction and in which there is a reasonable expectation that otherwise he would be employed or will involve the loss of other business while employed in the particular case or antagonisms with other clients.

"3) The customary charges of the Bar for similar services." (And I think that is important.)

"4) The amount involved in the controversy and the benefits resulting to the clients from the services.

"5) The contingency or certainty of the compensation.

"6) The character of the employment, whether casual or for an established and constant client.

"No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service. In fixing fees, it should never be forgotten that the profession is a branch of the administration of justice and not a mere money getting trade."

I think the latter, of course, is very plain to all of us (laughter).

And now we come down to the matter of fixing fees. Set forth there in the Canons of Ethics is a guide for all of us.

Now the question of a minimum fee schedule. I have seen Bar associations that have had no difficulty in adopting a fee schedule, but the difficulty is in how you are going to enforce it. To me this is far more important to the younger members of the Bar than it is to the older members. After all, we haven't got a long time to be here. But I never could understand why a lawyer would take the viewpoint that he had to charge a lesser fee to compete with any other lawyer or lawyers in a community. I have never seen any lawyer accomplish anything or get anywhere to have it said in a given community, 'Go to that lawyer, because he doesn't charge you much."

If we bear in mind that in our given communities we are bound to get our proportionate share of fees if we, as lawyers, do as the doctors and dentists, the accountants, the other members of the professions, the real estate men in their commissions and even the plumbers and carpenters do. They stand pat and agree to charge a certain amount and charge that fee which they consider is reasonable.

My good friend, the late John Graham, always said—and I will not use John's distinct language, because there are some here who at one time took exception to the language used by John at a state convention of this Bar—but John always said, "I would rather do half as much work and get twice as much money." (laughter) And I don't think truer words were ever uttered.

Just out of curiousity I am going to read rapidly from a minimum fee schedule of the Twin Falls County Bar Association published November 20, 1931. In 1931 it wasn't a question of what you were going to charge but what you could collect. Compare it with the charges being made today when we are paying three times as much for a stenographer and for rent and for everything else. We are paying income taxes we were not paying at that time. And what prices we are paying for the cost of living.

For instance, consultation, $5.00. The result of that is that I never have collected a fee for consultation. (laughter)

Collections:

Minimum	$ 5.00
$500 or less	15%
Above $500 and up to $2,000	10%
Above $2,000	5%

I doubt very much if in Twin Falls the lawyers are charging that much today.

District Court:

For commencing or appearing in any case, to be charged in all cases when suit is filed or appearance made	$ 50.00
Trial fee, first day or fraction thereof, uncontested cases	$ 50.00
Trial fee, first day or fraction thereof, contested cases	$100.00
Trial fee, each succeeding day or fraction thereof	$ 50.00

Criminal Cases:

Defense of misdemeanors appealed from Justice and Probate courts, first day or fraction thereof	$ 75.00
Each succeeding day, or fraction thereof	$ 50.00
Defense of Felonies, first day or fraction thereof	$200.00
Each succeeding day or fraction thereof	$100.00

Divorces:

Defaults	$ 50.00

I think we have increased that in our district since the six weeks residential period has been enacted by the Legislature.

Contested cases	$100.00

Damage suits on Contingent Basis:

Settled without suit—of amount recovered	25%
Contested cases—of amount recovered	33⅓%

Don't forget that this is 1931!

Probate Court:

Settling Estates in accordance with that provided by statute, and at that time it was higher than it is now.

Probate and Justice Courts:

Civil Matters—minimum	$ 25.00

Appeals from Probate and Justice Courts to District Court, when same attorney appears as in lower Court, and to be charged when appeal is taken or appearance entered ---------- $ 50.00

Appeals from Probate and Justice Courts when new attorneys appear, and to be charged when appeal is taken or appearance entered ---- $ 75.00

Criminal Matters:
Preliminary Hearings ---------- $100.00
Misdemeanors ---------- $ 50.00

And then it goes on to bankruptcy and so on. I think that except for a few of those items, you will find them practically the same as we are charging today and even lower fees are charged by a lot of lawyers today.

I don't know whether any of you fellows have had any doctor bills or dentist bills lately. I know that you have had plumbers and electricians at your houses. I think that we lawyers in our own communities are our own worst enemies. We have our families to support. We are trying to get by, and none of us are getting rich. We are lucky if we do get by. And yet I would like to see the Bar association anywhere that can get every member of the Bar to agree on fees. Of course, there are times when minimum fees can't be applied. But you can't get the members of the Bar to agree on fees as minimum fees and that is what they will charge. If they would ever reach that point and do it, there isn't a lawyer but what would profit in dollars and cents and at the same time, I think, render better service to his clients.

We had a man in our district who had given considerable time to this matter, and we all appreciated it, but in our district we have done nothing about it.

At this time I want to call on Sherman Bellwood of Rupert.

SHERMAN BELLWOOD: Thank you, Harry. You mentioned this to me shortly after I was seated in here that I would be called on. I became interested in this when I talked it over with Hugh Maguire from Pocatello, who told me about their plan in Pocatello, and surprised me by saying that it worked there. Afterwards he sent me a copy of the Southeastern Idaho Bar Association Minimum Fee Schedule, and I looked that over and became much more interested in it. I wrote letters to several of the lawyers in our district giving them some of my observations on it from my short time of practice.

The fee problem is exceedingly difficult for young lawyers. They haven't arrived at a very good idea as to just what their services are worth, and yet they are in communities competing with older lawyers who have battled that problem for a good many years. For instance, they try to follow the statute in estate cases and quote a fee to a client and then pick up the following week's paper and see a notice to creditors published in there or a notice for proving a will and find out they were apparently wrong on that one. (laughter) Still they can talk to the lawyers in the community, and most all of them, on that particular phase, say, "Yes, we follow the statute." Yet you will find any number of young lawyers who are having difficulty obtaining those cases after they have quoted such a fee.

I hear about the high esteem in which the Bar is held by the public. We talk about it all the time. It was mentioned here by our President earlier this afternoon. The further I get into this business of law practice the more my belief that this high esteem is largely enjoyed by the members of the Bar themselves. (laughter) And I feel certain that one reason for that is the fixing of fees by the Bar. It has caused the public to become a nation of shoppers when it comes to legal services.

And I feel that when you get the public shopping around for legal services, the esteem that we are supposed to have just doesn't exist any more.

The big problem is enforcement. I don't know how you are going to whip that problem. The other problem is getting an agreement on it, and there are two views on these fee schedules. Of course, some of us feel we should have a minimum fee schedule. The other view is that no one knows the value of my services except myself, and no group can fix my fees on my services, and I think there is a lot to be said for both sides of the question. And that is probably why we can't agree on it, because there are two good views on it.

I personally feel that we do need a minimum fee schedule, and if a group can set a minimum fee schedule, they are not prescribing the value of any particular lawyer's services. They are simply setting a floor on them below which they will not go. And I think that in those Bar associations which do have a minimum fee schedule, it does work out well.

FROM THE FLOOR: Mr. Bellwood, would you read the minimum fee schedule of the Southeastern Idaho Bar Association and compare with the minimum fee schedule read by Mr. Benoit.

MR. BELLWOOD: This is the Southeastern Idaho Bar Association Minimum Fee schedule.

Supreme Court:

Representing Appellant	$250.00
Representing Respondent	$200.00

District Court:

Original Appearance, Civil	$ 75.00
Civil Appeal from Probate or Justice Court:	
Appellant	$ 50.00
Respondent	$ 50.00
Criminal Appearance	$ 75.00
Criminal Appeal: Probate, Justice or Police Court	$ 75.00
Dissolution of Corporation, Partnership	$125.00
Divorce, Default: Complaint, Summons, Appearance	$125.00
Divorce, Default: Including Order to show cause and restraining order	$150.00
Condemnation Proceeding	$175.00

Habeas Corpus	$100.00

Foreclosure of Mortgage or Lien:

Up to $1,000.00	$150.00
Up to $5,000.00	$150.00 & 5%
Up to $10,000.00	$150.00 & 5%
$10,000.00 and over	$150.00 & 5%

Quiet Title Action	$200.00

Probate Court:

Probate of Estates (to be based on total accounted for)

First $1,000.00	Statutory Fee
Up to $5,000.00	Statutory Fee
$5 to $10,000.00	Statutory Fee
Over $10,000.00	Statutory Fee

Probate Under Title 15, Chapter 14 or Probate of Wife's Estate, Sec. 14-114 ..... $100 and one-half statutory fee over $3,000.00
Proceeding to determine heirship or terminate life estate $125.00
Adoption Proceeding ..... $ 75.00

Guardianship:
- Person only ..... $ 50.00
- Person and Estate ..... $ 75.00
- Accounting, Annual ..... $ 50.00

Proceeding for approving compromise of settlement of claim of minor ..... $ 50.00

Public Utility Commission, appearance $100.00
Industrial Accident Board, appearance $100.00

Incorporation:
- Drawing articles of $150.00
- Amendment of articles $100.00
- Minutes and by-laws, notices of meetings ..... $ 50.00

Justice and Probate Courts:
- Trial of Misdemeanor, with jury ..... $ 50.00
  without jury ..... $ 35.00
- Trial of civil case, with jury ..... $ 50.00
  without jury ..... $ 35.00
- Preliminary Hearing, indictable misdemeanor ..... $ 50.00
  felony ..... $ 75.00

Collections—Suits (see below):
- Without suit: Under $100.00 ..... 50%
- $100 to $300 ..... 25%
- $300 to $500 ..... 25%
- $500 to $1,000 ..... 20%
- Above $1,000 ..... 15%

With Suit Being Filed, including attachment:
- Under $100 ..... 50%
- $50 to $300 ..... 33⅓%
- $300 to $500 ..... 25%
- $500 to $1,000 ..... 20%

Suit fee in addition to above regardless of recovery—J. P. Court $10.00, Probate $25.00, District $50.00.

U. S. Circuit Court of Appeals:
- For appellant $500.00
- For respondent $400.00

U. S. District Court: Criminal Matter,
- Plea of guilty ..... $ 75.00
- Trial $150.00

Civil Matter $100.00
Simple Bankruptcy $150.00

Office Work:
- Consultation fee ..... $ 5.00
- Drawing contract, easement ..... $ 15.00
- Deeds, mortgages, bill of sale ..... $ 7.50

Lease	$ 15.00
Wills	$ 15.00
Abstracts: First 75 pages	$ 15.00
For each additional 25 pages thereafter or fraction thereof	$ 5.00
Notice of eviction	$ 5.00

Appearances:

Pardon Board, State Board of Education	$100.00
County Commissioners, City Council	$ 50.00
Creditor in Bankruptcy, Arbitration Board, Land B.	$ 50.00

There is a provision that might be interesting. "Section X of the Uniform By-Laws contained in Rule 187 of the Supreme Court Rules reads as follows:

"The association is empowered to adopt such rules and regulations as it shall see fit, including a minimum fee schedule as hereinafter defined, to fix and prescribe penalties for the violation thereof and the machinery for the enforcement thereof not inconsistent with the rules and regulations of the Supreme Court, the State Bar or Board of Commissioners of the State Bar.

"Any minimum fee adopted shall not be construed as fixing the maximum fee or the reasonable fee to be charged in any given case or situation. In determining the amount of fee to be charged for any legal service, there should be taken into consideration the actual time required, the character of the questions involved and their difficulty, and the skill required to properly conduct the business."

And I believe that the balance of that paragraph is as read from the Canons of Ethics but a moment ago.

"Nothing herein shall prevent an attorney from doing work or rendering assistance for less than the minimum fee where the client is unable or it will work an undue hardship to pay the minimum fee as specified herein, nor shall anything herein be construed to affect private contracts for general retainers.

"This schedule shall be binding on all members of the Idaho State Bar who perform legal services of any kind within the territorial boundaries of this Association. See Section XI of Uniform By-Laws, Rule 187 of the Supreme Court.

"This certifies that the foregoing fee schedule was adopted by this Association at its meeting at the Bannock Hotel, Pocatello, Idaho, November 17, 1949, and amended at its meeting December 15, 1949, at the Bannock Hotel, Pocatello, Idaho, and that the same has been filed with the Secretary of the Idaho State Bar, and copies mailed secretaries of other local Associations of Idaho, as provided by Section XI of the Uniform By-Laws, Supreme Court Rule 187, and that said schedule is now in full force and effect."

For lack of time I did not contact all of the attorneys in the Eleventh District, but I got out approximately 16 letters with copies of this to get their reactions. I didn't get a reply from all of them, but better than 50%, and by far the great majority thought it would be a wonderful thing.

WILLIAM GIGRAY: The Seventh District, in June, 1950, adopted a new fee schedule. We had one in 1937, and the committee revised and upped a good number of the fees.

As Mr. Benoit said, in every community you will find a certain number of lawyers who will not permit themselves to be bound by the fee schedule anyway and will continue to set their own fees under the minimum set by the schedule.

I was Scretary of our District Association last year, and mailed copies of our fee schedules to the secretaries of all the other associations, but I received none from anybody. And I think it would help, in setting fees around the state, for the various committees that work in these various associations to send whatever schedules they have adopted to the secretaries of all the associations in the state. That was not done last year. I didn't get any, but I sent ours out to everyone.

SAM S. GRIFFIN: The Supreme Court rules No. 187 Section XI require that that be done, but I don't believe any new ones were adopted last year.

HUGH MAGUIRE: I would be happy to make available copeis of the Southeastern Bar schedule.

In connection with this schedule there was some apprehension as to how it was going to work. But I have heard a lot of favorable comment by members of the Bar at our Association meetings in Pocatello. One attorney was a little bit doubtful as to how it would operate as far as divorces were concerned. That is one type of action in which there is probably as much shopping around as any. He said that when a person comes to his office now and explains the circumstances, and he determines it is to be a default divorce, he tells them what the minimum fee is, and if the person leaves, that is fine. If they are going someplace else to shop, that is all right, because some other attorney will probably get that particular divorce, but in the long run it is going to come back, because some other individual will be going to some other attorney's office, and he will tell them what the minimum fee is, and they will wind up in the first attorney's office, and they are going to be charged with the minimum fee.

Some people have the idea that those minimum fees are the maximum fees. That is not true at all. Nor do I believe that it is true that the adoption of a minimum fee schedule will result in it becoming the maximum fee schedule. It merely gives you a basis from which to start.

Two young women came to my office the other day, and one of them was interested in a divorce, and she asked how much it would cost. I told her, and her friend, who was sitting by her, said, "See' that is just what it cost me when I went to attorney so and so." I think it is a helpful thing. We had no argument over the fee whatsoever.

MR. BELLWOOD: Have there been any particular enforcement problems during the time you were President of your association or since they adopted this schedule?

MR. MAGUIRE: We have never taken any enforcement action. At the time we adopted the fee schedule we appointed a committee to make inquiry into any circumstance that came to any attorney's attention that would cause him to believe somebody might be violating. And to my knowledge there were no instances where it was necessary for that committee to take any action. I don't say there never were any violations, but at least there were never any violations that were flagrant enough to require action on the part of our committee appointed for the purpose of bringing any such matters to the attention of the Bar.

ROBERT KERR: It is nice to have these fee schedules sent to the secretaries of the associations, but with modern duplicating methods I certainly would appreciate it if we could actually have copies of the various fee schedules circulated among all the members of the Bar.

MR. BENOIT: It would be up to your local Bar association to do that after the secretary gets a copy.

A. L. MERRILL: The fee schedule of the Southeastern Bar Association is extremely helpful to the lawyers. Shopping has never worried me a bit, because I have found out that if a client is shopping, he isn't a good client anyway, and I don't want to monkey with him. He would be aggravating, and there would be a number of things about him that would cause a lot of difficulty and a lot of trouble. There are really very few of them. The client picks out the lawyer he wants to go to, and the schedule is a guide that helps you a very great deal.

The last paragraph read in that schedule permits the lawyer, of course, to give helpful service legally to people that need it and can't pay for it. And it gives him an opportunity to help widows and orphans of a friend who has died and his family is in hard circumstances. They won't go to anybody else but that lawyer, and that lawyer, under that fee schedule, has an absolute right to be easy with that client. That is why that provision was placed in there.

The lawyers generally will obey a minimum fee schedule, and it is extremely helpful.

Here is another situation that applies particularly in a town like Pocatello where labor unions are very strong. They themselves have fee schedules, and they understand the lawyers' fee schedule, and they don't expect to go underneath it, because it applies exactly to them in their own work as it does to the lawyers.

Our fees are tragically low in some instances. Our overhead expense has gone up tremendously. We used to get a stenographer for $75.00 or $80.00. Today you pay $250.00 for a competent stenographer. Thus it is with other expenses. When we realize the fact that we have to pay those expenses before we get a dollar for ourselves, we have to give consideration to those fees and be businesslike about it or else we might as well go out of practice. I think the lawyers generally, with a fee schedule like that before them, appreciate the fact a great deal more than if they didn't have anything as a guide upon which to charge. I would like to suggest that every one of the associations in the state give consideration to the adoption of a minimum fee schedule.

E. B. SMITH: In 1929 the Third Judicial District Bar adopted a minimum fee schedule in which every attorney in the district joined. It wasn't long after that until we found attorneys not living up to it, and they never lived up to it. I became extremely disappointed over it. I don't know whether I am in favor of it or not. I may be converted.

I am not so sure that the Supreme Court has any right to attempt to punish any member of the Bar for violations. I have thought that the best approach is through education.

You might accomplish more good, especially in the cities or larger centers, if you had a standing committee and the attorneys advised of that committee—so that they could go to that committee any time and discuss the problems relating to fixing the charges which puzzle the lawyer in question. We have operated under that system unofficially for a number of years in Boise.

Now I have another subject matter that I would ask to place before this meeting, and this is the time to do it, I believe. It has to do with the Industrial Accident Board in workmen's compensation cases. For a long time the Industrial Accident Board had some difficulty in relation to regulation of reasonable fees. The fees that they desired to allow for attorneys are very reasonable. They are not cheap. The Chairman of the Board has asked me to place this before the Bar. This matter needs study, and it needs recommendations by a committee of the State Bar working in conjunction with the Industrial Accident Board.

SAM S. GRIFFIN: I move that Mr. Smith present to the Resolutions Committee a proposed resolution for its consideration along the lines suggested by him.

(The motion was seconded, and, upon vote had, carried.)

MR. BENOIT: Mr. Merrill said he was not worried about bargaining. Most of us are not. And I think there are many of us, where a widow with children has only a house and title has to be cleared just by probating, have done it for nothing time and time again. But I don't find that it is the people who can't afford to pay who do the bargaining. In my experience it is the person who can afford to pay who does the bargaining. I think we have lost a lot by not charging the fee which the statute says is the maximum fee you can charge against the estate.

That maximum fee set by the Legislature, which was for the purpose of reducing the fees that lawyers were charging, I think, is a fair fee for any lawyer who can competently handle an estate, especially in these days with interitance tax and income tax questions always involved. I don't think any lawyer, assuming that the person can pay, is justified in charging any less than that.

Often I have had five or six heirs—and not a one of them had spent a cent or worked a minute to earn the money they were getting—come into my office and say, "How much will you charge us to probate this estate?"

And several times the first thing I have said to them is, "if you have been around bargaining on this, I am satisfied you can go somewhere and have it done cheaper than I would do it, and you are wasting my time, and I am wasting yours."

The result was that they walked out, of course. (laughter) But if every lawyer took that viewpoint, you would get the fee you are entitled to in the long run. And at the same time you would be rendering a service and would be paid what you should be paid. That is an important element in every community, the probating of estates, and I don't think that fee is a bit too high.

A. G. SATHRE: The Clearwater Bar Association has a schedule. That schedule, as it affects probating of estates, probably has a tendency to make the individuals having estates to be probated go shopping more than anything else for the simple reason that though we have a statutory fee the Bar's minimum schedule is less. In fact the minimum fee is just one-half of what the maximum fee would be. The result is that prospective estate clients go down to Lewiston where there are more lawyers and start shopping. Frankly in the smaller communities you see a $150,000 estate go to Lewiston, 63 miles away and traversing two counties in order to get there. That has been my experience in north Idaho as far as Bar schedules are concerned. It doesn't do what it is supposed to do. It really sends them out shopping.

Take the matter of consultation fees. The Bar Association sets $3.00 for consultation. When a client think of a consultation, they don't think of a ten-minute talk that we heard about today. If they want to spend an hour in your office, or if they want to spend the afternoon in the office, they figure 3.00 is sufficient.

So I say the minimum Bar schedule doesn't mean a thing.

HUGH MAGUIRE: I do think the minimum Bar fee schedule does mean something. It is not a question of argument, it is just a question of how you personally feel about it, I guess. One of the reasons, probably, that a minimum Bar fee schedule doesn't work in a lot of places is because the Bar association isn't active. I know in Pocatello we devised means to get the attorneys to come out to Bar association meetings, and I think that since it was devised we have had a lot stronger Bar, and the members have come, and they have talked their problems over, and they

have felt a much closer association with each other and have felt more like working and seeing that this minimum Bar fee schedule was carried out.

About the same time this Bar fee schedule was adopted, we put our members on a pay in advance basis. It is kind of hard to get started, but we were going to have a meeting each month, so we charged them $12.00 in advance plus $3.00 for dues—$2.00 a meeting for the dinner—and you had to pay that whether you came or not. The dinner was taken care of in advance, and we had practically all of the attorneys coming to the dinner, because they had paid their two bucks, and they were going to eat. We are fortunate enough to have the Federal Court and the Supreme Court convene in Pocatello, and we have been able to build up enough reserve so we can have those Courts as our guests without wondering how we are going to pay for it. I think the prepayment idea had a lot to do with the increases in our attendance. And the increased attendance did make our Bar more active.

MR. SATHRE: We pay our fees to the Clearwater Bar Association, and we drive 63 miles to attend the meetings, and we pay for our own meals when we get there.

MONDAY, JULY 2, 1951
10:00 A.M.

PRES.: At this time we will have the report of the Bar Committee on the Election of Idaho Judges. Mr. Robert St. Clair is Chairman.

ROBERT ST. CLAIR: The following resolution was passed by the 1950 Idaho State Bar Convention.

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 methods now in force or suggested in other states for the selection of judges:

NOW, THEREFORE, be it resolved that the President of the Idaho State Bar be, and he is hereby, directed to name and appoint from the membership of the Bar of this state a permanent committee 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 of this state; that the committee be further directed to advise by ordinary 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.

Pursuant to this resolution a committee was appointed composed of Judge Hugh Baker of Rupert, Oscar W. Worthwine of Boise, Paul W. Hyatt of Lewiston, Ralph H. Jones of Pocatello, and myself.

All over the country today there is an increasing need for revamping the set-up of election of Justices and Judges. It has been very evident in the last few years.

The American Bar Association recommends that each state look into the matter of their own systems and see if they can be changed or made better.

Under our present Constitution, Idaho cannot adopt many of the plans now in force.

In Missouri the Justices are appointed, under their present system, by the Governor. If a Justice or a Judge of the higher Courts and of the prominent Courts seeks to be reelected, all he need now do is file his intention. He would appear on the ballot, "Should Justice so and so, naming him, succeed himself?" In the event that the public did not want him, they would naturally vote "No." If the "noes" had it, then the Governor would appoint another Justice, and he in turn would stand an election similarly held. That has been a very ideal system for Missouri.

It is thought by the American Bar Association and by other states that possibly such a system could be inaugurated in other states, but state constitutions prohibit largely that plan being adopted.

This must have been a matter of grave concern to the lawyers of Idaho, or they never would have passed a resolution such as was passed at the last State Bar Convention.

The committee, as we understood it, was to promulgate some sort of bills to present to this State Bar meeting for your consideration and see if anything could be worked out with respect to a system in Idaho or if it need be done.

In California they also have a system which is quite similar to the Missouri plan. The Governor appoints a judge and he takes the recommendation of a Board of Governors, and he follows their recommendations largely. In Idaho the constitution requires an election. And in California the appointment must have the approval of three elective officials.

Before Governor Warren became Governor of California, appointments were entirely political. Warren added the voluntary practice of having the appointee approved by the Board of Governors of the California Bar, but it is still somewhat political. Some person has to fill the vacancy.

