

Proceedings
of the
Idaho State Bar

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Thirty-Third Annual Meeting

SUN VALLEY, IDAHO

July 9-10-11, 1959

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SPEAKERS



HONORABLE JOHN D. RANDALL
 President-elect of the
 American Bar Association



JOHN P. FRANK
 Phoenix, Arizona

ROBERT F. KENNEDY
 Washington, D. C.

Thursday Afternoon, July 9, 1958, 2:00 p.m.

JUDGE SPEAR: Ladies and Gentlemen: We might as well start the 1959 annual meeting of the Idaho State Bar, even though considerable numbers of the members are not present, in order to complete our program within the allotted time.

We will open the meeting with an invocation to be delivered by Father Jerome T. O'Conner.

REV. JEROME T. O'CONNOR: Please rise. Gentlemen, you will follow these thoughts.

Oh, My God, I believe you are my first beginning and my last end. Oh, My God, I believe you sent your Son, Jesus Christ, on earth to be the way, the truth, and the light, whereby we are to live our lives. Oh, Merciful God and creator, help us to recognize that you are the great law giver, that in our vocation and the practice of it, that it is not strictly justice, but justice seasoned with mercy that counts. That in our lives each day come through our doors not merely human beings of flesh and blood, but of minds and souls as well. Help us, dear God, to carry away with us from this meeting of this convention some ideas that we may better serve the communities which we represent so that when our life is over it might be said of us, as Saint Matthew said of your son, Jesus Christ, he went about doing good, and that our lives may be summed up in the few little words, he was a good man. Therefore we pray and beseech thee, oh Lord to direct our actions by the holy inspiration and to carry them on by thy gracious assistance that every prayer and good work of ours may begin always from thee, and by thee be happily ended, by Christ our Lord, Amen.

In the name of the father, the Son, and the Holy Ghost Amen. Be seated.

JUDGE SPEAR: Thank you, Father. Just an announcement or two before we begin our regular program for the afternoon. I will appoint the Canvassing Committee now to canvass the votes that were cast in the election of the new commissioner of the Northern Division. The chairman will be Robert McLaughlin of the Southwestern Division; members will be John Bloem of the Southwestern Division, and Pat Arney of the Northern Division. The committee will meet immediately following this meeting of this afternoon session in Room 233-A of the Lodge, and will make a report—it seems to me it is tomorrow morning, so if you will be ready at that time we will appreciate it.

We had originally scheduled a few remarks from Governor Smylie at this time but he called a few weeks ago and advised me it would be impossible for him to attend and for me to extend his sincere regrets to the membership for his inability so to do, as he thought he would probably be either in Leningrad or Siberia or some such place.

I think it unnecessary for me to comment on any of the programs, they have been arranged by Judge Bellwood, the Vice-President, and speak for themselves. It is all printed here, there was but one error I have been able to detect and that is the one involving the past presidents luncheon of the Idaho State Bar. It is listed here as Saturday, when, in fact, the luncheon is tomorrow, on Friday, at the Ram. If those of you present will make a note of it I will announce it again tomorrow.

At this time I will turn the balance of the meeting for this afternoon over to the Vice-President, Sherm Bellwood. Sherm. (Applause).

JUDGE BELLWOOD: Thank you. We have arranged, as you know, a program for this afternoon which has met with lots of success and lots of pleasure. Its success depends largely, I think, upon participation at the proper times by members in the audience. So I will now introduce to you the State Committee on Ethics, Paul Eimers, Chairman; Merrill Gee and Calvin Dworshak. Would you please come to the podium here to get your panel discussion started.

MR. DWORSHAK: Ladies and Gentlemen, on behalf of our Committee on Professional Ethics I would like to tell you briefly how we plan to proceed. As you know, in the June issue of the Advocate there were published 19 problems in legal ethics, all based upon hypothetical situations. We on the committee have selected about 4 or 5 we thought were particularly interesting, at least to us, and we hope to you, and purely in the interest of time we thought we would probably be able to only cover those few questions. Now, after we get through, if you want any of the other questions considered or touched upon, we will be glad to do whatever we can.

We have also decided that we do not feel it would be in order for us to consider at this time any particular individual questions, separate and apart from the ones published and of which you have copies. If you do have particular ethical problems you would like submitted to the Committee we will respectfully request that you put it in writing and direct it to any member of the Committee or to the Secretary of the Bar and we will get it and we will render an informal written opinion on it or a decision, if it is a simple matter.

The question we thought would be most interesting to start with is No. 12 on the sheet you have. The question has been debated, I know at least in our district from time to time, and I know that most of the members in our district are not entirely satisfied as to what is the proper ethical conduct. The question reads:

Is it ethical for a lawyer, after verdict, to seek out one or more members of the jury before whom he has tried a case and question them concerning how certain aspects of the case impressed them, what they thought of certain evidence on both sides of the case, and how certain members of the jury stood on certain questions, even assuming that the lawyer did so for the purpose of informing himself as to any mistakes he may have made in the presentation of evidence or of testing his judgment in selecting members of the panel?