Now the District or Superior or Trial Judges stand election there. In California it doesn't apply to Trial Judges—or in Missouri—but it applies to the Supreme Court and Appellate Court Justices. In California the appointment is equivalent to a life tenure, a 12-year term. In California the Governor appoints all Judges, but it is still under the plan of submission to the Board of Governors.

New Mexico will vote on the Missouri plan in September. Reading an article from the Journal of the American Judicature Society, it states:

"New Mexico may become the second state to adopt the A.B.A. plan for selection of judges. A constitutional amendment to that end was approved by the Legislature last month and will be voted on at a special election in September.

"The plan provides that vacancies will be filled by appointment of the governor from nominations by a commission composed of the Chief Justice and the State Bar Commissioners. A Judge who files notice of candidacy for reelection goes on the ballot without competing candidates, the sole question being his return to office. If he does not file, or if the vote is negative, the vacancy is filled by nomination and appointment.

"Governor Edwin L. Mechem has announced that he may use the procedure of the plan on an advisory basis for appointments between now and September.

"The long fight of the Utah Bar for a similar measure in that state resulted this

year in a law providing for non-partisan election of judges on a 'headless ballot.' Appointive plans were pending in Nevada and West Virginia at adjournment last month."

Most of the States of the Union are very seriously considering the question of the selection of Judges and how best they might improve their present systems.

I want you all to know specifically that the members appointed on the committee for this report gave untiringly, do not expect and have not asked for any remuneration whatsoever and that the views expressed by them in this report are just the views that they have promulgated in their meetings which have been various and which have involved time and travel. The plan offered by the committee is for your consideration. In other words, we feel that we have done the best we can, and we are not attempting to shove anything down anyone's throat. We were appointed for a purpose; we feel we have fulfilled that purpose, and today we present the plan for your consideration. It is up to you after that.

A copy of our report went forward to every attorney in the state.

The purpose of the enactment first proposed is the separation of judicial offices of the same class, distinguishing one from the other by the name of a particular incumbent, requiring a candidate to state in his declaration of candidacy the name of the incumbent whom he seeks to succeed and continuing the separation and distinction through nominating and general elections to and including the certificates of nomination and election.

I will not read the title and text of this bill since you have all had it.

The considerations which prompted the members of the committee to recommend this bill are:

There is at present no way by which a candidate may be elected or an incumbent re-elected without opposition if there are more candidates than offices to be filled. A declaration of candidacy makes the declarant compete with all other candidates including the satisfactory incumbent who seeks re-election. The result is that an incumbent, although thoroughly capable and satisfactory, finds himself opposed by candidates who do not desire to compete with him and who would not have declared against him. The incumbent is faced with the necessity of incurring campaign expenses.

In the election in 1950 one justice of the Supreme Court sought to succeed himself. One vacancy was to be filled at the same election. In the primary there were seven candidates for two offices, six of whom in law opposed the incumbent as well as each other. In all two-judge districts, except the Eleventh, one judge retired on account of age but the other sought reelection. In all cases there were three or more candidates for the two offices. It is believed that in no case would an aspirant have declared against the incumbent but all were candidates against him. Every incumbent deemed it necessary actively to campaign. No incumbent was defeated. If the incumbent's opposition had been limited to those who had filed against him, it is believed none would have had opposition and all would have been saved campaign expense and concern over the result. The bill would permit unopposed candidacy and limit the contest to the particular office concerning which there is in fact a contest.

While the offices are of the same class there is a separation and distinction in operation. Justices of the Supreme Court are seated and have a priority fixed by seniority. In two-judge districts one is the senior judge.

This legislation is of importance as to justice of the Supreme Court only in those

years when two are to be elected and as to district judges is of importance only in two-judge districts.

The committee desires to break up the presentment of the report in two sections, and therefore, at this time, I move you the adoption of the proposed Bill No. 1 just read.

(Whereupon the motion was seconded by Mr. Oscar Worthwine.)

PRES.: The motion is open for general debate from the floor at this time. Mr. Griffin pointed out that when we vote on this matter, it will be necessary to vote by Associations as required by rule. Does anyone wish to discuss this motion?

GEORGE DONART: If we adopt that, are we approving that bill in exactly that form or are we adopting that principle.

PRES.: As I understand the motion, it would be this identical proposal with the additions necessary to conform to the rules of the Legislature when presented.

MR. ST. CLAIR. That is the idea of the committee. That the bill as read, with the adaptation later for legislative purposes, would be adopted.

MR. DONART: If that bill in its present form was submitted to the Legislature, some member might ask what we would do in a case where four or five men file at a primary to succeed a certain Judge if that Judge, before election, should resign or die and a successor to him would be appointed. They would not then be succeeding the Judge that they were running to succeed. I wonder if we shouldn't change the language.

MR. WORTHWINE: The committee considered that, but we have another meeting of the Association, and under the resolution adopted a year ago, there will be an addition to take care of that contingency. It occurred to us that that would be rather elaborate and probably would make too long a report if we went into that at this time. But we considered that very question, and the procedure, as we saw it, would be somewhat complicated to provide for that contingency. But it is the intention of the committee to take care of it.

S. T. LOWE: I have considered this report. I am entirely opposed to it. I think the report is entirely unwarranted. Any person who runs for office, whether he is in office or not, should compete on a fair basis and on an even basis with all other persons or aspirants to office. If this bill were enacted and accepted as law, the result would be that an incumbent in office, whether he was satisfactory or whether he wasn't satisfactory, would be almost impossible to get out of office. I don't think that is a fair proposition. I don't believe anybody should ever be perpetuated in office by legislative enactment, and that is what this bill would do.

There is no reason why every person should not have a right to be a candidate for any office, and it doesn't make any difference whether he is an encumbent or whether he isn't an encumbent. There should be as many as desire to be candidates for any office without any limitation by legislative enactment preventing it.

True, it may cause some expense. But any person who is a candidate will incur expense. An encumbent has an advantage because of his encumbency as it is at the present time, but certainly there should not be any legislation passed here that gives additional advantages to any of the candidates. They should all stand on the same ground.

This, to me, is bordering on the Hitler one-ticket ballot. That is about what it amounts to. It hasn't gone that far, of course, but adopt this and you will have

that sort of thing creeping in. It is only a matter of development. And so far as I am concerned, I certainly am opposed to this bill that has been submitted.

MR. ST. CLAIR: Of course the committee, in going into this matter and looking over all the different plans of the different states, realized that we had to have an election. We really favor the appointment of Judges. But since our constitution does not permit it, this seemed to be the best way of arriving at the same result.

As we view it, this doesn't bar anyone who wants to declare or run for office from running. And the man who is going to be Judge has to run the gauntlet of his own profession regardless, or he won't get it. The voters usually ask an attorney about the candidates' qualifications. The attorneys would know if the present encumbents are satisfactory, and the people usually go to the attorneys about it. Most people don't even know who is on our Supreme Court today.

As the committee views it, this doesn't bar anyone or deter anyone in any manner from declaring or running for a particular office. It really brings a little order out of chaos.

ABE GOFF: Mr. President, has the committee considered the idea of numbering the places on the ballot as a means of getting away from a contest involving the encumbent where the new candidate doesn't seek to oppose him? In other words, a place number one and a place number two.

MR. ST. CLAIR: That was brought up though perhaps not by number, but the mere designation by names seems to define the situation so that you know what you are going for. If it were by number or some other method, then there would always be the question of explanation to the public as to what the number meant.

WALTER ANDERSON: Mr. Chairman, in theory this bill may be all right. But in practice, as we all know as practicing attorneys, it would not work out the way it appears on its face. Suppose there is one place to be filled, and there is one encumbent. It would be an utter impossibility, in my view of this situation, for that encumbent to have opposition under this bill. You are not going to find lawyers over the state who are in effect going to sign a petition, a public record, that they are against the encumbent. If you pass this bill, that is exactly what you have to do. The lawyer who is running against the encumbent must procure signatures of lawyers throughout the state, as I understand this bill, a limit of 25 in one county and 150 in the state.

PRES.: Mr. Anderson, we are acting on just the first bill.

MR. ANDERSON: I beg your pardon. Just remember my speech when you come to the next one. (laughter)

But as long as I am on my feet, I will make one on this subject. I agree with Mr. Lowe. I don't believe that any encumbent, whether it is Judge, Governor or anyone else, should have a patent on the office, and I don't think there has ever come a time when there should be any objection to submitting his claims to the voters of this state. I quite agree with Mr. Lowe that this bill would be only the wedge to perpetuation in office of men whether they are satisfactory or not. And I for one am compelled to vote against the bill and certainly will vote against the next one.

MR. WORTHWINE: Mr. President, over in our district we had two Judges. I believe they were originally appointed. And for a great many years they had no opposition at all.

Now what is the situation? I think most of you here have been on committees, and we have had special sessions of the Bar in an attempt to increase the salaries of our Justices and Judges. We finally did get through a meager increase. Many great lawyers have stood on this rostrum and told of what an advantage it was to be in private practice.

The terms of our District Judges are only four years, and it is the view of the committee that they should not be put to the expense, if they are satisfactory, of going through a primary. I almost got out of my territory to go over into the Seventh District and help the Judges there. I think they are very highly regarded in that particular district.

That is the thought that the committee had. Do not put the men who are satisfactory to the expense of going through a primary. If they are unsatisfactory, I think that the Bar will assist the public in getting rid of them.

Our experience in our district—and we think it particularly applicable to two-Judge districts—has been that if they are at all satisfactory, keep them. We educate them. After they have been in office awhile, they have no practice, and it is very difficult for them to go back to private practice. And we think this measure in part will in a slight way, add to the compensation of the Judges—both members of the Supreme Court and District Courts.

HARRY BENOIT: Mr. Chairman, do I understand correctly that if we have two District Judges to be elected and there are encumbents seeking reelection that the candidates would have to designate which one of the two they were running against?

MR. ST. CLAIR: That is right.

MR. BENOIT: Well, as I view it, we know what the condition is today. If we have one Judge that we are satisfied with and one that we are disatisfied with, so far as ability to handle that office is concerned, we don't oppose either one of them, because if we do, we are opposing both of them. The purpose of this bill is to give us an opportunity to oppose an unsatisfactory Judge or one who is not qualified to be on the bench. It is an opportunity that we don't have today.

Now we know well that for years there has been no opposition to Judges. Very seldom has there been. And I can see that under this bill you at least get an opportunity to oppose an encumbent who is not qualified. Under the present law you now are in the position of opposing a good Judge when you oppose an unsatisfactory one in two-Judge districts.

It seems to me that is the purpose of this bill more than the perpetuation in office of any man who is in that office at this time.

EARL MORGAN: I believe we are forgetting that the voting public is entitled to have this information, too, and the effect of this bill is to do precisely what we believe should be done, and that is give the public a clear-cut choice of whether or not they are going to retain an encumbent in office or put a certain individual in a certain job. While we, as attorneys, might know a little more about it, I believe that the proposed bill will give the public, for the first time, an opportunity to know precisely who they are voting for and for what office.

E. B. SMITH: Mr. Chairman, the assembly here ought to have some background on how the present laws have worked. About 1934 the constitution was amended to provide the nonpartisan judiciary. Very soon after that it became very apparent in the State of Idaho that that constitutional amendment meant, in effect, life tenure in the various courts. Very shortly thereafter we had to enact a necessary com-

ponent of life tenure, to-wit, a judicial retirement provision. And we worked steadily from 1937 until 1949 in order to remedy that situation.

Through the years the various objections that have come up here today came up before the committees time after time. I believe I worked on every committee having to do with that problem and how to solve it. When we obtain a good Judge we are desirous of keeping him; that is the objective of this proposed law.

I take issue with some of the remarks made by my good friends Mr. Lowe and Walter Anderson to the effect that if we have an undesirable Judge we haven't got the nerve to attack the situation. We have the nerve to attack those situations, and we have done it twice on the floor of this convention and if either one of those Judges had again sought to come up for election to office, the entire Bar would have opposed them. I never want it to be said that I haven't got the nerve to attack any Judge that I don't think is qualified. I have done it once, and I will do it again. I will carry it to the Bar if I don't think he is qualified. I am very highly in favor of this proposal.

PRES.: The local Bar Associations can get together and caucus to determine their vote.

(Whereupon a vote was taken by local Bar associations resulting in 434 votes being cast in favor of the motion and 124 votes being cast against the motion.)

Pres.: The motion is carried.

MR. ST. CLAIR: The purpose of the second enactment proposed, aside from making amendments made necessary by the first bill, is to make members of the Bar in the number required or permitted necessary subscribers to the nominating petitions of candidates for the office of justice of the Supreme Court.

I will not read the title and text of this bill except to call your attention to the provisions concerning signers of a declaration of candidacy, ie, "Said declaration of candidacy, if for the office of Justice of the Supreme Court and by one not an incumbent, before the same shall be filed, shall have attached or appended thereto a nominating petition on one or more sheets signed in person by not less than 200 nor more than 400 qualified electors of the state of Idaho of whom not less than 150 shall be duly licensed attorneys at law of the state of Idaho; provided, however, that not more than 25 of such attorney at law subscribers shall be residents of the same county. Each subscriber shall set forth on said nominating petition his occupation, his place of residence and the date upon which he signed."

It would be rather tedious to go on through the rest of the forms, but I assure you that the committee went into it thoroughly, and on the succeeding pages, as shown in your reports that you have received are shown the different sections amended in the manner to fit the case and to put into effect this bill.

The section that has to do with the nominating petition and that requires the signatures of 150 lawyers throughout the state is subject to any amendment you make see fit to make. The figure "150" is merely an arbitrary figure picked out of the air by the committee with no intent that it should be the number that be required. It is merely for the purpose of the report to bring up the discussion of the matter and for the consideration of the Bar as to the number they think proper. The committee didn't know what to put in there. It is just put in there to have a number to start the ball rolling.

The considerations which prompted the committee to recommend the enactment of the bill just quoted are:

The nonpartisan judiciary law has disclosed some inherent defects. Among other things, it has deprived judicial candidates of all organized sponsorship. It has denied to them the aid of political party. The candidate for judicial office is now entirely on his own, and if loss of party sponsorship is to be compensated, the candidate must create his own sponsoring agency. While the incumbent may no longer be party conscious, self preservation tends to make him self conscious. There is at least a temptation to create a sponsoring agency by appeal to denomination, organization, class or other group. This situation can readily produce and in some instances in other states has produced politics at its worst.

The members of the Supreme Court lead a monk-like existence and have contacts only with the lawyers who have business in that court. They do not meet jurors, witnesses, spectators or representatives of the press and do not at frequent intervals and for extended periods hold court in different places. They receive but little publicity in newspapers. They are soon forgotten by all save lawyers and their personal friends. But a small percentage of the voters know even the number of Justices of the Supreme Court and but few can name more than one or two of the members of that court. Many justices abhor campaigns and many of the best are notoriously poor campaigners. The character of their work tends to make them so. The justice sorely needs help in a campaign for reelection.

The individual voter knows and can know but little of the qualifications of justices and aspirants especially the incumbent. The average voter must do one of three things: (1) Inquire of someone who knows, usually his lawyer; (2) determine qualifications from a picture or newspaper advertisement; or (3) pass his right to vote. There is but little interest in non-political offices and candidates. Many voters choose the course last named.

This bill is designed to give to the voter who might not otherwise inquire the benefit of recommendations of those in position to know and qualified to recommend. There seems to be a need for some screening or rating of candidates, a need for some organization to provide a sponsorship. Lawyers are in position accurately to measure the qualifications of candidates for judicial office. Lawyers are concerned with ability and fitness of a candidate or incumbent and have no interest whatever in his political or religious beliefs. In all professions the qualifications of members to fill any position are judged by their fellow members. Lawyers pass upon the qualifications of all who seek to practice law. Why should not lawyers be asked to pass upon the qualifications of those of their number who seek to fill the highest judicial offices in the state?

In California many judicial offices are filled by appointment by the Governor, not by election. While not required by law so to do, Governor Warren years ago voluntarily adopted the practice of submitting to the Board of Governors of the Bar of that state the names of all persons being considered by him for appointment and of appointing only those who were approved. In addessing the California Bar he said:

> "I am extremely grateful to the State Bar for the assistance that it has given me in the past six months. You have helped me in every judicial appointment that I have made—I am of the opinion that no man should aspire to the bench unless he can run the gauntlet of his own profession.
>
> "Every man who is appointed in the next four years will have to do precisely that. If he can not come through after an investigation by his own profession as being qualified for the bench, he will not be appointed to any judicial position."

Governor Warren has followed that rule without deviation. His appointments have been highly satisfactory.

It seems that all substitutes for party nominations and elections have in their operation demonstrated that if the plans are fully to accomplish their aims, if judicial office is to be made or kept attractive, if qualified and capable jurists are to be given some assurance of continued tenure within limits fixed by retirement laws, the Bar of the state must assume and continue to exercise a constantly increasing interest and supervision. Why should not lawyers initially be given a voice if they are ultimately to bear the responsibility?

Other plans have been proposed or adopted, notably with ABA or Missouri plans, both of which involve acquisition of office by appointment not by election. The appointment is made from an approved list in the preparation of which the lawyers have an important part. Such a plan, it seems, cannot be adopted in Idaho without constitutional amendment. The committee does not now suggest that the people of the state be asked to reject the idealism expressed in the constitutional provision they have adopted. The committee believes the objections to and the defects in our present nonpartisan judiciary law can be corrected satisfactorily by legislative act and at the same time preserve and retain the spirit as well as the letter of the constitutional provision.

District Judges continue to live and to work among and to associate with those who know them well. Their frequent appearances in the various county seats of their districts and the publicity which attends the performance of their duties tend to keep at least their names before the public. The voters of their districts know them, have a clear understanding of their fitness and ability and are not dependent upon the recommendations of others. The committee does not believe there is a need for change in the manner of nomination of candidates for the district bench and accordingly does not recommend that their nominating petitions to be sufficient be signed by a minimum number of lawyers.

I now move you, Mr. Chairman, the adoption of the committee's report in respect to Bill No. 2 just read.

(Whereupon the motion was seconded by Oscar Worthwine.)

PRES.: It has been moved and seconded that the committee's report with respect to the second bill be approved. The question is open for debate.

WILLIS SULLIVAN: Mr. President, a committee of the Third Judicial District was appointed to study these various proposals. After careful consideration by this committee, they felt, and their feeling was subsequently approved by the Third Judicial District Bar, that the requirement of 150 attorneys on a nominating petition for the Supreme Court was unduly restrictive. For example, if there was a vacancy on the Court and three attorneys aspired to that office from populous districts and succeeded in obtaining the required number of petitioners who were lawyers, then if an attorney from a district less populous desired to run and was qualified, he might have a great difficulty in obtaining the required number of lawyers' signatures. The committee recommended that in place of 150 attorneys' signatures that the requirement be reduced to 75. It was felt by the committee that this would not be unduly restrictive and would permit those qualified lawyers who aspired to such an office to obtain the required number of signers and would also give the necessary protection which this bill seeks to give the public in forcing a prospective candidate to obtain the approval of the Bar.

In order to eliminate possible objections to this bill as now proposed, I would

like to move that Section 34-703 of the proposed bill be amended by substituting in place of the figure "150" the figure "75."

(Whereupon the motion was seconded by Ralph Breshears.)

PRES.: It has been moved and seconded that the proposed Section 34-703 be amended to reduce the number of signatures of practicing attorneys from 150 to 75. Do you wish to debate the amendment, gentlemen?

ABE GOFF: Mr. Chairman, a point of order. The reason I didn't submit any amendments of the Clearwater Bar to the other proposals was because we are voting by district Bars. Any change you make you would have to send back for vote of the district Bars, anyway. From a point of order, we can't change this at all without referring it back to our districts.

PRES.: I was going to rule that a vote on this particular amendment can be taken by voice vote instead of by districts because this does not pertain to the change of an existing statute. Do you wish to question that?

MR. GOFF: I don't question it. You are the Chairman.

PRES.: I will rule to that effect. Is there any further debate on the amendment?

(Whereupon a vote was taken, and the motion passed.)

PRES.: We will now resume debate on the amended motion.

FROM THE FLOOR: Mr. Chairman, does that mean now the bill is open to amendment in any other phases in accordance with the Chair's ruling?

PRES.: Yes.

FROM THE FLOOR: May I ask, but not in the way of an amendment, why the committee felt it was not necessary that encumbents have signers and seek a petition in support of their right to run?

MR. ST. CLAIR: The commitee felt, in line with the first bill and the entire set-up, that anything that could be done to ease the method of getting the name of the encumbent before the public should be done, and the bill was drawn so as not to require him to go through the work of securing a nominating petition and the like and to merely have him file his declaration of candidacy, and he would automatically be placed on the ballot. If he had to secure names for a nominating petition, there wouldn't be any change.

FROM THE FLOOR: Following that thought, as I understand it, the Bar wanted to have some control over the type of men who were going to be Judges, and if they were unsatisfactory, the Bar wanted to have some method of eliminating them. I take it that if there were an unsatisfactory Judge, it would not be necessary for him to get signers on his petition to run again, and there would be no way whereby the Bar could express dissatisfaction at that time. Of course, as a practical matter, they would vote against him.

GEORGE DONART: I am rising to a point of order or information. As I understand, in voting on this resolution different Bar Associations here cast their vote of the association as directed. Now the resolution before the house isn't the resolution that the different Bar Associations have voted on for or against. What are you going to do about that?

PRES.: We construe the rule that we have discussed to be that the members of the local Bars who attend this convention determine the vote of the district on

that particular question. So under the rule it is not required to be resubmitted at a called meeting of the local Bars. Does that answer your question?

MR. DONART: Yes.

FROM THE FLOOR: Why would it not be proper to ask an encumbent seeking reelection to present his case to the Bar by requiring him to have signatures upon his petition? He would still not be a candidate except against those who declared against him as provided in the first bill we have considered. Particularly in a case of flagrant failure to qualify, it would give the Bar a direct chance to express their approval or disapproval.

MR. WORTHWINE: I am going to be quite frank. I think I am as much responsible for that as any member of the committee—for the provision that an encumbent need not, if he does not desire to, secure signatures on his petition. I don't know how other members of the Bar feel about it, but for some 20 years in my district, except for one occasion, there was no opposition to our District Judges. Personally I was humiliated to be asked to sign a petition for someone that we knew would be elected, because there was no opposition.

Under this provision, if an encumbent desires signatures on his petition, he can secure them whether they be members of the Bar or not. And he can file that petition. But the committee thought, after consideration, that it would be better if all an encumbent need do would be to file his papers with the Secretary of State.

That is about all there is to that proposition. It makes it a little easier, the committee thought, for an encumbent to remain in office. I take it that if he is unsatisfactory, the Bar will see that a suitable candidate is nominated, and some of the lawyers will undoubtedly sign the necessary papers.

I understand that in some states they use this plan, and it has worked out satisfactorily. We don't think it is necessary for an encumbent Judge that is satisfactory to go all over the state or throughout his district securing signatures for his petition.

T. M. ROBERTSON: Mr. President, while I was in favor of the first bill, I rise to speak in opposition to this present one. I think that the bill fails to incorporate either the letter or the spirit of the democratic ideals as expressed in our constitution as mentioned in the committee's report. I think that there are plenty of reasons why there should be a certain amount of Bar approval of judicial candidates, but I don't think that there should be such a drag put on any candidate that wants to run for office to require any number of signers on a petition whereby, by the very number of attorneys in this state, the number of candidates will be restricted. I think the bill could very well provide, and I think it should provide, that any attorney could sign as many petitions as he wanted to, and we could have as many candidates in the field as want to run. If he needs the approval on the part of his profession on the ballot, let an attorney endorse three or four candidates, if he wants to. But I don't think we should, in effect, restrict the number of candidates by law as we are doing by providing that an attorney can only sign one petition and you have to have a required number of attorneys signing for a single candidate.

PRES.: We will be in recess three or four minutes to determine the vote of the local Bars on this motion.

(Whereupon a short recess was taken after which a vote was taken by district Bars resulting in 240 votes being cast in favor of the motion and 318 votes being cast against the motion.)

PRES.: The motion is lost. You had nothing further with reference to your report, Mr. St. Clair?