We will open this question for discussion right away, I would like to say I think it is a rather common practice and procedure to do this very thing in all of the courts in Idaho, and do any of you have any particular views as to whether you think it is ethical or unethical, and by the way, when we have concluded this discussion I will read to you the opinion of the American Bar Association Committee on Professional Ethics in which this very same problem was presented. Do any of you care to make any comments?

ATTORNEY: Since we are all doing it, what is wrong with it?

MR. DWORSHAK: Do any of you feel that it is not ethical?

ATTORNEY: In any of the courts in the State, is any instruction given to the jurors at the conclusion of the case that they do not discuss it with any persons?

MR. DWORSHAK: To my knowledge I know of no such instruction. I have never heard it given.

We have the customary admonition about not discussing the case during the trial. I might direct your attention to Canon 23, which provides among other things, a lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause. That is the particular canon that is involved. Of course, if you stretch that canon it would obviously preclude a discussion of the case after the verdict has been rendered, and again, we have the question of how we are going to determine if there has been any fraud, if the members of the panel during deliberation were incompetent. The Supreme Court of the United States, I believe just last week or the week before, ruled in a case out of Hawaii—they didn't rule, they had a good opportunity to rule on this very question, it involved a lawyer who discussed the case after the verdict was in. It was a criminal case involving union leaders who had been prosecuted under the Smith Act, and the court recognized this particular issue as a point on appeal but declined to comment on it, saying that the other points on appeal were determinative of the particular case. Recognizing that most lawyers do this very thing, we would like to know if it is or is not ethical, I can give you the opinion of the American Bar Association, as I stated.

ATTORNEY: It depends on the attorney. Some attorneys could be particularly obnoxious in approaching or discussing the matter with a juror, but if they did, it would only destroy their opportunity to get information, and the juror, if he wished, could tell the attorney to go to, and that is it. As long as the discussion is conducted on the right plane I don't think the lawyer has much difficulty in talking with the average juror, especially jurors friendly with him and denying the friendship on voir dire.

MR. DWORSHAK: We have two specific problems that apply here in Idaho, and one of them is that in the smaller communities, members of the jury with whom most lawyers are acquainted, usually on a personal basis, will approach the attorney in his office maybe weeks later and want to discuss the case and report about the deliberations of the jury and what motivated them to reach the verdict. It seems to me that this is one problem we have, the other is, here in Idaho a panel will sit on more than one case and if a lawyer has more than one case at that particular time, we have the additional problem of, in discussing a case with a juror, maybe subconsciously currying favor with him, knowing that he is going to be sitting on another case in another week or two weeks, whenever it might be. Does anyone else have any comment before I summarize the A. B. A. opinion?

ATTORNEY: I had a criminal case in which I met two of the jurors in front of the Hotel Boise afterwards, and I will preface my remarks by saying I could see no harm in my own mind about it, no good or harm had been done by the jury's verdict, in this particular case it was a criminal case, I don't think you always get the right answers because these two fellows promptly spoke up and said: "We found your client not guilty but our unanimous opinion was that you should advise your client never to do it again."

MR. DWORSHAK: I had the same thing happen to me, it wasn't a case I was involved in but I happened to be discussing prospective jurors with someone else to determine a little background on some of the members of the panel, he offered

about the same thing, he had been on a criminal case not too long before, he said, "Everyone on the jury knew the man was guilty but the prosecutor didn't prove his case."

Well, the A. B. A. has ruled as follows: "The precise ethical question presented is whether or not it is professionally proper for a lawyer to interview, after verdict, jurymen who were on the panel as to what took place in the jury room and as to what the salient points were which caused the jury to arrive at a given verdict. The question assumes that the inquiries are directed by the lawyer for his own information and benefit. Both categorically answering the question, it would seem expedient, if not necessary, to cite a few of the numerous decisions in respect of the secrecy of the jury room, and the immunity of jurors from interrogation as to their verdict."

"Previous to the nineteenth century the earlier authorities might not have been uniform. Since the beginning of the nineteenth century there probably has been no English case in which, after the return and affirmance of a verdict in open court, the testimony of jurors as to the motives and influences by which their deliberations were governed has been admitted into court. (In other words, they precluded the evidence).

"Baron Alderson said in the Straker case that 'it is entirely against public policy to allow a jurymen to make affidavit of anything that passes in agreement to a verdict.' This statement was quoted with approval by Chief Justice Tindal in the Burgess case. (Those are both, by the way, English cases).

"The cases in the United States are overwhelmingly to the same effect.

"In *Woodward v. Leavitt* (1871), 107 Mass. 453, where will be found a collection of English and United States cases, the court said: "The proper evidence of the decision of the jury is the verdict returned by them upon oath and affirmed in open court; it is essential to the freedom and independence of their deliberations that their discussions in the jury room should be kept secret and inviolable; and to admit the testimony of jurors to what took place there would create distrust, embarrassment and uncertainty." To the same effect see *Clark v. United States* (1933), 53 Sup. Ct. Rep. 465, where Mr. Justice Cardozo said: "For the origin of the privilege we are referred to ancient usage, and for its defense to public policy. Freedom of debate might be stifled and independence of thought checked if jurors were made to feel that their arguments and ballots were to be freely published to the world." The same judge said in the same case: "No doubt the need is weighty that 'conduct in the jury room shall be untrammelled by the fear of embarrassing publicity. The need is no less weighty that it shall be pure and undefiled. A jury of integrity and reasonable firmness will not fear to speak his mind if the confidences of debate are barred to the ears of more impertinence or malice."