E. B. SMITH: This matter of improvement in the election of judicial officers has been before this meeting for a number of our sessions. The Missouri Plan follows the 1937 American Bar Association resolution. We have discussed from time to time the matter of attempting to present some kind of a constitutional amendment in this state with reference to the improvement of the election of Judges. We have studied the Missouri Plan and the A.B.A. resolution many times, and yet to my observation nothing concrete has come from it.

I believe we have sidestepped the issue. It is time that we got down to business and have our conventions study the feasibility of educating the people of the state of Idaho, if necessary, as they had to do in Missouri, in order to attempt to amend our constitution, if we deem it advisable to follow the American Bar Association resolution.

I have in mind that we should have a resolution to give this further attention that it may come up again at our next annual convention of this Idaho State Bar.

PRES.: Mr. Smith, I would suggest that you present your views to the Resolutions Committee. Is that agreeable to you?

MR. SMITH: That is agreeable.

PRES.: The next topic on our program is a discussion on group insurance for Idaho lawyers by John Black of Pocatello.

JOHN BLACK: Mr. President and members of the Bar: One of the ways to achieve a lot of unsuspected popularity is to be called upon to talk about this subject of group insurance. I have seen more insurance agents in the last three months than I knew existed in the state. And likewise, I suppose, one of the best ways to prove unpopular would be to try to sell all of you fellows on some insurance, because you are bothered enough in your own localities.

However, we have made a survey of the various group insurance plans now in force among the several Bar Associations of the country, and we have tried to determine their application and practical adaptability insofar as our association is concerned.

I would like to outline, first of all, the steps that I have taken to determine the availability of group insurance for an association such as ours. Our Bar Commission was originally contacted by the same company writing the insurance for the Utah State Bar Association, and that, I presume, is how the matter started and first came to the attention of our association.

In seeking the information necessary to prepare a report such as was requested in this matter, we contacted various Bar Associations and various insurance companies. Other than the Utah Bar, we contacted the following associations, either directly or indirectly, through insurance companies: West Virginia, Multnomah County Bar Association, Illinois State Bar Association, Iowa State Bar Association, Salt Lake County Bar Association, Cleveland Bar Association, Chicago Bar Association, Colorado Bar Association, Indiana State Bar, Kansas Bar Association, Kentucky Bar Association, Minnesota Bar Association, Missouri Bar Association, Milwaukee Bar Association, Nebraska Bar Association, New Jersey Bar Association, Tennessee Bar Association; and we have referred to numerous medical associations, dental associations, nurses associations, engineering societies, teachers organizations, and other professional associations.

In the course of our investigation, the matter of insurance of the type we are interested in here has been taken up with the following companies: Mutual Benefit of Omaha, United Benefit of Omaha, Continental Casualty, Columbian National Life Insurance Company of Boston, Massachusetts, Commercial Casualty Insurance Company, North American Life Insurance Company, Aetna Group, Loyal Protective Life Association, Paul Revere Life Insurance Company, and some others in a casual sort of a way through their local agents.

Before proceeding to analyze the several plans suggested by the various insurance companies, for our purpose, I wish to make a few general statements concerning the survey we have made.

First of all, I would like to say that the survey made cannot by any matter of means be defined as an exhaustive one, as the time and facilities available did not permit one person to cover the complete field, But I believe that out of the data available, it is possible to state several general principals:

First, that a Bar Association as such, is not a true group from the standpoint of the insurance companies, and therefore falls in the class of association insurance. By these terms, as they have been defined to me, insurance companies indicate that a true group must all be employed by one employer, and the method of paying the premiums by pay roll deduction, whereas, an association depends upon individual policy writing and individual payment of premiums. For this reason, I found several of the companies declining to even submit a proposal for group insurance, and others submitting proposals similar to those which have been adopted by other Bar Associations, but which are not fundamentally true group policies. The additional savings available from the premium standpoint to a true group, and not available to us are made possible by the fact that the collection of premiums is expedited under the pay roll deduction plan, and only a single policy is written with certificates issued to the respective members of the group, thus saving considerable expense in processing of the insurance policies, and collection costs incurred in obtaining the premium payments as they accrue.

However, the plans which have been submitted and which have been adopted by other Bar Associations, do result in some savings in some cases, but as a second principal, I believe we can safely say that in each plan submitted, we are getting the type of insurance for which the premium has been fixed. By this, I mean to say that you will notice, as I mention the various plans, that there is a wide variety in the amounts of the benefits, the term for which they are payable, the cancellation privileges in the policies, the age brackets covered, and the premiums fixed. In other words, you will note that in some instances the premium appears to be much lower than in other instances, but at the same time, the higher premium carries greater benefits, and so these factors must be borne in mind in considering the several plans.

Before proceeding to a discussion of the four (4) plans actually submitted, I would like to remark that some of the other companies mentioned above have indicated a willingness to further discuss the matter and to prepare a plan in accordance with our desires in the matter, and have not done so until this meeting disclosed whether or not we would be interested in the plan, since I am advised by these companies that it entails considerable expense to prepare these plans for a company that does not have any association insurance for health and accident and hospitalization in force.

The four (4) plans submitted, and which we have for discussion, were submitted by: 1. Mutual Benefit Health & Accident Association, of Omaha; 2. Continental Casualty Company; 3. The Columbian National Life Insurance Company; 4. Commercial Casualty Insurance Company.

The most comprehensive, and at the same time, most expensive of the proposals, was submitted by the Mutual Benefit Health & Accident Association of Omaha. The plan was originally worked out for the Michigan Bar Association, at their special instance and request, and has been put into practice by various groups of attorneys, physicians and dentists throughout the country. The plan submitted by Mutual Benefit is the most comprehensive plan of any submitted. It is divided into two separate programs; one policy to be issued to those under the age of 58, and the other issued to members from 58 to 69. For the convenience of the members of the Bar in examining this plan, I have attached to my remarks, a complete schedule of the benefits available to those in each age group, together with the premiums payable under each separate plan. The plan is set up so that the individual person may obtain a basic compensation of $400.00 per month, $300.00 per month, $200.00 per month, $150.00 per month, or $100.00 per month, during the period of total disability from accident or sickness, and the benefits as set up by the Mutual Benefit are payable during the period of disability for the life of the insured. There are included in the program benefits for non-confining sickness, and confining sickness, and additional benefits for hospitalization and payment for nursing. I am inserting at this point in my remarks, these schedules (pages 46 and 47), and while I will not read them in their entirety, I want to call your attention to some of the benefits.

The benefits to be derived from this insurance program called to my attention by Mr. Frank T. Briggs of Pocatello, Manager of the Idaho division office, are as follows:

1. The Mutual Benefit Health & Accident Association of Omaha, is the largest organization of its kind writing accident and health insurance, and a comparison with other companies in this field illustrates the fact that in 1950 it wrote approximately $86,000,000 in premiums, as compared to its nearest competitor, Continental Casualty, with $40,000,000.00 in premiums.

2. It was the only plan submitted carrying lifetime coverage, with no limit to the amount of benefits that would be drawn should total disability strike the insured, either by way of accident or by sickness.

3. The company maintains a local claims service, and claims are handled by Idaho personnel.

4. There is no automatic termination age.

5. The policy is non-cancelable, and guaranteed renewable unless the member leaves the profession, or unless the entire group is terminated.

6. There is no reduction in benefits because of occupational change of duties.

7. Pays disability benefits resulting from accidental bodily injury (the means or the act causing the injury is not a factor in the claim).

8. Pays disability benefits regardless of whether disability is immediate.

9. The policy contains a waiver of premium provision should disability continue for a period of one (1) year or more, meaning that should such disability continue for more than a year, the company waives the payment of premiums, and continues to pay the benefits provided in the policy for the compensable period.

Its disadvantages that occurred to me in this policy were as follows:

1. The premium is higher than the other plans submitted, but this is the only

(Continued on page 48)

PROFESSIONAL MEN'S PROGRAM

Income Protection with Lifetime Benefits . . . Available to Eligible Members of the Legal Profession

ISSUED TO AGE 58

	BASIC PLAN				
ACCIDENT BENEFITS: Double Benefits for Specified Travel Accidents					
TOTAL DISABILITY, per mo. for LIFE, if incurred before age 60	$ 400.00	$ 300.00	$ 200.00	$ 150.00	$ 100.00
TOTAL DISABILITY, per mo. for LIFE if incurred after age 60	200.00	150.00	100.00	75.00	50.00
PARTIAL DISABILITY, per month for three months	160.00	120.00	80.00	60.00	40.00
PHYSICIAN'S & SURGEON'S FEES, for non-disabling accidents	50.00	50.00	25.00	25.00	25.00
SICKNESS BENEFITS:					
CONFINING SICKNESS, per mo., for LIFE, if incurred before 60	$ 400.00	$ 300.00	$ 200.00	$ 150.00	$ 100.00
CONFINING SICKNESS, per mo., for LIFE, if incurred after 60	200.00	150.00	100.00	75.00	50.00
NON-CONFINING SICKNESS, incurred prior to age 59:					
Benefits payable up to age 60, per month	200.00	150.00	100.00	75.00	50.00
THEREAFTER, even for a LIFETIME, per month	100.00	75.00	50.00	37.50	25.00
NON-CONFINING SICKNESS, incurred after age 59:					
Benefits payable up to twelve full months	200.00	150.00	100.00	75.00	50.00
THEREAFTER, even for a LIFETIME, per month	100.00	75.00	50.00	37.50	25.00
ADDITIONAL BENEFITS:					
HOSPITAL BENEFITS (either sickness or accident) per month, up to 3 months	200.00	150.00	100.00	75.00	50.00
NURSES' BENEFITS (if hospital confinement not required) up to 3 months	200.00	150.00	100.00	75.00	50.00
ACCIDENTAL DEATH AND SPECIFIC LOSS BENEFITS: Double for Specified Travel Accidents					
Accidental Death	$10,000.00	$10,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00
Loss of Both Hands	10,000.00	10,000.00	5,000.00	5,000.00	5,000.00
Loss of Both Feet	10,000.00	10,000.00	5,000.00	5,000.00	5,000.00
Loss of Both Eyes	10,000.00	10,000.00	5,000.00	5,000.00	5,000.00
Loss of One Hand and One Foot	10,000.00	10,000.00	5,000.00	5,000.00	5,000.00
Loss of Either Hand, Foot or Eye	3,000.00	3,000.00	1,500.00	1,500.00	1,500.00
Annual Premium FIRST DAY COVERAGE	$ 328.00	$ 248.00	$ 164.00	$ 124.00	$ 84.00
7-DAY ELIMINATION	281.20	212.90	140.60	106.45	72.30
15-DAY ELIMINATION	250.00	189.50	125.00	94.75	64.50
30-DAY ELIMINATION	234.40	177.80	117.20	88.90	60.60
60-DAY ELIMINATION	218.80	166.10	109.40	83.05	56.70
90-DAY ELIMINATION	203.20	154.40	101.60	77.20	52.80

IF PAID QUARTERLY, PREMIUMS ONE-FOURTH OF ABOVE RATES

60-DAY ELIMINATION	218.80	166.10	109.40	83.05	56.70
90-DAY ELIMINATION	203.20	154.40	101.60	77.20	52.80

IF PAID QUARTERLY, PREMIUMS ONE-FOURTH OF ABOVE RATES

PROFESSIONAL MEN'S PROGRAM

Personal Income Protection for Senior Ages . . . Available to Members of the Legal Profession

ISSUED TO MEMBERS FROM 58 TO 69

	B A S I C	P L A N		
ACCIDENT BENEFITS: Double Benefits for Specified Travel Accidents				
TOTAL DISABILITY, per month, for LIFE	$ 400.00	$ 300.00	$ 200.00	$ 100.00
PARTIAL DISABILITY, per month, for three months	160.00	120.00	80.00	40.00
PHYSICIAN'S and SURGEON'S FEES, for non-disabling accidents	100.00	75.00	50.00	25.00
SICKNESS BENEFITS:				
CONFINING SICKNESS, per month, for 24 months	$ 400.00	$ 300.00	$ 200.00	$ 100.00
NON-CONFINING SICKNESS, per month, for 3 months	200.00	150.00	100.00	50.00
ADDITIONAL BENEFITS:				
HOSPITAL BENEFITS (either sickness or accident) per month for twelve months	$ 200.00	$ 150.00	$ 100.00	$ 50.00
NURSE'S BENEFITS (if hospital confinement not required either sickness or accident) per month, for three months	$ 200.00	$ 150.00	$ 100.00	$ 50.00
ACCIDENTAL DEATH AND SPECIFIC LOSS BENEFITS: Double Benefits for Specified Travel Accidents				
Accidental Death	$10,000.00	$10,000.00	$5,000.00	$5,000.00
Loss of Both Hands	10,000.00	10,000.00	5,000.00	5,000.00
Loss of Both Arms	10,000.00	10,000.00	5,000.00	5,000.00
Loss of Both Feet or Legs	10,000.00	10,000.00	5,000.00	5,000.00
Loss of Both Eyes	10,000.00	10,000.00	5,000.00	5,000.00
Loss of One Hand and One Foot	10,000.00	10,000.00	5,000.00	5,000.00
Loss of One Hand or One Arm	2,800.00	2,800.00	1,400.00	1,400.00
Loss of One Foot or One Leg	2,800.00	2,800.00	1,400.00	1,400.00
Loss of Either Eye	2,000.00	2,000.00	1,000.00	1,000.00
Annual Premium FIRST DAY COVERAGE	$ 456.00	$ 342.00	$ 228.00	$ 114.00
7-DAY ELIMINATION	396.00	297.00	198.00	99.00
15-DAY ELIMINATION	356.00	267.00	178.00	89.00
30-DAY ELIMINATION	336.00	252.00	168.00	84.00
60-DAY ELIMINATION	316.00	237.00	158.00	79.00
90-DAY ELIMINATION	296.00	222.00	148.00	74.00

IF PAID QUARTERLY, PREMIUMS ONE-FOURTH OF ABOVE RATES

plan which carries lifetime benefits; all of the other plans terminate payment of benefits at a maximum of five (5) years.

2. The policy contains standard provision number 17, which provides that if the insured shall carry with another company, insurance covering the same loss, he must give written notice to the company. Otherwise, the company shall be liable only for such portion of the indemnity as the indemnity bears to the total amount of like indemnity, in all policies covering such loss. I am advised, in connection with this provision, that it is only necessary to serve written notice on the company of the additional health and accident coverage carried by the insured, and that to members of our profession, this is sufficient to avoid any difficulty with regard to this provision of the policy. The reason for the provision is to limit the indemnity to compensating the insured for disability only to the extent of his actual damage or loss of income, and originally the provision was incorporated in the standard policy to give the company an opportunity to prevent an individual from becoming over-insured insofar as his monthly indemnity was concerned.

Mr. Briggs cited me several instances of claims he has paid to doctors and dentists under the terms of this policy, where the full amount was never questioned, and I merely call it to your attention as part of this report, for further thought on the matter.

3. The most serious disadvantage that I was able to find in the policy is in the insuring clause which provides that it insures against sickness, the cause of which originates while this policy is in force, and more than 30 days after the policy date (except tuberculosis, heart trouble, hernia, or any disease peculiar to women, in which case the cause must originate more than 6 months after the policy date), and does not include any benefits for pregnancy, child birth, insanity, or mental infirmative, or syphilis, or venereal disease.

4. The Mutual Benefit policy does not include surgical benefits, but does include an additional $100.00 a month for hospitalization not exceeding three (3) months, and an additional $100.00 a month nursing benefits while under the care and attention of a Registered Nurse, where no claim for hospital benefits is made for the same period, an additional $100.00 per month not to exceed three (3) months.

One of the interesting factors of the plan proposed by the Mutual Benefit is the availability of insurance to suit the individuals' taste. In this regard, it is interesting to observe from the schedules referred to above, that in accordance with the individual desire, the policy may be obtained which will provide for coverage commencing the first day, or he may pay a lower premium and eliminate the first 7 days, 15 days, 30 days, 60 days, or 90 days of disability or illness. In other words, he becomes his own insurer during the elimination period, unless he desires to take first day coverage.

The second plan submitted was that submitted by the Continental Casualty Company. This more closely resembles a group plan than the Mutual Benefit plan.

The policy is submitted on three (3) different plans. Plan A provides for a $75.00 weekly indemnity, and a principle sum payment of $1,000.00, and is available to male members of the bar under age 60, at an annual premium of $95.00.

Plan B provides for a $50.00 weekly indemnity, and a principle sum of $1,000.00, available to all male members under the age of 65, at an annual premium of $64.00 per year.

Plan C provides for a weekly indemnity of $25.00 per week and a principle sum of $1,000.00, and is available to all members of both sexes under the age of

70, and requires an annual premium of $33.00. The coverage is available until the insured reaches the age of 70.

The policy covers accidental bodily injury sustained while the insurance is in force, and any sickness or disease causing total disability beginning while the insurance is in force. The policy expressly excludes disabilities caused by pregnancy, suicide, private flying, or war.

Weekly indemnity for accidental injuries commencing with the first day, and is payable up to 5 years for total disability, and for partial disability pays one-half of the weekly rate up to 6 weeks. All medical or surgical expense incurred within 30 days of the accident where it is non-disabling, up to one week's indemnity. The principle sum is payable in addition to all other benefits if death results within 180 days, and is likewise payable for the loss of both hands, both feet, both eyes, or any two such members, or in the loss of speech and hearing.

The full weekly indemnity is payable for sickness resulting in total disability, beginning with the first day of hospital confinement, or the 8th day of disability, and is payable up to 52 weeks.

In addition, at an additional premium, the program proposes the payment of hospital confinement up to 70 days at the rate of $7.00 a day, and $70.00 miscellaneous fees for an additional annual premium of $13.30.

At an additional annual premium of $9.00, the program offers surgical indemnity not to exceed $225.00. Thus an individual not eligible under plan A would be able to obtain the benefits above mentioned, including the surgical and hospital indemnity, for a total annual premium of $117.30.

The outstanding advantages of this plan are as follows:

1. All members under the age of 70 are eligible to apply, and will be insured regardless of previous physical history.

2. All benefits are effective immediately as soon as the policy goes in force. This means that there is no 30-day waiting period if illness commences within 30 days after the policy date.

3. Disabilities beginning after the insurance is effective are covered, irrespective of the date of origin of the ailment causing the disability.

4. House confinement is not required during the term of disability.

5. Standard provision No. 17 has been deleted, and full benefits are payable regardless of other insurance.

6. The policy is non-cancelable until age 70 is reached.

7. The premium does not increase with age, and the benefits do not decrease with age.

8. The policy requires only regular attendance of a physician, and does not require attendance once every 7 days during the period of disability.

9. The policy provides for 31 days grace for payment of premium.

10. Waiver of premium takes effect when total disability has continued for six (6) months.

Some of the disadvantages that have occurred to me in the course of studying the Continental Plan, are as follows:

1. The indemnity for total disability from accident has a maximum period of

five (5) years, and for partial disability from accident, one-half the weekly indemnity for a maximum of six (6) weeks. Total disability benefits for sickness only continue for a period of 52 weeks.

2. A surgical schedule is attached to the policy to finding the maximum amounts that may be paid on any particular type of surgeries, and each item of surgery is mentioned, with a final general clause providing that in the event surgery occurs which is not specifically mentioned, that the company may in its own discretion determine the amount of reimbursement, if any, to be paid for an operation not enumerated in the schedule. While the schedule seems to be a standard schedule used in similar policies, I am advised that claims frequently arise which are left to the company's discretion. However, I am also advised that Continental Casualty Company has an excellent record for satisfying their policy holders in this regard.

. It is a requirement that 50% of the members enroll in the plan before it takes effect, but the company has the option of waiving this provision after a sixty (60) day campaign by the company to obtain 50% of the elegible members.

My general observations concerning this plan, are that it affords a very reasonable priced policy easily within the means of all members of the Bar, but the amount of benefits to be obtained by the individual insured does not seem large enough in this day and era of high prices and high costs of living to greatly assist the disabled member.

I believe I am safe in saying that Continental Casualty Company would be willing to furnish a plan providing for larger benefits if we requested it, and should you determine to carry this program of group insurance further, I would recommend that whoever carries on from here, contact Continental Casualty Company with the idea of obtaining a plan providing for greater benefits to be considered along with the plan which has already been submitted. It is needless to point out that Continental Casualty Company is well recognized, not only in our own State, but in other States as being one of the outstanding companies in America, and any insurance obtained from this company would be of course entirely stable.

The next plan proposed was that of the Columbian National Life Insurance Company of Boston, Mass. This is a plan which is now in operation in our neighboring State of Utah, and seems to have been very well received in that state. The report furnished to the Utah State Bar Convention last year showed that from the period of July 15, 1949, to June 12, 1950, well over 50% of the Utah attorneys were covered by the plan, and that a total of $7,436.25 had been paid in claims during the first eleven (11) months operation of the plan.

The Columbian National policy insures all active members of the association under the age of 70, regardless of physical condition, sex, race, or other insurance, during the period of initial enrollment. After the initial enrollment period is past and the plan has been in effect, members who have not applied during the initial period must furnish evidence of insurability. The plan provides that it shall become effective when a minimum of 50% of the eligible members have been enrolled.

Two plans are proposed to the Idaho State Bar. I attach hereto a schedule showing the respective plans and the premiums, and while I will not read this schedule entire, I want to point out that this plan furnishes very definitely a middle-of-the-road plan which, as a group proposition could have very general application to most of the members of the Bar.

I read here from the schedule attached at this point.

IDAHO STATE BAR

Accident and Sickness Disability Plan

	PLAN 1	PLAN 2
ACCIDENT		
Full monthly benefits beginning with first day of total disability up to a limit of five years as result of any one accident		
Monthly indemnity	$ 200	$ 100
SICKNESS		
Full monthly benefits beginning with the eighth day of total disability up to a limit of two years for any one sickness. House confinement not required		
Monthly indemnity	$ 200	$ 100
ACCIDENT AND SICKNESS EXPENSE COVERAGE		
If injuries of any nature or totally disabling sickness require, within six months of the injury or start of the sickness, medical or surgical treatment, hospital confinement or employment of a trained nurse, cost of such treatment, hospital charges and nurse's fees will be reimbursed, *in addition to the monthly indemnity, up* a maximum of	$ 350	$ 350
NOT COVERED		
In the event of sickness, there is no payment for (a) medicines, drugs, materials or supplies. (b) Physicians' fees for the first three home and/or office calls.		
ACCIDENTAL DEATH OR DISMEMBERMENT		
The indicated amount would be payable in event of accidental loss of:		
Life	$5,000	$5,000
Two members (eye, foot or hand); speech and hearing	$5,000	$5,000
One eye, one foot or one hand; speech and hearing	$2,500	$2,500
Thumb and index finger of either hand	$1,250	$1,250

PLAN 1 is available to all active members under Age 65.

PLAN 2 is available to all active members under Age 70.

COST – PLAN 1	Up to Age 49	Ages 50-59	Ages 60-65
Annual Premium	$90.50	$101.50	$124.50
Semi-annual Premium	45.75	51.25	62.75

COST – PLAN 2	Up to Age 49	Ages 50-59	Ages 60-70
Annual Premium	$65.50	$71.00	$82.50
Semi-annual Premium	33.25	36.00	41.75

The Utah plan provides some very outstanding advantages which I want to call to your atention.

1. Pre-existing and chronic conditions are covered by the policy. This is an important feature of the plan, because many of you who have had experience in

adjusting or settling claims based upon this type of insurance coverage, have encountered the defense that the conditions which has disabled the insured, particularly as to the sickness provisions, were pre-existing and chronic, and therefore the benefits are not payable. This provision eliminates any argument based upon pre-existing conditions.

2. The benefits are not reduced because of age.

3. Members engaged in practice of law retain full benefits until they reach the age of 70.

4. Full benefits are paid under this plan regardless of Blue Cross or any other health and accident or hospitalization insurance now owned. In other words, standard provision No. 17 has been eliminated.

5. As you will note from above, surgical benefits are provided to a maximum of $350.00.

6. Claims service is out of Salt Lake City at the present time.

7. The report to the Utah Bar Association shows that claims services have been very satisfactory so far as the lawyers are concerned, and included in their brochure are numerous letters from lawyers, many of whom are personally known to us, practicing in Southeastern Idaho, highly recommending the claims handling by this company.

Some of the disadvantages of the plan are as follows:

1. maximum benefits for disability are five (5) years for accidental injuries, and two years for sickness.

2. The policy excludes payment for injuries received as a result of war, suicide, and the use of private aviation.

3. Sickness disability does not take effect until the 8th day after the sickness commences.

The final plan submitted for our consideration is that of the Commercial Casualty Insurance Company of Newark, New Jersey, a member of the Loyalty group. The information we have on this plan was obtained through the cooperation of the Iowa State Bar Association and the Illinois State Bar Association. Both of these states have adopted the plan of this company. The letter from Mr. Gregory, President of the Illinois Bar Association, stated that the Commercial Casualty Insurance Company plan had been approved in more than 100 Bar Associations throughout the country.

My information concerning this plan is, however, somewhat limited, as I have only the Illinois and Iowa plans to refer to, and I was unable to make connections with Mr. Crawford of Boise, who represents this company in Idaho, prior to the preparation of these remarks, except over the telephone, and accordingly, I did not have a chance to examine the policy or to do other than obtain a brief outline of the plans in operation in these two states. Again this points out the necessity for further study in accordance with what we need in our particular state, and the submission of proposals to the several companies interested upon a basis that they may feel they can comply with. For example, in Illinois there are five (5) different plans available to the lawyers, and in Iowa there are only two (2) plans available.

In Illinois the weekly benefit for sickness and accident may be $20,00, $25.00, $30.00, $40.00 and $50.00, with an accidental death benefit of $1,000.00, and with optional indemnities of $5.00 a day hospital for 90 days, and a surgical benefit

with a maximum of $225.00, all with a variety of premiums, depending upon what the individual desires to have.

In Iowa, on the other hand, there are two (2) plans available; one providing for a $50.00 weekly benefit, and the other one $25.00 a week, and included without option are $7.00 a day hospital indemnity payable for 70 days, including miscellaneous X-rays, operating room, and other hospital expense not to exceed $70.00, and surgical benefits up to $225.00.

A comparison of the two policies shows that in Iowa a member of the Bar desiring to obtain $50.00 a week benefits, $1,000.00 accidental death, $7.00 a day hospitalization expense, and $225.00 surgical benefits, premium totals $86.00 annually, of which $1.00 is paid by the Iowa State Bar Association.

In Illinois to obtain a similar plan, providing for $50.00 a week, $1,000.00 accidental death, $5.00 a day hospital benefit for 90 days, and a maximum of $225.00 surgical fees, the cost would be $84.00 annually.

The advantages of the plan, as contained in the literature furnished by the Illinois State Bar Association and the Iowa State Bar Association seem to be as follows:

1. The plan in its modified form has been approved by many other Bar Associations.

2. All sicknesses are covered, including the insured suffering from a nervous breakdown, who is unable to practice.

3. In the event of a claim, it is suggested that the insured notify the company or representative by a letter or telephone, and a claim blank will be forwarded immediately. Your own physician may certify as to your disability, and is only required to attend you regularly during a disability.

4. It is stated in the literature that all sicknesses are covered, but in view of the fact that I don't have a policy, I cannot say whether this includes chronic or pre-existing illness.

5. The premium seems proportionately low to the other premiums, but I would not like to say that necessarily the premium quoted would be any lower, taking into consideration the insurance offered by the other companies, without an examination of the policy, and a definite proposal for a policy on the members of our Bar.

In examining the literature, certain disadvantages such as have been mentioned hereto, also occur to me, particularly with reference to the limits on indemnity for a period of five (5) years in the case of accident, and for a period of one (1) year in case of sickness. I am not well enough informed of this phase to be able to advise you at this time as to what experience shows with reference to the length of illness or disability, but I believe it is worthy of note that Mutual Benefit is the only company which seems to have extended the disability period beyond the limited 5 years and 2 years as noted before.

As late as Friday and Saturday of last week I continued to receive telephone calls and personal contacts from representatives of other insurance companies who had learned of our interest in this matter, too late to furnish information from their respective companies, and I personally feel that it would be unfair to these other companies and to ourselves to decide on any plan of group insurance at this time without further studying and without giving due consideration to all of the plans offered and to be offered by the various insurance companies. While I have been advised that in this type of insurance, regardless of the company, you get what you pay for; nevertheless, I feel certain that a committee could cover all of these plans

and submit to the Commission or the next Convention a proposal that would seem to be in line with the general needs of the entire Bar.

As you will have no doubt noted in connection with the analysis of the various plans which have been submitted, that there is a wide variety of policies available, and such a committee, as I have suggested, could perhaps work out the best plan for the association to obtain the "MOSTEST FOR THE LEASTEST," and at the same time could obtain a plan which would fit the group.

The advantage of group insurance are simply the buying power of a group as opposed to individual solicitation, and if a group policy or plan is adopted, for everyone, it has the advantage of obtaining a reduced rate for all participants. In this regard, the Mutual Benefit plan proposed above is really in a separate class, since it is not in any sense of the word a group policy, and the various plans suggested are available to every individual member of this association who can qualify as to age at the present time without group participation. Should a committee, such as I have proposed, decide that a plan along the lines suggested, by Mutual Benefit, would be the most desirable by reason of its flexibility, then I feel confident that the plan could be submitted to the company and that they would be receptive, to a group proposal that would perhaps reduce the rates to some extent. I have no authority for making this statement from any authorized agent of that company, but the obvious advantages to the insurance company of mass solititation and insurance would no doubt be a consideration in fixing the premium.

The Cleveland Bar Association, for example, adopted the Mutual Benefit plan over other plans offered by some of the companies mentionel above, because they were particularly interested in the lifetime indemnity provisions, and the premium which was fixed as a group premium for the Cleveland Bar.

In conclusion, I am sure you appreciate that this report is by no means exhaustive, but at the same time, it has served to bring to your attention several plans which have been put in force in other states. I do not believe that anyone can deny the advantages of such plan to an association like ours. By acting as a group instead of individuals, and by accumulating the research of a committee, such as I have proposed, I am sure we can find a plan that will be feasible and workable and practical for the members of our association, and by proceeding as a group, we obtain the advantage of mass application resulting in lower premiums and more insurance for the money actually paid out.

All of us know of instances when accidents and sickness have struck down fellow members of our associatoin, and in some instances our brother lawyers have suffered painful financial sufferings, together with the pains of their illness, which would have been greatly assisted by health and accident insurance.

All of the plans submitted have many desirable features, and all of them have some features which would not be practical perhaps for our own use as a group, and for this reason it is my recommendation that the President appoint a committee to report either to the Commission, within the next few months, or to the next Convention, and to completely analyze all of the plans now before us, and in addition the plans yet to be proposed, and to make recommendations concerning the various plans.

Any plan adopted must have this factor in mind, that it cannot be successful unless the majority of our association believe that it is worthwhile, and are willing to back it up, and consequently the opinion of one (1) individual as to the merits of any plan cannot, under any circumstances, be satisfactory.

I have a large quantity of material about the various plans, on hand, and if

anyone is interested, they may look this material over during this Convention, and of course, all of the material is available to the members of the committee, if one is appointed. I believe that in the interests of determining to what extent the membership at present feel that a group insurance plan is advisable, the President should ask those present whether or not they feel that such a study as we have recommended should be continued, and therefore in order to get the matter before the Convention, Mr. President, I move that a committee be appointed to report to the next Convention, with an analysis of several plans of group insurance, and with the committee's recommendations as to the adoption of a plan of group insurance for the Bar Association.

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

PRES.: We certainly thank you for the exhaustive work and the report that you have given us on this very important matter. Mr. Snook, could you give us the report of the Canvassing Committee?

F. H. SNOOK: Mr. Chairman, the Canvassing Committee composed of Hugh Maguire, Sam Swayne and myself have canvassed the votes cast for the Commissioner of the Western Division with the results as follows: T. M. Robertson, 55, and George Van de Steeg, 39.

PRES.: Thank you, Mr. Snook. I therefore declare Mr. T. M. Robertson elected as the new Bar Commissioner from the Western Division. I notice Mr. Robertson is present. I wonder if you would stand up and be recognized, and give us a speech, if you want to. (applause)

T. M. ROBERTSON: Thank you, Claude. I am very pleased to be recognized, but no speech.

PRES.: And I think that other grand fellow should be recognized, too. He has been a bulwark to the Bar and faithful to the Bar for years. George Van de Steeg, stand up, and we will give you a little applause. (applause) We will be recessed until 1:30 this afternoon.

MONDAY, JULY 2, 1951
1:30 P. M.

PRES.: The first item is the report of our Legislative Committee. Willis Moffatt, former Speaker of the House of Representatives, will give that report.

WILLIS MOFFATT: The batting average of your Legislative Committee this year was not over 100. We haven't computed it percentagewise yet, and I am afraid to. I will say that the committee—and I have in one way or another been connected with it for some years—was, outside of the Chairman, the most loyal and willing committee that I have seen in a long time. The meetings were well attended, and a lot of work was done.

I have some explanations. You can call them alibis if you like. In the first place we caused to have introduced all of the recommendations of the 1950 session of the Idaho State Bar except one. That was the recommendations that were to be prepared by the Committee on Administrative Law pursuant to Resolution No. 8. These were never submitted to us, and we couldn't handle them ourselves, as we were not acquainted with the provisions.

As an illustration of our average, the only bill embodying one of our resolutions that was passed was the one increasing the license fees of attorneys. We didn't have much trouble with that. (laughter)

The duties of the Bar Committee on Legislation fell into three categories, and this year the judicial matters took a great deal of time. The constitutional amendment proposed had to do with the removal of the Justice and Probate Courts as constitutional courts. That has been attempted for session after session and with the same results. This year we got by the House but failed in the Senate.

We also attempted to assist the Supreme Court in an increase in their budget for travel. We got into the defensive position of trying to save the Coordinator, which we did, although we didn't save an appropriation even though the Governor had recommended it.

My observations lead me to believe that there needs to be a tremendous job of public relations, if that is the proper word, between the judiciary and the Legislature. They should have an explanation of what it is all about and what they propose to do. I think that can be best illustrated by telling you that the Governor approved a budget of $3,000.00, a very minor sum, for the Court Coordinator, and the Senate and House Finance Committees investigated the matter and arrived at the conclusion that it wasn't worth while and removed it from the budget. And after their investigation a bill was brought forth, not as a commitee measure but as an individual affair, to repeal the whole Coordinator law. I think that shows there is something wrong with our public relations.

We have tried to do something with Probate and Justice Courts for years. I think the difficulty is that we don't have an answer to what comes next. The question was asked, "Well, what are you trying to do?"

"We want the Legislature to create the courts."

"What kind of a court?"

"Well, that will have to be determined when we get this job done."

That isn't a good answer. And consequently your committee feels that the Bar should recommend—and this is probably controversial—that the Governor appoint a committee on reorganization of the judiciary and that the Bar support and cooperate with that committee. I suggest that intentionally, because if the Bar doesn't, there is a feeling in the Legislature, and it is unfortunate and should be overcome, but I don't know how to overcome it, that the Bar is selfish.

Your President recommended an advisory committee of some type made up of Bar and lay members. And those of us who have recently been mixed up with this situation have come to the conclusion—and possibly it is defeatism—that the Bar just hasn't got the public relations to do the job. Because when we attempt to get any legislation through, the lawyers are under immediate suspicion that it is for the lawyers and consequently against the public. I hate to admit that, but that appears to be true.

Last year the Supreme Court assumed for the first time, and your committee had very little to do with that, the duty of adopting rules of civil procedure. The question then became rather crucial as to how such rules would be published. And after several meetings, a resolution was prepared and passed both houses providing that the Secretary of State would publish, as an appendix to the 1951 Session Laws and each following Session Laws, the rules of civil procedure as adopted and promulgated by the Supreme Court. In that connection I think a further step should be taken by the next Legislative Commitee. You will notice, in the order of the Court, that the Court proposes to designate procedural matters by a capital R in front of a statute. I don't think that will be sufficient to discourage a Legislature from amending the rules of the Court if they appear as

legislative enactments. Furthermore, I believe it will be confusing in that some of the statutes embody both substantive law and procedural matters. It is therefore our recommendation that during the next biennium or 18 months that the rules of procedure be embodied into a code of their own, that appropriate bills be prepared and submitted to the Legislature repealing procedural matters which have been adopted as rules and remove them from the statutory enactments. That will also permit the division of substantive and procedural matters from the same statutes. It doesn't take long to say that, but it is a terrific job to do. That is why I mentioned 18 months. I don't know whether that would be long enough.

The third category which I would place as the duty of your Legislative Committee comes in what I would term technical matters. We had two constitutional amendments prepared by a committee headed by Robert Troxel relating to corporations authorizing classes of corporate stock for non-voting purposes. I have forgotten the other one. We had several other technical statutes having to do with corporations, none of which were passed. We did pass a few procedural things of more or less unimportance.

I would like to tell you why I think that in the last several sessions of the Legislature it has been difficult for the Bar to get its program adopted even though they were just minor procedural enactments.

In this session of the Legislature, in the House of Representatives, we had two practicing attorneys, Representatives Doane and Chalfant of Ada County. And they did a splendid job. Both of them were busy with other matters in the Legislature, and they had to carry the whole load, or almost the whole load. There were two other men in the Legislature with legal training, Representative Young of Canyon County, a farmer who has never practiced law to my knowledge, and the other, Representative McDevitt of Bannock County who was a student in the law school when he was elected and had not yet received his degree when he was in the Legislature. In the Senate we had no practicing attorney at all. Senator Soelberg had legal training. I don't know whether he ever practiced or not, but if he did it was long ago. He has been a rancher for many years. He had to be Chairman of the Judiciary Committee because there was no lawyer to be Chairman of the Judiciary Committee. He was President Pro Tem of the Senate. When it came time for Senator Soelberg to try to explain, let alone sell, a statute amending or relating to corporation statutes in the Senate, it just wasn't possible. That hasn't been too unusual in the last few years. The Senate has had, prior to this session, excellent legal talent, but over in the House it has been the same situation.

If there be one group of citizens and professional people in the State of Idaho whose obligation it is, regardless of their interest, and by reason of their education and training and position, to place themselves in responsible positions to take care of the laws, it is the Bar. But we have defaulted that job to farmers and laboring men and teachers, and if the laws that they enact are not satisfactory to the Bar, and if the Bar can't get done the things it thinks should be done in regard to the laws of this state, it has no one to blame whatsoever except the members of the Bar. You can't expect a farmer or a teacher or a laborer to carry the load on the floor of the Senate or the House of Representatives on matters of that kind.

There are, in the Judges' Retirement Bill, some patent inequities, but in view of the make-up of the Legislature in this session, it was the opinion of your committee that we didn't dare to introduce amendments which were clearly needed. If you look at the make-up of your Legislature 25, 30 or 40 years ago, you will find an entirely different percentage of lawyers to the whole of the Legislature. Maybe we are too busy. Maybe we need too much money. But we can't complain.

Consequently, when you pass a resolution such as you were considering this morning, it makes a nice discussion, but unless you have got somebody who is interested in those resolutions in the Legislature to carry the ball after you have got them into a bill, you might just as well have gone out and played golf. And that is what happened this year. Your committee tried. Your commitee prepared the bills. The bills were submitted. Dave Doane and Frank Chalfant tried and so did Soelberg. But it can't be done in that way.

PRES.: Thank you, Mr. Moffatt, for your report.

We are coming to the part of our program this afternoon that I know you are all looking toward. I would like to introduce Ralph Litton, who is Vice President of the Idaho Bar and the Idaho State Bar delegate to the American Bar Association, who will introduce our very distinguished guest.

VICE PRESIDENT LITTON: Mr. Chairman, members of the Idaho Bar, Ladies and Gentlemen: I feel somewhat reluctant to attempt to introduce our distinguished guest after observing him circulating at the picnic last evening. I feel that he knows more members of our Bar, and particularly their wives, than a lot of us who have lived here practically all of our lives. (laughter) It is barely possible that some of our members are a little envious of his winning our bottle of champagne, and I might also add that he wasn't satisfied with that, but he ended up with practically all the hats in the crowd, too. (laughter) In the second contest he was running a good race, and I feel would have won our other bottle of champagne had we not served the barbecue first. (laughter)

It is a pleasure to present to you at this time our friend, our guest, and our speaker of the afternoon, the Honorable Cody Fowler of Tampa, Florida, President of the American Bar Association. I will ask E. B. Smith and A. L. Merrill to escort him to the speaker's platform. (applause)

HONORABLE CODY FOWLER: Mr. Litton, Mr. Marcus, and thank you Mr. Smith and Mr. Merrill. Without your assistance, I would never have made it. (laughter)

I am delighted to be in Idaho. This is my first trip to this state. I heard someone last night call me an easterner. Maybe technically I come from the eastern part of the United States, and I don't want to lay claim to something I am not entitled to, but there is a difference between a southerner and an easterner. (laughter) I like the spirit I find out here, and I like the spirits I find out here. (laughter)

I enjoyed the party last night very, very much. I think I was given the prize because I was a guest and not because of anything that otherwise would entitle me to it. Of course, I did gather the hats. I think the little lady on my left, when I stood up straight, couldn't reach my head to get the hats off, so I naturally accumulated them. (laughter) I really wasn't built for that second contest that was won by my friend Mr. Benoit and who certainly did a fine job. It shows you how low a lawyer can get when it is necessary. (laughter)

By the way, I want to say very seriously that that report made by your Chairman of the Legislative Committee, Mr. Moffatt, was excellent, realistic and practical. I have been warned, as I go around the country, in substance, "Don't you stuffed shirts in the American Bar Association think you can go out to any state and tell them what to do." And I am aware of that fact. But I am going to observe that generally people are entitled to the government that they get, and certainly lawyers are entitled to the laws that they get, and I will mention that later. The obligation we have as citizens which is emphasized by what happened to you in the last

Legislature is somewhat different than the situation in most states where I have found that the Governors in a majority of the states are lawyers, and the mayors of the larger cities are lawyers, and, of course, the majority of the Senators of the United Staets are lawyers, and about half of the members of the average House of Representatives are lawyers. So it is rather a surprise to me to find out how few lawyers there were in the Legislature in the State of Idaho.

This is the thirty-first state that I have had the pleasure of being in since I was nominated for this position. You are nominated in February and elected in September. In the past the nomination has been the equivalent to election, and everybody thinks that is true except you, and you are a little uncertain that maybe you will be an exception and someone else's nominating petition will be circulated. So since May a year ago I have been traveling the countryside which explains the number of places I have been. In addition to the 31 states I have been in, and I have been in some of them two or three times, I have also been in Cuba, Mexico, and, of course, the District of Columbia several times.

As I have gone about the country, I have been impressed with the type of men who realize the importance of Bar association work and are active in Bar associations. You know Bar associations used to be social organizations. You met once in a great while, and you had a fine time socially, but that was about all we ever did. That has been changed remarkably in the last ten or fifteen years, and the Bar associations now are working organizations with very pleasant social attractions along with it. But the main thing they go for is for work. And the lawyers that participate in the average association meeting go home and feel they are better lawyers and better qualified to handle the problems of their clients.

I am very proud of my profession and the type of men that make it up. And I will tell you a story that is a true story—all of my stories, of course, are true stories—of what happened in 1906. I believe it was on the 18th of April, 1906, that they had the very devastating earthquake in San Francisco. I pause here to say that being from Florida, I speak with reluctance of any misfortune that happens to California. (laughter) But following the earthquake there was a fire that burned nearly everything in San Francisco. And then as now, Bancroft-Whitney had its place of business there, and then as now, they sold law books to lawyers. And then as now, in order to sell them, they had to sell them on credit. All of their records were destroyed in the fire. Within a few months after that time they sent out a letter to every lawyer in the United States telling them what had happened and telling them that there was $200,000 worth of accounts outstanding owed by lawyers of the United States and saying, "Do you owe us any money? If so, how much?"

I heard about this and wired them to give me the information and they sent a letter which had enclosed with it a number of little placards that you could put on the wall. And in beautiful gold letters the card said, in effect, "In grateful appreciation of an honorable profession." That was dated January 1, 1907. It said that by that date they had collected 93% of the money that was owing them, and then in a letter they sent enclosed with the placard they stated, "You may be interested to know that after January 1, 1907, we continued to collect money and receive money from lawyers over the United States until we had received materially over 100%." (laughter) And that just confirms the fact that we lawyers are very, very poor bookkeepers.

We have obtained a lot of information in the form of statistics from a survey of the legal profession we have been conducting. One of the remarkable things to me was that 75% of the lawyers of the United States are individual practitioners.

That may not seem strange to you here, because I think it is emphasized in the smaller states like my own. But you hear around the big cities that we are becoming a nation of specialists. Well, that is not true.

The statistics further show that not only 75% of the general practitioners practice alone, but that some ten or twelve per cent practice with only two men in the organization, either associated or as partners, and therefore there was only ten or twelve or thirteen per cent who practiced with more than three men in the firm. So you realize the responsibility of the Bar associations to keep their members abreast and the difficulty of the lawyers themselves in keeping abreast of the changing laws and the varied laws and rules of administrative agencies and the difficult tax problems and all the other things which we of the profession have to do today that a generation ago didn't have to be considered by the lawyer at all.

And I am convinced, as I become better acquainted with lawyers, and at the moment I feel like I know more lawyers than anybody in the world, and I feel like I have seen more hotels (laughter), that there never was a time in our history when the people were better represented or had lawyers who were better qualified by education or had a higher degree of integrity or higher ethics than the lawyers of the present time.

And therefore I was shocked to learn that these statistics also showed that only 25% of the people of the United States said they were friendly to lawyers. Twenty-five per cent said that they were hostile to them. And 50% said they didn't know enough about them to form an opinion. Now that may be something important to think about here in Idaho, and it may have something to do with the fact that it is as difficult to get matters passed by the Legislature as it is.

In the smaller states we think everybody knows us and it isn't necessary for us to make any real effort to do more than follow the even tenor of our way in handling our clients' business and representing anybody that comes into the office and says he needs a lawyer and hasn't any money to pay for it. And we all say we don't turn anybody away, but remember that the public doesn't know that fact. And we have never told them.

And along with that fact is a rather interesting corollary. The survey disclosed that of the 65% of the people of the United States who needed legal services, most of it was what might be called preventive law and yet things that were important to them and worried the individuals, because there is no unimportant piece of law business. There is no operation that I have had that isn't a serious one. It is the same thing to a person who has a legal problem. This means that only some 35% of our people who need legal services are getting them, and that is a very unhealthy and unsatisfactory situation both to the profession and to the public. It may explain our lack of popularity.

We are trying to do something about this in the American Bar Association by means of legal aid and the lawyers' reference plan. Some of the smaller states are saying that they don't need it in their states. They feel that everyone knows the lawyers and knows what they do. That is an error. Every state should have a set-up for both legal aid and the lawyers' reference plan. If you don't know the details of it, you should get it from your committee, for it answers a need which we, as American lawyers, should supply.

It isn't satisfactory to me, as an American lawyer, to feel that a majority of our people need legal services, and we, the profession, do nothing about giving it to them. But that fact has to be publicized. In many places labor and management have been interested in publicing that legal aid will be given to those who can't afford it. And particularly through the lawyers' reference plan a person can go

to a law office and have his problem solved knowing what it is going to cost him to have a fifteen-minute conference. Most of us can afford a fifteen-minute conference. They average about $5.00, and we don't lose any money on it even though we may like to feel our time is more important. This is a very important thing for us to do and an obligation which we owe our country.

I am not going to belabor this fact any, but I am going to mention it. The fact is that there are many organizations that are willing to recommend that legal aid and services be furnished to those in low income brackets by the government. And you know, if the government ever starts it, that is a step in the direction that we do not favor. We have too much government participation in what we always considered free enterprise already. Certainly we don't want that. But the plan has been set forth in England, and they have it started there. We don't want it here. We don't want it, because we don't think that is better service, and we don't want it, because that is a step in the wrong direction.

This audience is unusual, because there apparently are so few politicians among you. But as I tell audiences where there are many politicians in the audience among the lawyers, you know how difficult it would be to defend your position if a man was running on the ground of furnishing government-sponsored legal services to those who can't afford such services or low cost services to those who can't afford to pay much, and the lawyers had been given a chance to furnish it and failed to do so. Personally I don't see how our position can be defended or should be defended if we do not do it.

I agree entirely with what has been said on your program about public relations. We must have in the profession better public relations. We are getting them, but it is a slow, hard fight, and in order to have good public relations, we need more than just publicity. It means you must do things that are worth while—you, we, the profession. Ordinarily, when you do things that are worth while, the public will know about it, but we should publicize it as much as we constructively and graciously can.

We must remember that we are a monopoly, a closed corporation and that we do not practice law as a matter of right but as a matter of privilege. And the only reason we are justified in being a closed corporation is because we are supposed to render a public service and to exist for the benefit of the public. That is really true of the lawyers.

I enjoyed what Mr. Benoit said the other day that the unpleasant part of his law practice was when he had to talk money to his client. All of us feel that way, although it is absolutely necessary, of course, that we do so.

Now we do not practice law just to make money. If we wanted to make money, we could get in other lines of endeavor and be more successful. But we are a profession to render a service and not a business just to make money. I will add, for the benefit of the younger lawyers, that I don't want to say that a lawyer cannot get rich. He can. He has the same opportunity of marrying a rich girl as does anyone else in the community. (laughter)

I want to mention just a little bit about the American Bar Association. I would like to mention who they are. I understand that I have the honor of being the first President of the American Bar Association ever to be here. I don't know whether that means you wouldn't ask any other President or not. I hope that will not be the case. But those who are active in the American Bar Association, just like the fine representatives you have had active for years, are just men who have been active in local associations, state associations and now in an association

of the profession on a national scale. And they represent and have the understanding and speak for the profession as a whole.

By the way, we are having our annual meeting in New York in September. I realize that is a long ways off and an expensive trip. But we will be delighted to have any of you that can come. Our headquarters will be at the Waldorf. There is a rumor out among the wives of the lawyers in the country that there are some shops in New York that are not too bad. There are rumors that there are pretty good shows and night spots which may almost be as good as the night spot we enjoyed last evening—I mean particularly down on the river. And if you can come, I wish you would. We realize the difficulty for members of the profession in going, particularly the younger members who should be interested in the programs of the profession. So we are having regional meetings throughout the nation. We are trying to have two or three every year. We are hoping to have one next June of Idaho, Colorado, Montana, Utah and I believe one other state at the Canyon Hotel and Lodge. The accommodations are there. We can have a good one, and we can get some of the best men in the country to come and be on the program. The regional meeting we had in Dallas and the one we had in Atlanta were not only well attended, but the programs were excellent, and in one way they were better than the annual meeting, because they were not quite so large. I had many young men come up to say to me that they went home feeling they were better qualified as lawyers because of their attendance. So I hope we can work out a meeting at the Canyon Hotel.

I mentioned awhile ago that we ceased being a social organization. That is true of all of our Bar associations, and is particularly true of the American Bar Association. There is not an annual meeting that we don't go on record for or against some bills to be introduced in Congress. They are bills which you are interested in. We are on record in regard to those, and we meet before committees of Congress to carry out our ideas. We believe we are doing just what you would do were you there and active.

We have some sixteen sections and fifty committees. I am not going to list them, of course, but they are divided roughly between those which are bread and butter matters of the profession and those of a national nature or pro bona publico. We also appoint many committees at the request of the government to assist in one way or another.

I was glad to see the activities of your association in the matter of improving the administration of justice. That, to my mind, is next to the most important service which we can render. Do you realize, or ever take the time to think about it, that lawyers are the ones who really directed the founding of this nation? Lawyers wrote the Constitution. And because they knew the history and background of nations, they realized that there should be, to protect the rights of the individuals in the states, some check on the executive and judicial and legislative branches of the government, and so we have a government of checks and balances. But it is good to realize that the real check on the other branches of the government was given to the lawyers. The lawyers who would be the Judges in the judicial branch of the government have a responsibility of seeing that the Constitution is obeyed and of seeing that the rights of the states and the rights of the public are protected. That is a responsibility which is peculiarly ours.

And I heard your President talk about that and about Judges. It is also well for us to realize that courts are not run for the benefit of lawyers or even the Judges but for the benefit of the litigants who are reluctantly brought before the court and that the Judges are nothing but lawyers who have gone on the other side of the bench in the administration of justice. And they are, and I am sure they want

to be, subject to rules of ethics and canons of ethics just as much if not more so, than the lawyers themselves, because there is no greater responsibility. The confidence of the people in the judiciary is a cornerstone of the confidence of the people in government. And if you ever destroy that, you have destroyed that which makes our country secure.

I was interested in the statement made by the Chairman of your Legislative Committee about your endeavor to do something about courts. It doesn't necessarily apply to the Probate Courts but to courts of minor jurisdiction. We realize that in the American Bar Association tremendously, and we have done a great deal of work in improving traffic courts and justice of the peace courts and so forth. And I will tell you one of the reasons why. Do you realize that some twelve to fourteen million people a year are called before those courts? And only a small fraction of that number ever go before any other courts. Their opinions and their ideas of the administration of justice in America is decided upon the treatment they get in the justice of the peace courts and the traffic courts. If they are like many of the courts in my state, it isn't so good. And there is nothing more important than to have those courts put on the highest possible level. You know it is not only necessary, for the right impression to be given, that a man may obtain justice, he must have the appearance of obtaining justice and feel that he obtained justice. And so I want to say I think that is a most constructive program that your Bar association has.

And I was interested in your judicial selection program. I understand it didn't go through, but I am going to mention the American Bar Association plan which was originally adopted in Missouri and has proven successful there. On that point I would like to mention this: You are impressed, as you go around the country and meet with lawyers and get acquainted with them and see them in their various states, not in their differences but in their similarity of problems, of their whole outlook, of the people, of the lawyers themselves. And it is my opinion that programs which have been proven successful in one state will prove successful in other states, because the situations and problems are not too different. It has proved very successful in Missouri to the complete satisfaction of the Judges and the Bar. Some thirteen states during the last twelve months have gone on record in favor of one type or another of selection of Judges such as proposed in the American Bar Association plan. Three or four states, including New Mexico and Alabama, have had such a plan passed in the Legislature. In some states, including Pennsylvania, the Legislature has recommended that a constitutional amendment be made, because that was necessary in those states because of their constitutional provisions. I predict that after a reasonable length of time, that will become the situation in every state. Judges should be kept out of and taken out of politics, and a Judge should not be required to run a political race. I believe that is the consensus of opinion of the people in the United States who have studied the question.

Now I said that the matters in connection with the improvement of the administration of justice was our second most important function. There is one more important. And that is the work being done, or attempted to be done, by our Committee on American Citizenship. That is a matter that has been neglected in the last 20 or 30 or 40 years. Most of our children have studied little if any American history. I think ten or twelve per cent is all that study American history in our colleges. I have checked with numerous youngsters, and they don't know anything about American history or American government. They do not know why our country has accomplished what it has as compared with other countries. And I will pause here to say that the reason has not been because of our natural resources, because many countries have more natural resources. It is because we are a nation of free men who govern ourselves and have had free enterprise and

equal opportunity and protection under the laws. And there is nothing more important that we, as lawyers, can do than to work with other organizations and to spearhead the education of our people in realizing why our country is great and instilling the spirit of Americanism and pride of country and pride of our flag and its records and its history. That, to my mind, is so vital. And if we had been active in that regard during the last 20 or 30 years, we wouldn't have the infiltration of Communists and Communistic ideas and those who follow Communistic ideologies in too many places in this country including the government itself.

I will not go into that because of the time element. But if you will check, for example, the important part played by Communists during the organization of the United Nations, you would know something of what I mean. And I will mention the fact that one of the men who set up the number of votes that each nation was to receive in the United Nations assembly, and the only man representing the United States, was Alger Hiss. And he gave Russia three votes and the United States one. That may give you some idea of how important it is to teach Americanism and American history.

We have a committee on Communism which is very, very active and which not only has recommended that Communists be dropped from our membership, but we have recommended to the Bar associations in the various states that they take steps to have disbarred any man who is a member of the Communist party, because a man cannot be a member of the Communist party and be true to his oath to uphold and defend the Constitution of the United States of America. (applause) It is time we quit appeasing those people and meet them head on. They cannot be convinced. There is no compromise with them. It is a fight to the finish, and the sooner we know it and the sooner we meet it that way, the better it is for our country.

Now we have gone on record as recommending that lawyers be required to take periodic oaths of loyalty. A lot of our rugged individualists among the Bar object to that and say, "Why should they ask me, an American lawyer, to take an oath to uphold and defend the Constitution of the United States?" The answer is that I know of no technical reasons, but I will point out a few things to you. In many of our states we ask our college professors, our school teachers, to do it. In fact the government requires the labor union leaders to do it, and we require all people who go to work for the government to do it, and why should any American lawyer object to taking an oath to uphold and defend the Constitution of the United States? It is beyond my understanding. I am heartily in favor of it whether it should be technically required or not. The time for technicalities in regard to Americanism is over.

We of the American Bar Association are trying to do what we can for the benefit of the individual practitioner, for the profession, for the people and for our country as a whole. We, as lawyers, owe an obligation to our profession and to our country, and we should be active in every part of our government and in support of our associations. We cannot do what we should be able to do, as a profession, unless we act through our organization. It is there that we can exert our combined influence. And this we know and see on all sides of us is a day of organization.

In that regard it requires the active participation of the local organizations, the state organizations and the organizations on the national level, because each has its own field in which it has its influence. But if we are to carry forward the program of the profession, we have got to do it in a united way. And if we fail in our programs, just as mentioned by your chairman awhile ago, it is because we are so busy with our own affairs that we don't take the time and have the public interest to do that which we ought to do for our own good, the good of our profession, and what is more important, the good of our country.

Now the small states have a great deal of advantage over the larger states in many ways, and I have had that pointed out to me many times by the representative lawyers in the larger states. Because in our smaller states we know our representatives in Congress. We know our representatives in the Legislatures. We generally know our governors and state officials. We know our senators, and we have as many senators as any large state, and therefore proportionately we are much more influential, if we take the trouble to become so, than the lawyers in the big cities or big states where they don't know any member of their congressional delegation whatsoever. So we have additional obligations in that regard.

There is another thing I am going to mention that I was surprised to have said to me, and yet I realize it as I think of it. A member of the Supreme Court of the United States said to me not long ago, "You know I don't worry too much about what the public thinks about what I do. Of course, I would like to have them think I do well. But I don't worry too much if they don't, because they do not understand the problems which a court has. But I will tell you this: I am very sensitive to what the members of my profession think about me and the type of work I do in the conscientious service which I render." Therefore it is my opinion that Bar associations, as representative of our profession, should have the courage and be willing to take a firm stand on every matter that affects government, and that, of course, includes state government, that affects the welfare of the American people or what we generally refer to as the American way of life. And I will tell you more, and I believe you will agree with me, that if the lawyers will get aggressive or behind any program, there is nothing they cannot accomplish. The power is ours. It is a potential power, and it is up to us to make it active.

We definitely have that ability, and the people look to us for leadership. If they cannot look to the lawyers, where do you think they can look—the butcher, the baker, the candlestick maker? The medical profession? We are the only profession that is the hope of our country and that the laymen look to for leadership. And I have had laymen say that to me repeatedly. "Why don't you lawyers take the leadership in these matters?" But we are a little too busy looking after our own affairs and too complacent and like the status quo too well. Too many of our men, and unfortunately too many of our successful lawyers and some of our judges, have done pretty well and are well satisfied. And not only will they not lend their support of the programs, they are against everything the rest try to do. I mention that so we can recognize it when we see it.

We do have an obligation. We have very, very much to do. We have a responsibility. And we should realize that everything that is good for the American lawyer is good for our country, and that everything that is good for our country is good for the American lawyer. We could not exist as a profession as we are today in anything but a free nation, and a free nation cannot exist without lawyers.

The trouble with us is that we are too happy enjoying the blessings that this country offers and its opportunities, and we aren't frightened enough. But if you take the time to study and spend some time in Washington and look the situation over, I believe that you will agree that we have much to be frightened about and that complacency can become and has already become very, very dangerous.

We have taken advantage of our country's opportunities. We have made the most of the blessings this country has to offer, and it is up to us to preserve them for the good of all freedom-loving people in the world and for the good of our children and our children's children. Thank you very much. (applause)

PRES.: Mr. Fowler, I sincerely thank you for that splendid address. It has been a real inspiration to us. As you pointed out, this is the first time that the

President of the American Bar Association ever visited the Idaho Bar, and certainly we have been honored by the visit of yourself, your gracious wife and lovely daughter. We hope you can come back again real soon, even if you do win our champagne.

At this time Mr. A. L. Merrill of Pocatello will discuss the proposed Uniform Commercial Code.

A. L. MERRILL: Mr. President and Members of the Idaho State Bar:

The Uniform Commercial Code is almost ready for presentation to the State Legislatures. At the National Conference of Commissioners on Uniform State Laws held at Washington, D. C., with the American Law Institute in May of this year the following resolution was adopted:

> "BE IT RESOLVED by the National Conference of Commissioners on Uniform State Laws, meeting in its 60th year in Washington, D. C., on the 18th day of May, 1951, that the Uniform Commercial Code with the amendments approved at this meeting is hereby approved and adopted as a Uniform Act, with power nevertheless in the Editorial Board to approve the Comments and to make such further changes in style and other editorial changes as may be required for clarity and consistency in the Code; and be it
>
> "FURTHER RESOLVED, That when the Act with its Comments is available, it be submitted to the Board of Governors of the American Bar Association for its consideration, and that if the Act be thereafter approved by the American Bar Association, it be promulgated for enactment by the Legislatures of the several states, the District of Columbia, the Territories of Hawaii and Alaska, and the insular possessions of the United States."

At the present time, therefore, the Code has the approval of the National Conference of Commissioners in Uniform State Laws and also the American Law Institute, but has not yet been submitted to the American Bar Association. The American Bar Association meets in New York City in September of this year. This Code will undoubtedly be presented to the Board of Governors and if approved will then be submitted for final consideration to the House of Delegates and the General Assembly. Practically all of those who have been working on this Code as members of the Uniform Laws Commission and the American Law Institute are members of the American Bar Association. A large number of copies of the printed code has been circulated and it is anticipated that the members of the American Bar Association who will consider this matter in September of this year will understand the contents of the Code. Undoubtedly this is one of the most comprehensive pieces of legislation that has ever been offered to State Legislatures and it is essential that the lawyers of every state understand it and know what it means.

Fifty-nine years ago on August 24, 1892, the National Conference of Commissioners on Uniform State Laws held its first meeting in Saratoga, New York. The original purposes of the organization were a preparation of uniform state laws relating to marriage and divorce, descent and distribution of property, acknowledgement of deeds, their execution, and probate of wills. Acts on all of these subjects were prepared and adopted by the Legislatures of some of the States. However the most important and impressive work of the Conference has been in the field of commercial law.

In 1896 there was submitted for consideration to the Legislatures of various States what was designated as the Uniform Negotiable Instruments Law. This

Act has been adopted in every State of the Union including the District of Columbia. Ten years later the Uniform Warehouse Receipts Act and the Uniform Sales Act was prepared and submitted. In 1909 the Uniform Bills of Lading and the Uniform Stock Transfer Act were prepared and recommended to the various States. In 1914 the Uniform Partnership Act was promulgated, followed respectively by the Limited Partnership Act, and later by such Acts as the Uniform Chattel Mortgage Act, Uniform Trust Receipts Act, and the Uniform Fiduciary's Act. Many of the States have adopted all of these Acts, but there are States in which a number of them have not been adopted. Furthermore many of the States changed or modified the Acts as submitted so that they are not entirely uniform.

All of these Acts were drawn against the background of commercial transactions as conducted in the latter part of the last century and the beginning of the present one. It would be miraculous indeed if they were still adequate to cover commercial transactions of a Nation that has gone through the changes our Nation has passed through since said time. There have been tremendous changes in our method of doing business and in the speed in which it is done. A number of these provisions have become outmoded. We realize the fact that commerce is not organized on state lines. The perplexing difference in the laws of the several states only serves as a burden upon legitimate enterprise.

While the Negotiable Instruments Law has been considered as a uniform act, nevertheless it has been construed differently in various states by respected tribunals. I am advised that there are over seventy examples of jurisdictions holding contrary conclusions of the very sections of the Negotiable Instruments Act. These are some of the reasons why there has been a greater demand for a streamlined code covering not only negotiable instruments, but also sales, letters of credit, and other items which I shall hereafter mention.

The inadequacies of the existing uniform commercial acts were sensed long before the preparation of the Uniform Commercial Code was begun but it was not until 1940 that the National Conference of Commissioners on Uniform State Laws took steps toward the preparation of this Uniform Commercial Code.

It was suggested that because of the immensity of the project the American Law Institute be entitled to participate. The Institute had just finished the completion of the monumental Restatement of the Law—which is unquestionably one of the greatest projects ever undertaken by any group of lawyers. Both the Commission and the Institute were confronted with difficulties of financing this immense project. Fortunately the Maurice and Laura Falk Foundation of Pittsburgh, Pennsylvania, appreciated the necessity and advisability of developing this project and made a generous grant of $250,000. Thereafter other contributions were received from the Beaumont Foundation of Cleveland and ninety-eight business and financial concerns and law firms throughout the United States. There has been a total of $350,000 raised to finance the work, which it is considered will be sufficient to meet future requirements.

This Code has been written and rewritten, changed and modified, until the final 1951 draft seems to meet the approval of substantially every group. The Code has been drafted by the concerted efforts of many brilliant judges, law school professors, and lawyers, which could never have been available to any one state Legislature. The work upon the Code has been by three groups: Judges who possess judicial acumen and can realize and understand how an act should be construed; law school deans and professors who possess a brilliant concept of the problems and an ability to express them in language clear and concise; lawyers who are in the active field of the practice of the law and understand the practicability of the

project. Invitation has been extended to, and graciously accepted by, many groups affected by this Code. To illustrate: The American Warehousemen's Association, through brilliant legal counsel, has had various conferences with various committees on matters as it would affect this business. The Federal Reserve Bank, through its able counsel, has likewise held numerous conferences and offered valuable suggestions. The American Bankers Association has been active in this project for a number of years and its lawyers have screened the Code, offered valuable suggestions, and have assisted greatly in the final draft. There are many other organizations similarly affected who have rendered the same type of services. A screening process has been engaged in by the Commission and the Institute and the Editorial Board, whereby consideration has been given to and a number of changes made by reason of these various suggestions, so that now it is thought that this Uniform Commercial Code if adopted by the various Legislatures will be of tremendous help and valuable in the future conduct of the commercial business in the United States.

The Code contains the following articles:

Article 1. General Provisions
Article 2. Sales
Article 3. Commercial Paper
Article 4. Bank Deposits and Collections
Article 5. Letters of Credit
Article 6. Bulk Transfers
Article 7. Warehouse Receipts, Bills of Lading and Other Documents of Title
Article 8. Investment Securities
Article 9. Secured Transactions
Article 10. Effective Date and Repealer

In the State of Idaho there are a number of these Articles that are covered by uniform legislation. Others are not. However we are far from being uniform in the field covered by the New Code.

It may be helpful to very briefly consider the scope and general objectives of these various Articles of the Code. All of these Articles are divided into parts but time will not permit an analysis of all the parts of each Article. Hence I will review the most important ones. The Title is as follows:

> "An Act to be known as the Uniform Commercial Code, Relating to certain commercial Transactions in or Regarding Personal Property, including Fixtures, and Contracts and other Documents covering them, including Sales, Commercial Paper, Letters of Credit, Bank Deposits and Collections, other certain miscellaneous Banking Transactions, Investment Securities, Bills of Lading, Warehouse Receipts, other documents of Title, and various Types of Financing Security; Providing for Public Notice to Third Parties in certain Circumstances; Regulating Procedure, Evidence and Damages in certain Court Actions involving such Transactions, Contracts or Documents; to Make Uniform the Law with Respect Thereto; and Repealing Inconsistent Legislation."

ARTICLE I deals with general provisions, construction, interpretation and application of the Act. Some of the more important provisions of this Article are:

> The rules contained in the Code are mandatory, unless qualified in the text by the words "unless otherwise agreed' or their equivalent. The purpose of this Article is also to put an end to the common practice of

including in fine print terms waiving or otherwise modifying provisions of law which are intended to govern the transaction.

This Article definitely provides for good faith in every transaction. To quote "every contract within this Act imposes an obligation of good faith in its performance." Good faith is defined as "honesty in fact in the conduct or transaction concerned." The definition then says good faith includes observance by a person of the reasonable commercial standards of any business or trade in which he is engaged.

Provisions are inserted rendering the Code flexible so as to meet new usages of trade as they grow up unless the same should violate the mandatory rules of the Code. The Code is to be liberally construed and its objective is to make uniform throughout the United States all types of commercial transactions.

ARTICLE II covers Sales of Personal Property. This is a complete revision and up-to-date modernization of the Sales Act which has already been adopted in thirty-seven States. Besides bringing the law of Sales abreast of today's commercial practices an effort has been made to clarify ambiguities in the existing Uniform Act and where such ambiguities resulted in a difference of construction by courts of different jurisdictions, the New Article makes it clear which rule is to be applied.

The Article is divided into seven parts dealing with definitions of various terms used therein, the formation and readjustment of the contract, the general obligations and construction of the contract, creditors and good faith purchases, performance, breach and remedies.

In the preparation of this Article the Commission and its draftsmen had the assistance of associations, of merchants, and others vitally interested in having this important branch of the law made current with prevailing trade practices.

ARTICLE III covers Commercial Paper. This will supplement in part the present Negotiable Instruments Law. The provisions of the N. I. L. relating to securities, as distinguished from commercial paper, have been omitted and are covered in ARTICLE VIII which deals with Investment Securities. Much which has been said regarding the Article on Sales also applies to Article III covering Commercial Paper. There are, however, a large number of new sections in this Article covering such matters as payment of "stale" checks, liability of a bank for wrongful dishonor of a check and similar subjects.

Some practical every day subjects have been simplified in Article III. To illustrate: In the section which covers forged or unauthorized signatures, the burden of establishing these signatures is fully covered. Under the original N. I. L. Act the burden is on the holder to establish any signature as genuine or authorized. Under the New Code the holder does not have the burden of disproving the signature, the party alleging the forgery must prove it.

Another example is found in the New Code dealing with the so-called "Imposter Rule" and the "Fictitious Payee Rule." These matters are not covered by the present law. The Imposter Rule is especially helpful to bankers particularly in cases where the Government issues a series of checks, delivering them through government agencies and the Post Office to the wrong payee and then years afterwards, when all the witnesses are dead or scattered, seeks to charge these checks through the Federal Reserve System to the account of the cashing bank. The New Code does away with any distinction, made as in earlier cases, between face to face transactions and mail transmitted transactions.

The "Fictitious payee" cases have caused trouble in the past. The old code on this point has been misleading to law school students, attorneys and courts and it is hoped the New Code will clear this up.

ARTICLE IV covers Bank Deposits and Collections. Originally much of it was covered in Article III and in the Uniform Bank Collection Act. After considerable study and many conferences with groups of bankers and others the drafting committee recently created a new article and covered this subject. This Article contains Five Parts. The first part deals with definitions of Banks, when items are received, when action must be taken, etc. The second part deals with responsibility for collection, methods of presentation, endorsement, warranties, remittances, signatures, right to charge back, etc., Part three covers documentary drafts and items other than checks and duties and obligations of Depositary and Collecting Banks. Part four deals with the rights and obligations of Payor Banks and part five deals with the relationship between the customer or owner of an item and the bank collecting or paying his items.

It is apparent much more ground is covered than that covered by the N. I. L. and the Bank Collection Code and many uncertainties are cleared up.

ARTICLE V entitled Letters of Credit, covers a new field of growing importance in which there are no statutory rules and few court decisions. It has particular reference to foreign banking. It provides for regulation of the use of Letters of Credit by the beneficiary to finance his procurement of goods which will be needed to satisfy the conditions of the required credit. It is more important, of course, in Sections of our coast which deal in foreign commerce than in inland states, yet we are quite frequently affected.

ARTICLE VI covers Bulk Transfers. This is not unlike our Bulk Sales Act except it reaches farther and clarifies many such transactions. It gives protection to creditors and provides a way for the owner to get his equity in the goods sold without undue embarrassment or loss.

ARTICLE VII deals with Warehouse Receipts, Bills of Lading and Other Documents of Title. This Article is divided into Six Parts. Part one deals with the relation of the Article to Federal Statute of Treaty and definitions of Negotiable and Non-Negotiable Warehouse Receipts, Bills of Lading and other documents of Title. Part two covers Warehouse Receipts prescribing what is to be contained therein, liability for misdescriptions, character of goods covered, the creation of a lien and its enforcement.

Here, again, I should suggest the Article is broader and more effective than our present law.

ARTICLE VIII deals with Investment Securities. This covers bearer and registered bonds, certificate of stock, and similar types of investment paper. The Article is divided into four parts. Part I is directed to definitions, Issuer's lien and the effect of an overissue. Part 2 covers the duties and obligations of the issuer and what might constitute notice to him, completion or alteration of instruments, registration, and the duties of a trustee. Part 3 deals with the purchase of such securities, ownership, warranties, indorsements, delivery, attachment or levy upon such securities, conversions, and Statute of Frauds. As the bulk of secured transactions are handled by large organizations which deal in many securities, it would be impractical to have them check the files of stolen securities so a cut-off date is established as of six months. The duties of all parties to the transfer are fully set forth in this part. Part 4 deals with the registration of such securities and the rights, duties and responsibilities of the various parties to the transaction. It pro-

vides a reasonable commercial plan based on good faith and due diligence and precludes arbitrary, capricious and super technical objections.

ARTICLE IX covers Secured Transactions. It is divided into Five Parts. Part 1 deals largely with Applicability and Definitions. It is to be observed that the Article covers all sorts of purchase and sales transactions where liens are reserved for security of the purchase price. Part 2 of this Article deals with agreement between the parties and the legal effect of it. Part 3 covers right of third parties and establishes rules of priority. Part 4 provides for the filing of such documents and the notice given thereby. Part 5 deals with the default of the purchaser and the rights of the respective parties under such conditions.

The entire Article is aimed at simplifying and unifying the handling of personal property of any kind on the part payment plan. It is one of the great steps forward embodied in the Commercial Code as a whole.

ARTICLE X provides for the effective date following the enactment of the Code and a statement of statutes repealed and those not repealed.

I am cognizant of the objections that might be raised by lawyers to the enactment of this Code. It is difficult for lawyers who have practiced for more than a quarter of a century to adapt themselves to the changes this may develop. When I was young in the practice I felt a disinclination to consider the adoption of a uniform law, for I had the ill-conceived and unsound idea that it was for the benefit of lawyers in the larger cities who could practice in Idaho without the help of an Idaho lawyer. I am thoroughly convinced that this is an erroneous assumption and that the adoption of this Code will be helpful, not hurtful, to the true objectives of the Idaho lawyer. After having practiced for thirty-nine years and my mind having been set on the statutes and the decisions of the courts with respect thereto, it is, of course, difficult to accept a new code. However, I have become thoroughly convinced that this too is an erroneous objection for the new Code will help build and sustain our commercial life. The objective of the lawyer is not to make his path easier but to develop the law so that it will make safer the business and commercial life of his clients and add to their strength in the future. If this Commercial Code is adopted by such states as New York, Pennsylvania, Illinois and California, Idaho would be in a very difficult position if it should disregard it. The speed of transactions today and the scope within which we operate makes uniformity really essential.

This Code will be submitted to the Idaho Legislature. You as lawyers will necessarily be expected to explain it to legislators and clients. We cannot oppose progress and development and it behooves everyone of us to acquaint ourselves with the contents of this Code and, I am sure if it is correctly understood its acceptance by our state, at the opportune time will be of great value to us.

PRES.: Gentlemen, this afternoon we are going to have another section discussion on trial work. Our trial sections have been very popular in the past, and I am sure you are going to enjoy this one. We were very fortunate this year in getting to lead our discussions two men who are right at the very top among the trial men in the state. I say that in all sincerity, and I think you will agree. I take a great deal of pride in introducing to you George Donart of Weiser and Carl Burke of Boise. Mr. Donart, will you lead the discussion? I will turn the meeting over to you.

GEORGE DONART: Mr. President and members of the Bar: I hesitate to make suggestions along this line, because I recognize in the audience men who have had far more trial experience than I have had. I don't want to claim that

the experience I have had in that respect has been inconsiderable. It hasn't. I have practiced law for 35 years, and most or a good bit of my work has been trial work. And there is a reason for that.

When I was going to law school, the instructors all told us that there was no money to be made in trial work; that if you wanted to get the real money and occupy a place of importance in the legal profession, you should shun that kind of exercise and be a good office man. The result of that advice was that all of the real smart law students who graduated at that time specialized in office work. I, being in the other class, found that I had to do trial work. (laughter)

The discussion has been listed under several sections. They are not in the order of their importance, for everything about trial work is important.

The first heading is preparation and pleading. Now preparation, of course, is the most important feature of trial work, and a lawyer who has an important law suit—and every law suit is important at least to his client—wants to approach it with the idea that the lawyer who is likely to oppose him is going to be a smarter man and a better lawyer than he is, and that he has to make up the difference by knowing more about the facts of this particular case and hoping that he knows at least as much about the law.

Before a pleading is even drawn, I hope all of you young fellows will adopt the practice of first getting all of the facts, the facts that are in your favor and the facts that are against you. The first class seems most important at the time, but as the case progresses, you will find the others take on increasing importance.

It is important that you brief the law involved in that suit with the thoroughness that you would if you were going to present it to the Supreme Court. Then, if you lose your law suit, you will know it isn't because there is something you left undone which should have received more of your attention.

The preparation of pleadings is something that is comparatively simple in our code practice. I once took a course in code pleadings. I think it took a semester. The man who taught it had practiced law in Massachusetts, so he was well versed in our western system of code pleadings. But I had one lesson in code pleading that, to me, embraced the entire subject. We had an Irish professor by the name of James Gill up at the University, and I think there are men in the audience who knew him, who, in addition to being a professor had been quite a lawyer. He said that in code pleadings you just tell your story. Tell all of it. If it is two transactions, you have got two causes of action. If it is one transaction, you have one cause of action. That is just about the essence of it and the best definition of code pleadings I have ever heard. So if you tell your story, having learned the facts and investigated the law so that you know what you are required to prove, you have passed one important hurdle.

Now there is another thing that I feel is often overlooked not only by young lawyers but by experienced ones. A Judge who sits on the bench very long can tell, when a witness is put on the witness stand and a half dozen questions asked, whether that lawyer is familiar with what he is going to prove by that witness. For that reason you have got to have conferences with your witnesses, not one but several. And you should have one at least the night before that witness goes on the stand.

That falls into the general classification of coaching of witnesses. Now coaching of witnesses is not only legitimate, but it is desirable. I don't mean that you should tell a witness what he has got to say, but get his story and get the bugs out of it so that when that man gets on the witness stand he doesn't say something that

isn't true. He may believe it is true, but some of his testimony may not square with the rest of his testimony. You have got to eliminate that part of it. That is where you do your coaching.

Go over the testimony with the witness. "You tell me this, then you tell me that, but the two of them don't square. Now where are you mistaken?" And let that witness figure it out for himself, with the help you give him, where he has made a mistake in what the facts are as he is trying to give them to you.

When a witness has done that, you are in the enviable position of placing a witness on the witness stand without any doubt about his testimony or about it standing up on cross-examination.

A lot is said about cross-examination. I differ from a lot of lawyers. I feel that direct examination is more important than cross-examination, because you have got to win, nine times out of ten, on the strength of your own case rather than on the weakness of the opposition as you may develop it on cross-examination.

All I know about conducting a law suit I have learned from other people or from the mistakes I have made. And I don't want you to make those mistakes. I have watched some very good trial lawyers. I have tried to imitate some of the things they did. And in that connection I want to pay tribute to one man of all the trial lawyers I ever saw who stands out a mile ahead of the others in my opinion. He was James H. Nichols of Baker, Ore. And the thing that made him a trial lawyer was the way he presented his own case, the evidence of his own witnesses. I learned from him that you want to put that evidence on in chronological order. Just develop the story as it occurred. I also learned from him that it is very advisable, in examining a witness, to ask your questions in a fairly loud voice and in a clear and distinct tone of voice. That has a double advantage. It keeps the jury awake, and it enables the jury to understand what the question was, and it has the effect of causing the witnesses to answer back in a little louder tone of voice than if you were talking to them just conversationally. What you or the best witness in the world have to say isn't going to do any good unless the jury hears it.

There is another thing I learned from that man; in putting in your evidence you can do it in an argumentative way without being subject to correction from the Court. You can't argue, but you can ask your questions in a way that you have implanted in the jurors' minds, when you get the answers, your theory of the case and what you are going to have to say in your argument.

If your own case goes in so that it is interesting to a jury, so that there are no contradictions and it is logical, you are going to get a favorable reaction from the jury even though some of those witnesses do not stand up quite as well on cross-examination as you would like to have them. Because in the minds of a lot of jurors there is a feeling that a skillful lawyer can cause a witness to say things on cross-examination that he didn't intend to say. It is only when his testimony is broken down or made to appear ridiculous that the full effect of his direct examination is destroyed.

I wasn't asked to give anybody any advice on the subject of cross-examination. But one thing I want to say to the young men is that it is useless to buy any books on cross-examination and read them. You have got to develop your own system of cross-examination. And in that connection I will go back just a minute to direct examination.

When you have proved what you want to prove by a witness on direct examination, or even on cross-examination, stop! Every additional question you ask him

on direct examination lays a foundation for questions on cross-examination, and if you get off into immaterial matters where he isn't so well versed, you are taking a chance of making him look bad in that particular respect.

Now the same thing holds good on cross-examination. Don't ever cross-examine a witness unless you have got a purpose, unless you think you see some place where you can make his testimony appear in a more favorable light to your side of the case. I have never believed in long cross-examination. If you cross-examine a witness on everything he has testified to on direct examination, all you have accomplished is to get him to repeat and thus emphasize his testimony.

From watching other successful cross-examiners, I believe that the best system is to select the place or places in the witness' direct examination where you can break through or at least turn it to your advantage. And when you have done that; stop! You have accomplished your purpose of cross-examination nine times out of ten. Ordinarily a witness isn't deliberately lying. He is telling things as he sees them or he is giving his conclusions. Cross-examination is to make him see, if possible, where he is wrong in some respect. Or if he doesn't see it, make it apparent to the jury.

There are a few rules that I think everybody could well abide by on cross-examination. One thing you want to keep in mind. A clever witness can tell one lie. He can tie another lie to that one, and he can tie a third one to it and go right on and add an infinite number, if he is clever and you haven't any place where you can break him down. But when that witness tries to tie a lie or an erroneous statement onto something that is a fact, that you know is a fact, that is established as a fact, he just has a handle for the wrong instrument. They won't fit. And that is the place where you can break that testimony. Start with something you know is a fact, or start somewhere else and drive the witness on to testifying about that fact. And then, if his testimony is erroneous, in most instances, you can make it apparent.

Another thing I would say is, don't argue with a witness. And above all things, if you can help it, don't let him argue with you. Never, under any conditions, ask a witness, on cross-exaxmination, a question beginning with the word "why." When you have asked him that kind of a question, you have invited him to make a speech, if he wants to do it. And no matter what he says, it is probably in the record in response to the question that begins with the word "why."

I am speaking from bitter experience. It took me a long while to find that out. At different times I thought I had a foolproof question beginning with "why," but instead of being foolproof, I found I had just eliminated the suffix "proof" from that. (laughter)

In the trial of a jury case, the time to start your argument is when the first jurors comes into the jury box. There is nothing more important than the selection of twelve jurors. And you are not going to find out too much about those people in questioning them. I have had jurors make statements under oath in the witness box as to the existence of things where they had either forgotten or I knew they were deliberately misrepresenting things. The best thing to do is to find out all you can about those jurors, their backgrounds and prejudices before trial, so you won't have to ask them those questions. Sometimes the questions you would like to ask would be embarrassing, and he wouldn't be a very good man to keep on the jury if you had required him to answer.

That isn't as important, perhaps in the trial of a civil case as it is in a criminal case. There is where you can really start your argument. In a criminal case, before

a jury is ever sworn, you should implant, by questions, in their minds right then at the outset of the case, instead of when they hear the Court's instructions, the fact that a man is not to be convicted of a crime unless his guilt is established beyond every reasonable doubt. I have always thought it was best to use the word "unless" instead of "until," because when you ask a juror if he believes a man should be presumed to be innocent until his guilt has been established, he kind of gets it in the back of his head that you assume that "until" time is actually going to arrive. (laughter)

The other thing to implant in the minds of the jurors is that they are investigating the actions of a man who is presumably innocent rather than a man who is presumably guilty. When they are called into the court room, they have the unconscious feeling that a man is probably guilty or he would not be on trial. By your interrogation of the jury, you can remove about 90% of that attitude. You can at least make them comprehend that while that may be the way they would like to feel, that that isn't the way they are required to feel. And that makes a tremendous difference. In investigating the actions of any man on trial, if a jury keeps constantly in mind that they are examining the actions of a man who is presumably innocent rather than one presumably guilty, they are very likely to draw different conclusions from those actions. For instance, if you saw a suspicious stranger walking down the alley by your garage about dark, you would think he had no good purpose in being there. If, on the other hand, you saw one of your neighbors that you knew was an innocent, upright man doing the same thing, it wouldn't raise the thought in your mind that he was planning to steal your automobile or anything of that kind. Now those things count, and that is really your opening argument in the trial of any kind.

When you get past that and get around to presenting your case to the jury, there is something you should always bear in mind. If you represent the plaintiff, you have three arguments to that jury. If you represent the defendant, you have two. A lot of people do not realize that they have three arguments. They merely get up there, in their opening statement, and gloss over in a monotone what they expect to prove and are very brief about that. One thing I have learned is the importance of your opening statement. The real trial lawyers take about as much time in their opening statement as they do in either of the arguments. And after all, that is the first opportunity you have to sell your idea of the case to the jury, and you can tell in that opening statement what part of your evidence is really going to appeal to the jury from the reaction on their faces. For at that time the jury is fresh, they haven't started to go to sleep. When you are finally summing up, they are pretty tired. Frequently they don't distinguish between how effective a witness was in telling what he was proving and how effective the attorney was in telling them what he was going to prove. And to that extent your opening statement has the effect of being at least indirect evidence.

I guess I have always been more or less perverse. On the two arguments to a jury, when you are representing the plaintiff, I have always attached the most significance to the opening one. That is when you sell your case to them if you are going to. If you sell it to them in the opening argument, then in the closing argument all you have to do is hold what you already gave them.

There are no set rules for argument. Some lawyers feel that in presenting a case to a jury, you have to be eloquent and you have to pound the table and you have to roar at them as loudly as you can. Others talk to them very effectively in a conversational tone of voice. Either way can be overdone. I once had occasion to try a case over in Boise against a most eloquent attorney as far as volume went. He was the loudest advocate I ever listened to. He got up there, and from the

first word he said to that jury to the last one, he was trying out his voice, and believe me he had one. He was real eloquent. If he had been addressing an audience of 1,000 people, he would have been wonderful. He came from outside the State of Idaho from the State of Oregon. I was so impressed by the man's argument that I had to tell the jury how impressed I was. I told them that we should all feel thankful to that man for coming from Baker, Oregon, over to Boise and delivering that masterful argument, but that one thing that hadn't occurred to him was that the trip from Baker to Boise was unnecessary. He could have delivered it in Baker, and we could have heard it with ease there in the court room. (laughter)

It can be carried to the other extreme. I have seen some good arguments fall flat. They were logical. They were fluent. They were convincing. But they were delivered in a low monotone. The jury was tired, and if they were not sleepy, they became sleepy, and they didn't follow it too well. And besides, they got the idea that the man was just up there speaking a piece and probably wasn't too interested in its himself.

I have heard some wonderful arguments delivered in what you might call—well, they weren't monotones, but the man didn't raise his voice. He held the attention of that jury, because in talking to them, they realized that he was earnest, he was sincere, and that he was logical, and that the things he was saying were worth hearing and were going to help them in arriving at a proper verdict in that case. One of the most outstanding examples I ever heard like that—and he was a man that I feared in the court room about as much as any man I ever saw—was the late D. L. Rhodes of Nampa. He could stand up before a jury and just talk in a conversational tone of voice, and he would command the attention of that jury and the attention of everyone in the audience. But there was only one "Dusty" Rhodes. And just because he could do it doesn't mean that everybody else can do it.

Now this hasn't been very much of a round-table discussion as far as I am concerned, and I have given you my ideas on some things, and I suppose Mr. Burke will have some very different ideas, because Mr. Burke and I have been on opposite sides in a good many law suits, and it was apparent to both of us that the methods one of us used were not the methods used by others. And it isn't merely modesty that keeps me from saying my method was better than his. (laughter)

Before I turn this meeting over to Mr. Burke, I want to give all of you a chance to ask any questions you may have to ask concerning where I got some of the damn fool notions I have been telling you about or why I believe in them.

CARL BURKE: Brothers of the Bar: I am sorry you didn't heckle my good friend George here with a few questions. I am surprised that you didn't. He has stolen quite a little of my thunder. I would be very presumptuous to stand up here and tell some of you about the conduct of a trial in a law suit. As I look around I see a lot of you who have taught me in the bitter school of experience what little I possibly might know about the trial of a law suit. And there are many of you that do not need any instructions. I am sure of that.

To you younger fellows I would say that in my experience the most important thing that you can do is the spade work before the trial. If you have an accident case, if you have an automobile law suit, with which I happen to be most concerned, before you go out and talk to any witness, go down and look at the scene of the accident. Have a surveyor measure the scene so that when you talk to your witnesses, you will know what they are talking about. When somebody tells you he was coming up to an intersection at so many miles an hour and he was at a certain place when he saw the other automobile, have your little diagram there

and have it measured out to scale. Then you will know what he is talking about. Because if you don't have it or haven't been out there, you won't know what he is talking about. You must go out and familiarize yourself with the scene of the accident, if that is the kind of a law suit you have. Know every inch of the ground. That is important. And you must know how far it is from every object to every other object. When a witness is testifying about certain objects, then you will know what he is talking about.

The first law suit I ever had I was prosecuting attorney prosecuting an alleged bootlegger. I worked on that case. I slaved on it. It was my first law suit. I got all the facts, I prepared as I though I would never have to prepare again in my life. I had the man dead to rights. And lo and behold, I got a verdict of not guilty. The Sheriff came to me afterwards, and I said, "Sheriff, how come they turned that bird loose?"

"Well," he said, "you had the bondsmen of the defendant on the jury." (laughter)

I had worked hard on that case, but I hadn't checked up on the jury. I left the bondsmen of the defendant on the jury! That left an indelible impression upon me.

Check up on that jury. You may have friends of the defendant on it. You may have friends of defendants' attorney. In my candid opinion, the make-up of your jury panel is more important in a lot of cases than any other factor. That has been my experience over thirty years.

You can have a radical jury, and you can have a conservative jury, and it all depends on which side of the law suit you are on what kind of a jury you want.

I would say to you young attorneys, if you want to build a reputation as a trial lawyer, pick out a widow with four dependent kids and pick out a defendant with a lot of money or an insurance compnay or a telephone company, and you will very quickly pick up a reputation of being a trial attorney. It is very simple, if you have the right kind of a law suit. It is the law suits where you are on the wrong side of the case that cause you the trouble.

Last Sunday I was up talking to J. F. Martin who, I think, was one of the best trial attorneys that we ever had in Boise, and who gave the seminar on his trial experiences a couple of years ago up at McCall. I said, "What can I tell those young bucks that might give them some valuable information as to the trial of a law suit?"

J. F. looked at me, and he said, "It has taken me fifteen or twenty years to know how to be a trial attorney, and when I thought I knew something about it, I was a wreck. I had heart trouble, and I had everything else. Pass this information on to these young folks. Tell them that the easiest money in the law game is to probate estates or handle some other kind of work. Trial business is a real tough job in the law profession, and it is all a question of lots of hard work."

When you get into the trial of a law suit, and any successful lawyer will tell you this, you can't sleep or eat during the time the trial is in progress. I don't know how George has survived this long without having ulcers and heart trouble. He is one of the few exceptions.

Now, boys, the most important thing about the trial of a law suit is that you should never get into it unless you make your client pay, because you are going to earn it. (laughter-applause)

WELDON SCHIMKE: Gentlemen, I have one question that I want to address to both of you. Many witnesses, and this is particularly true of the litigants themselves, very often color their stories quite substantially. I have some idea of the

hard work necessary to boil the fluff out of these stories, but I am just wondering if there is any short-cut you know of that might help us out a little.

GEORGE DONART: That is where you get in your work the night before. Even if the story is true, and you know it is true, but it doesn't sound convincing to a jury, just tell your client to forget that unless he is asked about it on cross-examination. Show him where he is coloring and what can be done to him on cross-examination. I like to have two men present when I am going over a case with a witness. One of us examines him, and the other one cross-examines him. If I haven't two, I do the cross-examining myself. And that is where I try to take out that coloring. Once in awhile you can color that stuff and get away with it, but you can't count on it. If you haven't got a law suit you can win without coloring, you better not run the chance of ulcers in trying that law suit.

BRUCE BOWLER: Mr. Donart, on this preparation time you talk about that we all know is probably the most important factor, I wonder if you would care to venture any experiences as to the actual preparation time involved. One of the problems I have always encountered is how much time and preparation a case justifies and still keep the other stuff going that has to come in. I would like to know how a successful trial lawyer allots his time and how much time he figures he can spend on preparation to do these good jobs.

MR. DONART: I will answer that as James A. Garfield got an answer from a Latin shark. He asked that Latin shark how much time he spent studying his Latin each evening. He said that he began about 7:00 o'clock and studied until he got it. The same thing holds true in trial preparation. One witness is such that you can go over it with him once or twice. You may have others that you will have to go over the testimony with a dozen times. And you have to go over the little things.

I will give you an illustration. The ordinary witness can judge distance to some extent, and he can judge speed. Carl was talking about personal injury cases. You may have to take a witness out on the road and give him some demonstrations of speed. If he is a man that has been driving an old car, to him 50 miles an hour is a terrific speed. He will say that the man he saw coming was going 50 miles an hour, when, as a matter of fact, he was probably going 80. If you will take that witness out on the road and let him observe a car going 50 miles an hour and ask him if that is going as fast as the car involved, he will probably say no. Just keep upping that speed until you get to about the speed he says the car was going that he saw.

There is no set rule. You are not preparing that man to lie. You are preparing to keep him from misrepresenting. His first opinion was that it was going 50 miles an hour, when it was, in fact, going 70 or 80 miles an hour.

Another thing I have noticed is that witnesses are notoriously poor judges of time. You want to anticipate that your witness is going to be cross-examined. He will say, "The car was going 80 miles an hour. I watched it from this point to that point." Well, on cross-examination he may be asked how long it took the car to travel that distance. If that distance was, for instance, half a mile, he is very likely to say, "Well, not over two or three minutes." I have seen that happen repeatedly. The witness was really a judge of speed, but he was no judge of time.

Those are things that go into preparing a witness. Suppose he says, "Oh, I watched it."

"How long did you watch it?"

"Well, two or three minutes."

There you have a contradiction in your own witness. He says the car was coming 80 miles an hour, and it took two or three minutes to go half or a quarter of a mile. One or the other isn't right. You have got to have him decide on whether it was going 80 miles an hour or 18 miles an hour. If it was going 80 miles an hour, he must express that time in seconds and not minutes.

One witness will get that right away. Another witness and you will bear me out, won't you, Carl—takes six explanations, and if six isn't enough, try twelve, and if that isn't enough, get another witness. (laughter)

MR. BURKE: You have got to spend enough time to prepare your law suit, just as George says.

MR. BOWLER: No rules! Just stay with it until you have got it!

FROM THE FLOOR: George, how do you keep from getting ulcers?

MR. DONART: I was in danger of getting them once when I was younger. But the thing that has kept me from getting ulcers are the law suits I lost and came to realize that the world went along just the same afterwards.

NORMAN NIELSON; Can you give any particular suggestions to help in evaluating jurors? In a particular case you may have some men on a jury and you may have some women. You have old ones and young ones. Do you have any system or suggestions along that line?

MR. DONART: Yes. I will give you my ideas, but they may not be worth anything. Contrary to the popular conception, pick the twelve most intelligent jurors that you can get whose backgrounds you feel are such that they are not prejudiced against your case. I want intelligent jurors even in a criminal case. If you haven't enough faith in your theory of the case to think it is better than the other man's theory, you haven't got the faith you should have in the court room. If your theory is best, you want jurors intelligent enough to comprehend that theory.

Let's take a personal injury case. You have got some pretty serious injuries, but you haven't got too strong proof of negligence. In a case of that kind select men that are cautious in the way they drive, older men. They are more likely to find in your favor. But having once found in your favor, they are not likely to go as high with the verdict as a group of younger men.

You must consider their backgrounds. If you have a man 60 years old on the jury, he probably isn't in the habit of driving 70 or 80 miles an hour. To him that is a speed which implies negligence. But that speed might just seem ordinary to a boy 25 years old.

So if you are in doubt about whether you can prove your negligence, take the older man. If your negligence is clear, take men that are younger. They are more likely to give you a higher verdict, particularly if they are people who think in large sums of money.

If you want and expect to get a good recovery, you don't want a bunch of men on that jury who have reached middle age and there isn't a one on the jury that can make a property statement of $10,000.00, because they would think that if they gave you a couple thousand dollars they were being very liberal. Other men think in larger sums of money, and they would give you several times that amount. Now, of course, if you are representing the plaintiff in a damage suit, you don't want any utility executives on that jury. They are generally on the other side of the case.

And there are a few things you want to think of in a criminal case. If you are defending anyone accused of a crime, don't keep a naturalized Englishman or Scotchman on that jury. In the country they came from, they believe in convicting people. The same is true of Canadians. On the other hand, if you have got five men on that jury that are typically Irish, your client is going to have to be pretty guilty before he will suffer. (laughter)

KARL PAINE: I think you should explain to the young men that all of your clients have always been innocent.

MR. DONART: Whose clients haven't been? (laughter)

GEORGE GREENFIELD: Do you have any suggestions as to how to assist the jury in arriving at the amount of damages to award in a case such as a personal injury case either in terms of adducing testimony or argument?

MR. DONART: Both.

MR. GREENFIELD: I was wondering if you had any technique.

MR. DONART: You can't by evidence prove the amount of damages. That isn't anything you prove by evidence. You prove the extent of the injury. Then just picture to the jury what that injury amounts to. If it is a death case, get them away from the idea that they are paying for the man or woman's life. They are not doing that. They are paying for the damage to the children or the family. And it is a pretty good idea to elaborate, at the close of your argument, what that damage is. If a mother of some children or if a little child, was killed, you simply haven't worked yourself up to the proper emotional stage or done justice to your client unless you have at least four of those jurors crying when you quit talking. (laughter)

PRES.: We will recess until tomorrow morning at 9:30.

TUESDAY, JULY 3, 1951
9:30 A. M.

PRES.: I think we ought to announce that the Bars of two local communities are here in full force, 100%. One of them is Orofino. All the lawyers in Orofino are here and all the active lawyers in Salmon are here. I think that deserves a little applause. (applause)

We will now have the report of the prosecuting attorneys' section by Mr. Howard Adkins, President.

MR. ADKINS: I appreciate the time given to the prosecuting attorneys on this program, and I assure you I will take very little of it.

I wish to thank the Bar officers for the arrangements they have made for the prosecuting attorneys meeting here in Sun Valley and also to express our gratitude for the arrangements and accommodations which were afforded.

In the past several years, it has been the practice of the prosecuting attorneys to hold a semi-annual meeting, usually in Boise, during the term of the Legislature in the years that it meets and preceding the regular Bar meetings. Our last meeting was concluded on the 30th of June here at the Lodge at which time we had in attendance about two-thirds of our membership. At our meeting in Boise we discussed several phases of legislation, one of which was a recommendation for the entire revision of our juvenile code and procedure. With the assistance, perhaps, of other organizations, this matter was presented in the form of legislation and was passed by our Legislature. It sets up a committee, which I have since been

advised by Governor Jordan has been appointed, to make a study of the juvenile laws and to recommend to the next Legislature a complete new juvenile code.

There were a number of matters presented to the legislature. I might say that the only doubt I have in the juvenile code being adopted is the fact that we had requested that an appropriation be made to activate this committee. I note the committee is composed of legislators, and whether they will find time or give the matter sufficient time to effect it, I am not sure.

In the work of prosecuting attorneys, there are a number of things on which we are asked opinions, one of which was the power of the county commissioners to spend county public funds for the purpose of buying liability insurance. This has been a question long in dispute, and we were very much of the opinion that without proper legislation they would not be able to spend such funds. Through our organization a bill was drafted and presented to the legislature, and it passed, authorizing the county commissioners to purchase liability insurance in more general terms than had been allowed before.

Realizing at our meeting here at Sun Valley that there would be another meeting of our association before the legislature again convened, instead of proposed legislation, we discussed the various matters appertaining to the association and appointed committees to make studies of those matters and make a report to our next semi-annual meeting. One of these was the study of the present code with reference to preliminary hearings and a recommendation as to the manner in which it might be clarified and modernized.

Another committee was appointed to study the duties of the county coroner and to present a more effective method of holding coroner's inquests and the use of the coroner's office.

We discussed with reluctance also the present indeterminate sentence law, feeling likewise that we had time to make a more thorough study of the same before making definite recommendations. Provisions were made for a committee to make a study of this and to report on it at our next meeting.

In adopting our constitution, we set out generally therein the purposes of the organization, which, in short, would be to effect meetings and measures which would be of advantage to the members and thus to the public in general. And we hope that in our work in the association we will accomplish this purpose in general of not only rendering a service to the individual members but render a better service to the public.

PRES.: We had insufficient time yesterday for the report from the judicial section, and this morning Judge Jack McQuade from Moscow will give that report.

JUDGE McQUADE: This report was to have been made by Judge Porter, and he was called away yesterday. It was suddenly dumped into my lap.

The Chief Justice and all of the Associate Justices of the Idaho Supreme Court and ten of the District Judges met Saturday afternoon and evening and Sunday morning preceeding this convention.

We considered first uniform District Court rules for general use throughout the State of Idaho. It was determined that we should have a set of rules which would be uniform and standard throughout all of the districts of the State of Idaho so that attorneys who have to practice in several districts will know in advance what the ground rules are and not be embarrassed in crossing from one district to another. These rules, we determined, should be susceptible to modification and suspension whenever, in the opinion of the District Judge, it should be done to accomplish

justice. And we determined that the District Courts should be empowered to supplement these uniform rules with such additional rules as local circumstances indicated might be beneficial.

The inherent authority of the individual courts is recognized and preserved. We adopted a set which met with almost unanimous approval.

I was quite surprised to learn that practically all of these rules have been, in one form or another, in effect in all of the districts of the state, so you will not notice any great change, but you will find a standardization and uniformity as you go from one district to another district.

These rules are to be printed in the journal of these proceedings. At least the members of the judiciary hoped they could be incorporated in the report on the proceedings here, and they will also be printed in either the next volume of the Idaho Reports or under separate covers by the printers of the Idaho Reports according to provisions of a contract with that concern. They will be effective next year. (Note: The Bar Commission hopes to be able, when the Rules are available, to print and mail a copy to each lawyer.)

The second thing considered was the matter of adopting uniform instructions to juries. Considerable objection was raised at once. The conference objected to uniform instructions, but it was anxious to accept a number of approved instructions.

The District Judges then proceeded to go through a set tendered by the chairman of a committee which has been functioning since before the January conference. We gave them a rather searching analysis and made a few insertions, deletions and amendments and had the benefit of some Supreme Court criticism. We didn't get Supreme Court approval of them, however. So should you come into possession of some of these instructions, don't figure that they are automatically okeyed by the Supreme Court.

About 28 were adopted as approved instructions by the judiciary conference. The Judges determined that these should not be published other than providing each District Judge with a copy of them. If you have any interest in further details on this, I suggest you get in touch with your own District Judge.

The next judicial conference is scheduled for Boise on the 9th and 10th of January, 1952, when we will discuss possible revision of the Supreme Court rules and elimination of any conflicts which may be found between the District Court rules and the Supreme Court rules.

Judge Baker of Twin Falls and Judge Sutton of Weiser were both highly commended upon the great amount of work that they put in on the uniform District Court rules and uniform instructions. They and their committee had obviously done a great deal of work, and I believe the Bar should know that these District Judges and their committees are working earnestly to improve your courts for the benefit of your litigants.

It was also determined that all appointed committees of the judicial conference be made permanent and that they would continue in their efforts to improve our courts and their procedures in the best interest of justice.

Personally I am convinced that you will find your courts steadily improving as a result of these judicial conferences which Chief Justice Givens has initiated here. He seems to have a keen sense of appreciation of our social progress and the necessity for real justice to change conservatively and slowly to keep abreast of this social progress. And I look for great advantages to the Bar and litigants to come out of these conferences.

PRES.: Thank you, Judge McQuade, for that very fine report. It is certainly gratifying to the Bar to know of the real progress that the judicial section is making this year, and we want to assure the judicial section, Judge McQuade, that the Bar is willing to help in any way possible, too.

Dean Stimson of our law school at the University of Idaho has become one of the real active attendants at the Idaho Bar. It is a matter of great satisfaction to us. He has been doing an outstanding job at the law school. He is a recognized authority in the field about which he will speak this morning, and it is a real pleasure to introduce Dean Stimson of the Law School of the University of Idaho who will speak to us on the importance of a Uniform Conflict of Laws Statute to Idaho lawyers. Dean Stimson.

DEAN STIMSON: President Marcus, Members of the Commission and Members of the Idaho State Bar: A shorter title for this thing would be Simplifying the Conflict of Laws. I hope it might sometime become uniform, but it is a long way from that. It is now merely a proposal.

In the course of some ten years of teaching Conflict of Laws I have become convinced that the rules for ascertaining the applicable law could be greatly simplified. The draft statute which I have distributed is an attempt to do this. The difficulty with existing rules is that they differ for each subdivision of the digest: torts, contracts, workmen's compensation, etc. What we are trying to find out is what *law* is applicable. The problems are generic and we should be able to state them in terms which would be independent of the particular substantive law involved or the section of the digest in which it is found.

It is important in determining what simplified rules for ascertaining the applicable law should be that the basic objective or purpose of such rules be kept in mind. I believe that the object of these rules is to make certain that the result of the suit will be the same in whatever jurisdiction the suit is brought. Obviously the application of the law of the forum will produce an injustice if it will give a cause of action to a plaintiff who had none by the laws of the place where the cause arose. The same injustice results if the application of the laws of the forum will deprive a party of a cause of action which he had by the laws of the state in which the cause arose.

Courts repeat ad nauseum that matters of substance are governed by the law of the place where the cause arose and matters of remedy or procedure are governed by the law of the forum. However, when they come to apply this rule they differ on all of the questions which arise as to whether they are substantive or procedural. Damages, burden of proof, presumptions, statute of frauds, statute of limitations and questions of evidence are considered by some courts procedural and by others substantive. But why should we care whether these are substantive or procedural? If the application of the law of the forum will produce a result different from that which would obtain if the case were tried in the place where the cause arose, then the law of the forum should not be applied.

A case illustrating this problem is Levy v. Steiger, 233 Mass. 600. An injury occurred while the parties were in Rhode Island. By its law the burden was on the plaintiff to prove freedom from contributory negligence. The case was tried in Massachusetts by whose law the defendant had the burden of proving contributory negligence. The Massachusetts court applied the law of the forum on the ground that burden of proof was procedural. Burden of proof means that the jury must decide against the party having the burden when the evidence is evenly balanced and they are in doubt. In that event if the case were tried in Rhode Island the jury must decide against the plaintiff while if tried in Massachusetts it must decide

against the defendant. In other words, the plaintiff might recover in Massachusetts although on the same proof he could not have recovered in the place where the cause arose. A student of mine at Washington University in St. Louis examined 26 cases involving the choice of law problem on the question of burden of proof. Twelve cases applied the law of the place where the cause arose and fourteen applied the law of the forum.

We are concerned with two times in dealing with this problem, (1) the time of the conduct the legal effect of which is in question, and (2) the time of the trial. At the time of the conduct the parties were subject to the law of Rhode Island. At the time of the trial they were subject to the law of Massachusetts. To secure the same result everywhere that the case may be tried we must say that the applicable law is the law to which the parties were subject at the time of the conduct the legal effect of which is in question and not the law to which they were subject at the time of the trial. That is what I have done in Section 2 of the proposed statute. The Supreme Court of the United States applied this principle in Western Union Telegraph Co. v. Brown, 234 U. S. 542. In that case a telegram was sent from South Carolina to Washington, D .C. It was forwarded to Washington without delay, but was never delivered to Mrs. Brown, the addressee. This caused her to miss her sister's funeral in South Carolina. Mrs. Brown sued the telegraph company in a State Court in South Carolina which instructed that a South Carolina statute allowing recovery for mental anguish applied. The United States Supreme Court reversed, holding that the district of Columbia law applied because the agents of the company were there at the time of their negligent act, as was the plaintiff. Justice Holmes said, "The injustice of imposing a greater liability than that created by the law governing the conduct of the parties at the *time* of the act or omission complained of is obvious."

If the court has decided to apply the law to which the persons or property were subject at the time of the conduct or event the legal effect of which is in question the next problem is to determine how to ascertain what law they were subject to at that time. There are three conflicting theories which are utterly inconsistent. They are the territorial theory, the domicile theory and the citizenship theory. The application of one of these theories is a denial of the validity of the other two. A case showing this is Union Trust Co. v. Grossman, 245 U. S. 412. W, a married woman, was domiciled in Texas by whose law she could not bind herself as surety for her husband. While she was in Illinois she signed a note to the bank as surety for her husband. By Illinois law she had capacity to make such a contract. The bank sued her in a Texas court. I take it the problem would have been the same if it had sued her in an Idaho court. At the time of the signing she was physically in Illinois and by the territorial theory subject to its law. At the same time she was domiciled in Texas and by the domicile theory subject to its law. She might have been a citizen of Mexico and by the citizenship theory subject to its law. If the court chooses the territorial theory it will be rejecting the domicile theory and vice versa. It cannot apply both the territorial theory and the domicile theory because they will give opposite results. It must decide, and in doing so will be obliged to abandon one theory or the other. In Union Trust Co. v. Grossman the United States Supreme Court upheld the application of the domicile theory. In five other cases the courts applied the territorial theory and repudiated the domicile theory. I believe that the five courts were right and the Supreme Court wrong. The domicile and citizenship theories must be abandoned in favor of a single standard—the territorial theory. There is no logical reason why persons should be subject to the laws of one state or country in some matters and subject to the laws of another state or country in other matters. At present our courts say that people physically present in one state or country and domiciled in another

are subject to all of the laws of the state or country in whose territory they are, except its laws of dviorce, adoption, legitimation and custody of children because in these matters they are subject to the law of the state or country in which they are domiciled. I believe that this is unsound. If people are subject to the jurisdiction or power of a state they should be subject to all of its laws and not only to certain kinds or classes of laws. So I have provided for the territorial theory in Section 3 of my proposed statute.

Section 4 of the draft statute deals with the problem which arises when the parties to a transaction are subject to different laws at the time of the conduct or event alleged to have created legal rights and duties between them. The most significant case on this question is Commonwealth v. Acker, 83 N. E. 312, a Massachusetts case decided in 1908. Acker, his wife and child lived in Nova Scotia and were citizens of Great Britain. He abandoned his wife and child and obtained a job in Massachusetts. The wife also went to Massachusetts although she was separated from the husband. The child remained in Nova Scotia. Acker was prosecuted in Massachusetts for failing to support the child. By Massachusetts law non-support of the child was a crime. There was no such statute in Nova Scotia. The accused's counsel argued that the offense could not be committed if the child was outside of the state. A conviction was sustained. The court said:

> "The offender is here, within our jurisdiction. While residing here he ought to make provision for the support of his wife and minor children whether they are here or elsewhere. If he fails to do this his *neglect of duty* occurs here without reference to the place where the proper performance of his duty *would confer benefits.*"

The rule employed in this case is that in transactions between persons in different states the applicable law to determine whether personal legal rights and duties were created or continue to exist is the law to which the person alleged to be under a duty was subject at the significant time and not the law to which the person claiming the right was subject. This rule would give the right result whether the substantive law involved is the law of support, contract, tort or workmen's compensation.

Sections 5 and 6 of the draft deal with the fourth major choice of law problem: what law determines whether title to property passes when the property is subject to the law of one state and the owner or one of the persons claiming title was subject to the law of another state at the time of conduct or an event alleged to have effected a transfer. Section 5 adopts the view that whether title passes depends upon the law to which the property was subject and not the law to which the owner or person claiming title was subject at the time of the conduct alleged to have constituted a transfer. This is familiar law in the case of real estate and holds good for chattels also although the law of the domicile of the owner has been applied in some cases of transfers by will and by intestate succession. The stock example of this rule is Campbell v. Sewell, an English case decided in 1860 in 5 Hurlstone and Norman 728. I will simplify it somewhat. Lumber owned by an Englishman was shipwrecked on the Norwegian coast and sold there by the captain of the ship to an innocent purchaser. By Norwegian law the innocent purchaser got title but by English law his title would depend upon the authority of the captain to make the sale. The lumber was afterwards shipped to England and the question of the bona fide purchaser's title came before an English court. It decided that the law of Norway determined the effect of the sale in transferring title and not the law of England. That is, it applied the law to which the property was subject at the time of the conduct alleged to have transferred title and not the law of the domicile of the owner.

Section 6 applies the same principle to intangible property.

AN ACT

RELATING TO VENUE AND THE CHOICE OF THE APPLICABLE LAW IN MATTERS INVOLVING CONDUCT WHICH OCCURRED WHOLLY OR PARTIALLY OUTSIDE OF THE STATE, AND DEFINING CERTAIN TERMS AND REPEALING ALL STATUTES OR PORTIONS OF STATUTES INCONSISTENT HEREWITH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF IDAHO:

SECTION 1. DEFINITIONS. The following words as used herein shall have the following meanings:

(a) "State" means the United States, any of its States, any foreign country and any subdivision of these which is so far autonomous as to have its own laws.

(b) "Intangible property" includes corporate stock as well as credits and other claims.

(c) "Law" means both procedural and substantive law and includes case law, statutes and administrative regulations.

SECTION 2. Courts and administrative agencies must apply the law to which persons or property were subject at the time of the conduct or event prior to the trial the legal effect of which is in question.

SECTION 3. The law to which persons or property are subject at any given time is the law of the State in whose territory they are physically situated at that time. The law of the domicile or of the State of which a person is a citizen shall not be applied.

SECTION 4. In transactions between persons in different States which do not involve a transfer of title to property, real or personal, tangible or intangible, the law which must be applied is the law to which the person alleged to be under a duty was subject at the time of his conduct the legal effect of which is in question and not the law to which the person claiming the right was subject. When the person alleged to be under a duty is a corporation subject to the law of several states the law which must be applied is the law to which the officer or agent of the corporation was subject at the time of his conduct alleged to have subjected the corporation to liability. The law which must be applied to determine whether a person is entitled to be relieved of a legal duty is the law to which he was subject at the time of conduct or an event alleged to have entitled him to be so relievd.

SECTION 5. In transactions alleged to have affected the title to property when the property was subject to the law of one State and the owner or one of the parties claiming title was subject to the law of another State at the time of the transaction or event the legal effect of which is in question, the law which shall be applied is the law to which the property was subject at that time and not the law to which the owner or person claiming title was subject.

SECTION 6. Intangible property is subject to the law of the State to which the obligor is subject and not to the law of the State to which the obligee is subject. When the obligor is a corporation subject to the law of several States the law which shall be applied to determine the validity of transfers by assignment, endorsement, will or intestate succession shall be the law of the State in which the corporation is incorporated (first incorporated in the case of multiple incorporation of one company)—but this provision shall have no application to transfers by attachment, garnishment, or trustee process, nor shall it determine which executor or administrator succeeds to title on the death of the owner.

SECTION 7. All Statutes inconsistent with the provisions of this act, to the extent that they are inconsistent, are hereby repealed.

PRES.: Thank you, Dean Stimson. The next speaker on the program is one of our most active and promising young attorneys from up north. He also finds time to devote his efforts to an organization of which he is president at this time. Sidney Smith from Coeur d'Alene will speak to us on Lawyers in the Present Crisis. (applause)

SIDNEY SMITH: Mr. President and fellow Members of the Bar and Guests: Mention having been made of my extracurricular activity, and having been introduced as its head, I think that it would be permissible and proper that at this time I bring you the greetings of the American Legion to this body. The subject of my remarks is something that is very close to the heart of the American Legion, and I might say, in passing, that the gentleman who spoke to you yesterday, the President of the American Bar Association, happened to have been the Department Commander of the American Legion in Oklahoma, and he has the distinction of being the only such individual who has become the President of the American Bar Association.

From your program you will have noticed the subject of my remarks, "Lawyers in the Present Crisis." For clarity you are entitled to an explanation. With new crises arriving with each morning paper—Iran—beef shortage—economic—Korea—you may well be at a loss as to which one. It is none of them really, but yet all. The critical point dominating our American scene, in my opinion, is the present uninformed, misguided or misconceived concept of Americanism. And of that I shall confine myself to a tiny facet of the subject of which we, as practicing attorneys, are probably best qualified and informed to render invaluable aid and guidance; that is, in the extolling of the founding and fundamental principle of our government as a rebirth of positive Americanism.

As to our position as practicing attorneys and our opportunity in service, I shall come to later.

It is my position that we have for too long a period spoken, thought and acted on the defensive. We have been *against* the anti-American, whereas we have sorely neglected the positive approach which, though more difficult, ought to be *for* "Americanism." The phrase "A strong offense is a good defense" is attributed to a football coach. The same tactics have been employed in many fields militarily with great success in World War II under one of its greatest exponents, General Patton. Today, tomorrow and the tomorrows which follow we must use not defensive tactics but a strong offense, a positive and prideful Americanism.

I can think of no more timely subject, for tomorrow we celebrate the 175th anniversary of the birth of our nation, and we commemorate the death of the man who composed the Declaration of Independence, a man who perhaps more than anyone else best expressed the ideals of Americans everywhere and for all time—Thomas Jefferson.

Often our critics, trying to justify their own rebellious activity, will point out that we too, our America, are a product of a revolution. This we must admit, though seldom do we ever consider our revolting forefathers as "revolutionists," nonetheless they were. Their actions were treasonous—and if unsuccessful, their leaders, at least, would have been executed for their conduct against the government of England. Now that the ultimate outcome for good has been accomplished, seldom do we consider our American Revolution in these terms.

Webster, however, defines "revolution" as "a sudden and violent change in

government or in the political constitution of a country, mainly brought about by internal causes." Our forefathers revolted against a system; the word "revolution" itself does not tell the entire story. We must look to the foundation in fact of the product, as the "revolution" itself is but a means to the end.

All of the European systems of government are based on an entirely different concept than our own. Revolutions which formed the base of all present governments commenced during the end of the 18th Century. When one analyzes the French Revolution, from which the others stem there is shown a class collectivism. Their philosophers, Rousseau, Danton, Robispierre, spoke of classes not of individuals. "Life, equality and fraternity," although catchwords, were not meant for individuals but for classes. European citizens instead of individuals became a part of a "proletariat aristocracy or bourgeoisie." The individual was lost in the class. This same formula has been used infamously by opportunists, Napoleon, Hitler, Mussolini, Karl Marx, Lenin, Trotsky and Stalin.

Across the ocean, the American Revolution also progressed but with this essential difference. We had classes. There were the wealthy, the tradesmen and the middle classes; there were Puritans and Catholics, and Jews and Gentiles and all nationalities. In their first declaration, however, they expressed the very essence of Americanism—that the foundation of rights be not in classes but individuals. They declared their independence by saying, "We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed." Note, it is not said all men are equal; they are created equal. Note, too, the position of the government. Note also the source from whence they acknowledged these unalienable rights to flow, from their Creator Himself. In effect, there was created and acknowledged a classless society. God created them as individuals and gave them inherent rights which were not to be infringed upon by governments, majority, classes or other individuals.

In its true essence, "Americansim" is the dignity of man itself and the assumption that he has certain rights—life, liberty and the pursuit of happiness. No other state is founded upon this concept. In all others the state grants the right, and with that power to grant there is the corresponding power to take away. Our rights as Americans, as expressed in the Declaration of Independence and embodied in our Constitution, were not given by the State but were granted by the Creator. There is no corresponding power as in other countries that these rights may be taken away.

Americanism is a moving, growing thing. It is not static. Our Americanism and our patriotism must fit the times. There are those critics who would say our Constitution or the Declaration of Independence is outmoded. You and I know that as the Bible is the word of God it is timeless. Our Constitution is in like manner timeless. Its basic concept of our rights is not changed. Surely, however, with the changing mechanics of modern age our interpretations change to fit the present.

Although written at a time when muzzle-loading rifles were the best at Bunker Hill, conveyance by horse was fastest for Paul Revere, and the signal light he watched for was an oil lantern—all these material things are a far cry from today's technological advances and daily use of rockets, supersonic airplanes, radar and electricity.

Consider for a moment an example, say "freedom of speech." When one realizes that the Constitution and the Declaration of Independence were written at a

time of no high speed presses, radios, telegraph, "free speech" did not mean the same as it does now. Newspapers were scarce. There was a towncrier, not only because of lack of newspapers, but many could not read. The cobbler advertising his trade could not rely on printing the word "cobbler" or "bootmaker." Instead he had a replica of a boot over his door. A baker pictured a loaf of bread; the cabinetmaker, a hammer or saw. Our interpretations of free speech is modified by the law and by judicial interpretation. This is but an evolution, an interpretation to set the basic concept of man's human dignity to fit the ever changing time.

Such an example may seem elemental but there are critics amongst us who would point to the time alone and question that our government as constituted cannot be suitable in our present age, or that with changing conditions the concept of the Declaration of Independence and our Constitution cannot be appropriate. They urge that we should have a new system—a better system—yet the only tried systems are all based on the very concept from which we revolted 175 years ago. What is deplorable is that there are those who each day not only advocate but work toward that end.

I say this without criticism, but merely point out by way of example. At your service club meeting last week, Rotary, Lions, Chamber of Commerce, Kiwanis, you met; perhaps sang the National Anthem, and may have included in the benediction a prayer of thankfulness for living in this free land. Our meeting was but an hour and then we went back to our everyday pursuits, for us the practice of law, others the sale of furniture, or production on the farm or in the mill.

While we spend an hour each week, there is near us each day, however, a hard core of anti-Americans who would destroy the very thing that we enjoy and are so proud of—our American heritage.

No doubt, you were a bit alarmed when you saw in the United States News and World Reports of March 30, 1951, in the interview of J. Edgar Hoover a map showing by state the number of known anti-Americans in each state. In all probability you looked immediately for Idaho. You found they numbered 60. On a population basis this is about one-third (1/3) of the national average. You probably felt that we were quite free of such individuals and think of them in terms of larger centers of population.

I merely point this out by way of example. How many of us are working each day in the interest of pure Americanism?

It was Theodore Roosevelt who stated: "More than 990 of every 1,000 people in the nation have as their first and constant interest their clothing, their mate, their home and children, and only a few give thought to the structure of society in which they live."

We negligently go about our daily lives, conscious perhaps that the threat is there, but not actively working at cross purposes to it. Of the few actively who become interested many say let the F.B.I. or counter-intelligence do it. Our investigative bureaus have a job to ferret out and to find these anti-subversives, like a sheriff or city policeman, like any law enforcement officer who finds who broke into a neighborhood grocery or who embezzled the funds at the corner bank.

It is not the job of these bureaus to explain or to plead the cause of positive Americanism or to convince our people of the need for a positive approach. Their duty is but to police that job of selling positive Americanism – that selling job is up to individuals. We need a militant spirit of our people, a patriotism, downright pride in being American – to let the phrase, "I am an American," mean more

than that we are a people with more wheat, more telephones, more bathtubs, more automobiles than any other people on the face of the earth. For these are but end results, the product of our system of individual rights.

Realizing that Americanism in its true essence stems from the Declaration of Independence and the Constitution, there is unquestionably no single group who is better schooled and informed on the Federal and State Constitutions than this audience and our fellow colleagues of the Bench and Bar. It is part of our daily work, and one might say a tool of the trade. For this reason, with such background and knowledge we should be the leaders in actively promoting positive Americanism. For it is that Constitution and its amendments which are the fountain of our American system and the reason that we are different. Others less schooled and informed may become tangled in their own thinking and impressed by public utterances and written words which have no foundation actually in fact. Perhaps we ourselves cannot see the forest for the trees, but a discerning student will see in black and white and can point out to all who would question the basic difference between our system of government and all others. Privileged to be educated and informed, we have a duty to relay this information and to help others less informed.

That is why it is my belief that we as attorneys have a particular responsibility in this time. It may be serving with our school board, not in a legal capacity, but as one of the members, or it may be on the library board; it may be encouraging of groups and aiding patriotic organizations who are attempting to instill this positive type of Americanism to such activities as Boys' State and Girls' State, or through oratorical contests in which the very constitution and its meaning is debated, discussed in all of the history classes in our public schools throughout the nation.

It may be at the corner barbershop or someone who in your company makes statements which are basically unsound, and if not corrected others hearing them unwittingly mouth these phrases until by common talk they become recognized as dogma.

It is one thing for a layman to say, on reviewing someone who is ill, my opinion is that he has cancer, or he has epilepsy, or a bad cold. How much credence do we give such a statement? How different it is when a medical doctor, one schooled in medicine to the diagnosis of symptoms, makes the same statement. So too with the law and its very foundation, the Constitution. Who best can make credible, reliable statements as to what the law means or to what the Constitution protects or to what in part it means? Obviously the most credible and reliable would be a considered opinion by a member of the Bar in interpretating the fundamental principles of our Constitution. Those same principles set forth in the Declaration of Independence (reiterated in 47 of the 48 state constitutions, Idaho among them) of the dignity of man, and our Creator as the source, as it is, of our rights, the fundamental concept of our American system, differs from all other systems. Such an opinion by yourselves will be respected and given much more weight.

We need the help of all in bringing out a positive Americanism. It is not the duty of one group; it will be made possible by the concerted effort of all.

I do not claim that it is our sole job, nor that with the fulfullment of our responsibilities the battle is won. You and I know that this would be but part of the effort.

It was Daniel Webster who once said: "God grants liberty only to those who love it and are willing to guard and defend."

You and I have a particular role. The very essence of Americanism stems

from the Constitution. No one knows better how to interpret it, how to recognize and realize the loss of fundamental rights—how to meet its critics, how to explain to those who do not know the essential differences of our way of life as compared to all others.

We have a job and a great opportunity in service at the present for each of us.

There is an old fable of a Persian farmer named Hafed. One day a mystical wise man came to him and thrilled the farmer with tales of the beauty and value of diamonds. He explained that with a handful of diamonds Hafed could buy the entire country and with a diamond mine he would be rich enough to rule the world.

Hafed was so impressed, and when the visitor explained that diamonds were located in various parts of the world merely waiting to be discovered, that all one had to do was find them, Hafed was enchanted. He sold his farm and worldly goods and went forth searching in many faroff countries. He found no diamonds. Many years later Hafed, weary and penniless, died in a strange land. Another Persian, while digging in Hafed's deserted garden, discovered the diamond mines of Golconda, the richest ever uncovered in the ancient world.

PRES.: Thank you, Mr. Smith, for this very timely and appropriate talk.

We have reached the point in our program for the presentation of resolutions. The Resolutions Committee worked hard last evening. The Chairman is here this morning bright eyed and ready to do the job. Somebody said that one of the members of the committee had to go down to Ketchum to do a little research last night, but I am sure they have the report all ready. We will ask Fred Taylor to take charge of the meeting for the presentation of resolutions.

FRED TAYLOR: Mr. President, as usual, you made a very gross misstatement of fact. (laughter) I am not bright eyed. We did work a little bit yesterday afternoon, but after looking these resolutions over this morning, they didn't look quite as good as they did then.

Most of these resolutions, gentlemen, were handed to us. We have done a little editing, and they are here for your consideration. There are not very many of them, and I doubt that very many of them will be too debatable.

RESOLUTION NO. 1

RESOLVED, that the Idaho State Bar approve the suggestion of President Claude Marcus that a Laymens' Committee be organized to study, advise and assist the Idaho Bar in promulgating judicial reforms and improvements, and

The Idaho Bar Commission is hereby directed to organize such committee forthwith.

BE IT FURTHER RESOLVED, that the Idaho Bar Commission be and it is hereby authorized to pay the actual and necessary expenses of the members of said committee.

(The adoption of the resolution was moved and duly seconded.)

FROM THE FLOOR: Mr. Chairman, in the recommendations yesterday by Mr. Marcus, he mentioned the number of persons to be on that committee. I take it that those recommendations were suggestions, but I took notice that no farmers' organizations were mentioned in the persons named. I feel that farmers' organizations in the state and farmers generally tend to be antagonistic towards the Bar more than any other particular group, and I would like to urge that some repre-

sentative of a farmers' organization, the Grange or some other representative of the farmers, be included in that laymen's committee when it is organized.

MR. TAYLOR: In the suggestion it was stated that certain people should be on the committee. The Resolutions Committee felt we should leave that out and leave it up to the commission and that such a committee should have such representation as you are suggesting now, but leaving it in the discretion of the commission. We feel that farmers, representatives of labor, the editorial association and maybe chambers of commerce and people of that character in other segments of life should be represented on the committee. That is the reason we didn't designate any particular people.

CARL BURKE: What are you going to call this committee?

MR. TAYLOR: Laymen's Committee to work with the Bar.

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

RESOLUTION NO. 2

WHEREAS, the Supreme Court has made an excellent and timely beginning in the adoption of Rules of Procedure for Idaho Courts, and

WHEREAS, the situation confronting the Court in adopting the provisions of the Code as Rules did not permit the adoption of some Code sections as rules where substantive law was contained in such section, and

WHEREAS, in order to complete the Rules it will be necessary to segregate substantive law from procedural law and the re-enactment of the substantive law by the Legislature and the readoption of the procedural law as rules,

RESOLVED, that the Bar hereby tender to the Supreme Court the services of its officers, members and committees in effecting such segregation, drafting of bills, and such other asisstance as the Court may desire.

(The adoption of the resolution was moved and duly seconded and upon vote unanimously carried.)

RESOLUTION NO 3

BE IT RESOLVED, that the Idaho State Bar reaffirm its position that probate and justice's courts be eliminated as constitutional courts and made statutory courts with such powers, duties and jurisdiction as may be provided by law.

BE IT FURTHER RESOLVED, that the President appoint a committee of the Bar to devise, formulate and submit to the next annual convention of the Bar an improved inferior court system for the State of Idaho.

(The adoption of the resolution was moved and duly seconded.)

MR. TAYLOR: We were told yesterday by Mr. Moffatt, there have been two attempts in the last two sessions of the Legislature to amend the constitution to eliminate the probate and justice courts as constitutional courts. I carried the ball in 1949 in the Senate, and one of the chief reasons that we couldn't get the job done was because the lay people in the Legislature are fearful of what we are going to do. So the purpose of this resolution is to have a plan at the time of submitting those constitutional amendments, if it is deemed necessary. In other words, there is some thought that perhaps we should eliminate justice courts entirely. That is something to be decided. We should increase the jurisdiction of the probate court and make it a countywide court with jurisdiction up to perhaps $1,000.00 and

give it jurisdiction over indictable misdemeanors, and if either or both courts are retained, to fix some qualifications for the judges so that in reality they are courts. Because in many counties, especially the small ones, we don't get too competent people sometimes.

That is the purpose of this resolution. It is more for a study to be submitted, and I do want to say that from my experience I feel there will have to be a plan for your inferior courts before we can get any constitutional amendment through. I know that is the thing we ran into. We had four lawyers arguing these amendments on the floor of the Senate in 1949, and even with that we couldn't get the two-thirds majority. We did get a majority, but not two-thirds.

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

RESOLUTION NO. 4

BE IT RESOLVED, that the Commissioners of the Idaho State Bar appoint a committee of the Bar to cooperate with, aid and assist the Industrial Accident Board in regard to fixing and allowance of attorneys' fees under the Workmen's Compensation and correlated laws.

(The adoption of the resolution was moved and duly seconded.)

E. B. SMITH: The position of the Industrial Accident Board is this: There has been considerable confusion on the matter of fixing and allowing attorneys' fees in workmen's compensation cases. The schedule of fees which are desired or demanded by attorneys over the State of Idaho in compensation cases has varied greatly. For instance, it wasn't over two years ago that the Bar was subjected to criticism by virtue of the fact that in the northern part of the state the attorneys' fees were, or the attorneys were demanding, a contingent fee of 50%, which was considerably out of line. In the southern part of the state, the Industrial Accident Board has been liberal, taking into consideration the amount and time and character of work involved, and allowing anywhere from 20% to 25% in cases involving guardianship of minor children and minor children's rights and perhaps a sliding scale of 25% to 35% in litigated cases not involving children. There has also been confusion in relation to the so-called hybrid statute we have where, if a case is defended upon unreasonable grounds, the Board has the right to assess attorney's fees against the surety company. In some of the cases the attorneys ask exorbitant fees, and usually they do not see the distinction as to what is reasonable grounds for defense.

I also point out the so-called minimum schedule of fees from the Fifth Judicial District has in it a minimum attorney fee of $100.00 in compensation cases, which, if the attorneys were aware of the practice, resolves itself into an absurdity. There isn't any such thing as a minimum attorney's fee in compensation cases unless you are representing a surety company, and then you don't need a minimum fee schedule. It is all up on a contingent fee schedule.

The industrial Accident Board has mentioned several times that there is such a chaotic situation involved that they would like to have a Bar committee aid and assist it in these problems, and whatever conclusions may be arrived at, that the information be disseminated to the Bar.

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

RESOLUTION NO. 5

BE IT RESOLVED, that the Judicial Selection Committee of the Idaho State Bar be, and it hereby is, instructed to prepare the following Bills for submission to the 1952 Idaho State Bar Convention:

FIRST: A Bill providing for the filling of vacancies on the nonpartisan Judicial Ballot occurring subsequent to a Primary election and before the next general election.

SECOND: A bill amending Sections 34-701 to 34-707, both inclusive, and Section 34-906, of the Idaho Code, where necessary to conform to the Report of the Judicial Selection Committee adopted at this 1951 convention pertaining to the separation of offices of the same class in the offices of Supreme Court Justices and District Judges.

And that the report of said committee on said Bills be submitted by mail to each member of the Idaho State Bar at least 30 days before the 1952 Annual Meeting of said Bar.

(The adoption of the resolution was moved and duly seconded.)

OSCAR WORTHWINE: What we did yesterday was separate the offices, and it is necessary to amend the sections in some particulars or else the portion of the report adopted yesterday would be worthless.

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

RESOLUTION NO. 6

BE IT RESOLVED, that the Secretary of the Idaho State Bar resubmit to the Presidents of all the District Bar Associations of the state, for the consideration of their respective Districts, the second portion of the report of the Judicial Selection Committee, pertaining to the second proposed Bill, with the following amendments:

ONE: That the portion of said Bill pertaining to an incumbent not being required to supply a nominating petition be deleted; and,

TWO: That the number of attorney subscribers to nominating petitions be reduced from 150 to 75.

And that the said second portion of said report and the said second proposed Bill, as amended, be reconsidered at the 1952 State Bar Meeting.

(Adoption was moved and duly seconded, and upon vote had, unanimously carried.)

RESOLUTION NO. 7

BE IT RESOLVED, that the Idaho Bar by and through an appropriate committee continue its studies in regard to improving the selection of justices of the Supreme Court and judges of the District Court, giving special attention to the proposals and recommendations of the American Bar Association; that such committee prepare and submit to the next annual meeting of the Bar such constitutional and statutory amendments as it may deem necessary, together with its recommendations.

(Adoption was moved and duly seconded, and upon vote had, unanimously carried.)

RESOLUTION NO. 8

RESOLVED, that the statutes fixing the penalty on the conviction of felony crimes be amended so as to clearly authorize the trial judge to fix a definite maximum sentence within the limits prescribed by law.

(The adoption of the resolution was moved and duly seconded.)

CARL BURKE: What is the purpose of that resolution? Is that to get away from this Board of Corrections or Pardons?

MR. TAYLOR: As I understand it, there is a great deal of confusion, not only among the Judges but prosecuting attorneys, as to just what a Judge can do. And they want to clarify it so a Judge can give a defendant the maximum sentence, and then, of course, it makes the defendant subject to parole or pardon by the Board of Corrections. But there is some confusion, and this is just a short statute to authorize some amendments.

SAM GRIFFIN: I understand also, from one of the Judges, that they are now placed in this position. If a man forges a $5.00 check for the first time in his life, they have to give him life or whatever the greatest maximum penalty is by statute. That is the effect of it. And if it is a $10,000.00 check, it is still life. In other words, it makes it look on the face of it as though the judge was paying no attention to the seriousness of the crime.

HOWARD ADKINS: There are those cases of absurdities which do arise. I think the statute in a manslaughter case provides ten years in prison, and there are cases in a statutory rape case where it may be extended to life, and I think the same penalty applies to burglary. And when we come out with a headline in the paper that Judge so and so has sentenced somebody to life imprisonment for burglary or armed robbery, and the next day the public sees where someone got ten years for manslaughter, the public doesn't understand it. And naturally that works a hardship on the Judge.

There has been one other proposal, however, that I thought might be embodied in that resolution. It is simply to the effect that the District Judge sentence the defendant to the penitentiary, where found guilty, and the procedure otherwise would remain the same that it is with respect to the time that he stays there.

MR. TAYLOR: Well, this is the one that the prosecutors and, I think, the Judges approved.

ELBERT STELLMON: And then we have the case where the defendant diligently tried to reduce the charge from illicit cohabitation to rape. One was life and the other was something less. (laughter).

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

RESOLUTION NO. 9

WHEREAS, the success of any Association such as ours depends upon the diligence and ability of our officers and the members of our various committees;

NOW, THEREFORE, BE IT RESOLVED, that the Idaho State Bar hereby extend its sincere thanks and appreciation to our officers and the members of each of our committees who have served us so well since our last annual meeting. And especially to the members of the arrangements committee for securing for our use and enjoyment the accommodations and facilities of Sun Valley.

(The adoption of the resolution was moved and duly seconded, and upon vote had, unanimously carried.)

RESOLUTION NO. 10

BE IT RESOLVED, that the Idaho State Bar hereby extends its sincere appreciation to the officials and employees of Sun Valley for the kind and efficient service given us during our stay here and hereby congratulates them upon the excellence of such service, the accommodations and entertainments furnished.

(The adoption of the resolution was moved and duly seconded, and upon vote had, unanimously carried.)

RESOLUTION NO. 11

BE IT RESOLVED, that the 1952 annual meeting of the Idaho State Bar be held at Sun Valley, Idaho, upon such dates as may be agreed upon by the arrangements committee or the proper officer in charge.

(Adoption of the resolution was moved and duly seconded, and upon vote had, unanimously, carried.)

RESOLUTION NO. 12

BE IT RESOLVED, that the Idaho State Bar and the members hereby extend to Hon. Cody Fowler, President of the American Bar Association, our sincere thanks for honoring us with his personal attendance at our annual meeting and delivering to us an inspiring and dynamic address. We hope that the warmth of our appreciation may equal the warmth of his own personality.

(Adoption of the resolution was moved and duly seconded, and upon vote had, unanimously carried.)

RESOLUTION NO. 13

WHEREAS, the continued success of the Idaho State Bar depends upon the interest and attendance of its members at our annual meetings, and

WHEREAS, every member of the local Bars of Clearwater, Teton, Lemhi and Blaine Counties is in attendance at this meeting,

NOW, THEREFORE, the Idaho State Bar hereby congratulates the above named County Bars and the members thereof, and recommends such exemplary action to the members of the other local Bars throughout the State.

(Motion to adopt the resolution was made, seconded and put to a vote, and was carried unanimously.)

MR. FRED TAYLOR: Are there any resolutions that anyone has that they would like to submit from the floor?

PRES.: Thank you, Mr. Taylor. After your arduous labors, you are certainly entitled to our full appreciation.

This cleans up the working part of our program. Mr. Litton will give you the names of our recently admitted attorneys and introduce those present.

VICE PRESIDENT LITTON: Mr. Chairman, Members of the Bar and friends: I hold in my hand a list of the new members of the Bar who have been admitted since our last meeting in July, 1950. I have counted the number of names appearing, and I believe there are 55. This is one of the largest admissions we have had during any year. I am happy to say that I am informed that most of these new members of our Bar are now actively practicing law in the state or will be in the near future.

I am also glad to have with us, at least as furnished to me by the registration office, seven of these men in attendance. I will read their names, and if they are present, I wish they would stand up, and as they stand up, let's give them a hand.

(Whereupon the following attorneys were recognized: Edward Benoit, James M. Cunningham, George A. Greenfield, Cecil Hobdey, George R. Kneeland, Raymond C. McNichols and William M. Smith.)

On behalf of the Bar, we extend to you our heartiest congratulations. We wish you success, and we offer to you any assistance which we can possibly give. And again I welcome you. (applause)

PRES.: Gentlemen, Mr. Fowler is supposed to do some work with us this morning. He got out here so late, but these southern delegates are a little bit hazy on the morning after. And since he did get here late, we are going to require him to say a word or two. (applause)

CODY FOWLER: Gentlemen, let's get the record straight. I crashed this party this morning. If I was supposed to be here, it was kept a secret from me.

But I came over and said I wanted to have an opportunity to say goodbye. If I neglected to do anything I should have done—I know I have done some things I shouldn't have done—but if I have neglected to do anything I should have done, I am awfully sorry, but I don't think I could have added anything to this meeting.

I want to say I have had a delightful time in Idaho. It has been a great pleasure to be with you, and I appreciate the friends I have made here. You get a feeling, after you are here a few days, this would be a fine country to live in and a fine group of people to practice law with, although I realize competition would be very stiff.

I really have been writing letters and answering long distance telephone calls this morning. There is some work to do besides pleasure in this little job.

But it has been delightful to be with you, and I will remember it a long, long time. As, if and when you attend the American Bar, please come in and see me. And if you would like to see how the other half of the world lives, come down to Florida and look us up sometime.

Thank you, and thank you very much. (applause)

PRES.: Mr. Fowler, we have surely enjoyed having you here, too, and we wish you a most pleasant trip and hope you can get back to see us at some future convention.

CODY FOWLER: Thank you. I would love to.

PRES.: Gentlemen, now comes a very pleasant point in our program. We are at the end of our working sessions. Your Bar Commission has reorganized and elected officers. Mr. Robertson is the new Commissioner from the Western Division. He was introduced yesterday. Mr. Brown is the Vice President of our Bar for the coming year. He is the Commissioner from the Northern District. The Secretary continues in his job. And it is distinct pleasure to announce that Mr. Ralph Litton is your President for the coming year. From working with him for two years, I know he is going to do a fine job for us. (applause)

PRESIDENT LITTON: Thank you. Members of the Bar, I appreciate most highly this honor, and I am going to say that I hope that I can command the esteem and cooperation from the Bar that my friend and predecessor, Mr. Marcus, has.

I want everyone to feel that this is their Bar. They are not only a member of it, but they are a working part. We need the help, and we want everyone to assist us. We have a big job. I think we are moving in the right direction. I think we are making progress. We are not magicians or anything like that. We are just men. So if we make mistakes, we hope you will be considerate and try to prevent us from making any more than absolutely necessary.

Mr. Griffin, our Secretary, has been on the job, and by asking for reservations here last February, he was able to get the dates of July 10, 11 and 12, 1952. Those are fine dates. They begin on Thursday and end on the weekend. He has also gone a little further than that. He has reserved the dates of July 9, 10 and 11, 1953.

In case we don't want them, don't worry. Sun Valley will readily relieve us from this obligation.

Again on behalf of the Bar Commissioners, we certainly want to extend our sincerest and our heartiest thanks for those who have worked so hard and so faithfully and helped us make this a success. Thank you. (applause)

PAST PRESIDENT MARCUS: Is there anything to come before the meeting? If not, I will entertain a motion for adjournment.

(Whereupon it was moved, seconded and unanimously voted that the convention do adjourn.)

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