"It therefore may properly be concluded that the English cases, the cases of the various state courts, and the decisions of the United States Supreme Court, do not permit to be introduced into evidence discussions in the jury room, as to the manner in which a jury arrived at any given verdict. This conclusion is supported, as above pointed out, by reasons of ancient usage and public policy."

Canon 23 is quoted and I have already read the salient parts of that

"Many times it has been pointed out in our opinions that a lawyer, like Caesar's wife, should be above suspicion."

"If after verdict, a jurymen wishes to talk upon interrogation by one of the lawyers who tried the case, one or more ethical questions present themselves. As far as the juror is concerned, is he to be subjected to embarrassment as to what reasons led him and the other jurymen on the panel to arrive at a given verdict? As far as the lawyer is concerned, he is prying into deliberations which, by reason of public policy, should be inviolate. Further, in questioning a juror about the motives prompting the jury's verdict, he is indirectly soliciting disclosures about the conduct of other members of the jury without their consent. As a practical matter, what security has the lawyer that he is obtaining a fair representation of what took place in the jury room? If, as is likely to be the case, the juror, instead of relaying accurately the effect which the conduct of the lawyer produced, tempers it with charity, it may prove harmful instead of helpful. As far as the public is concerned may it not occur to them, especially where the attorney has pending other causes upon which the same panel of jurors may sit in judgment, that the lawyer is covertly attempting 'to curry favor with juries by fawning, flattery or pretended solicitude' contrary to the provisions of Canon 23.

"This opinion, of course, is not intended to extend to a situation where there has been a mistake in the announcing or recording of a verdict, and in the protection of his client's interests, it may be necessary for a lawyer to interview members of the jury to prevent a miscarriage of justice. Nor does it extend to a case where a juror has been guilty of fraud.

"The committee is of opinion that upon the facts stated, the conduct of the lawyer is unethical. It tends to destroy the secrecy which should, on account of ancient usage and public policy, safeguard the activities in the jury room."

I also understand that the Ninth Circuit Court sometime ago, in an Idaho case, ruled to the same effect, and in effect served notice on any Idaho lawyer that if they are down in the circuit court they had better not talk to members of the Federal jury. Unless anyone has any further comment, we will go on to the next question.

ATTORNEY: Are we bound in Idaho by the A. B. A. opinion on ethics?

MR. DWORSHAK: Maybe it would serve well to tell you briefly how we got our Canons of Ethics in Idaho, and may give you a little other background. I wrote sometime ago to the American Bar Association to determine if we had other states where the A. B. A. had considered a specific sort of canon. They sent me a report they had conducted on the existence of canons in various states throughout the union. I was very much surprised to learn there were quite a few states who had no canons of ethics governing practice of law; quite a few states, I believe in the majority, have adopted, by rule of the Supreme Court as we have, the canons as promulgated by the American Bar Association; other states have adopted their own modified canons of ethics and as far as answering your question, we are bound by the A. B. A. canons but not necessarily bound by their decisions, our own committee, I presume, would have the last say so, unless the matter is tested in court.

ATTORNEY: Are we bound by the canons that have been adopted since the Supreme Court order adopting them?

MR. DWORSHAK: There is some question about that. I don't know whether the other members of the committee agree, in our first opinion we raised that question and decided that it would take further rule-making by our Supreme Court to adopt those amendments made since our canons were adopted. In other words, any changes or modifications in the Canons of Ethics from after the time they were adopted in Idaho would not automatically be an amendment to our Idaho canons, it would take a rule of the Supreme Court to do it.

ATTORNEY: Is your committee or somebody petitioning the court from time to time to bring this up to date?

MR. DWORSHAK: We have never done that; I don't know if there have been any amendments since we have adopted them.

MR. GEE: I would just like to make one observation in connection with this question. There is a decision of a Federal Court holding that an attorney who questions members of a Federal jury after a verdict, is in contempt of court. That question and that decision were called to my attention because I was guilty of violating it and fortunately, the court didn't do quite the same thing to me. I was frankly unaware of it and I guess the reason why was because in law school I had a teacher in criminal law, a man who was then or just formerly had been a District Attorney for the District of Columbia, later became one of the few Republicans appointed to the Federal Bench by President Truman, he told us the best way to learn how to overcome mistakes was to talk to the jurors after the case was over, and apparently that was a practice that was rather widely followed, at least in the District of Columbia; but I gather it isn't very safe to follow it here in Idaho.

MR. DWORSHAK: Our canons were adopted in Idaho as of 1951. I don't believe there have been any amendments since then by the A. B. A.

ATTORNEY: They had been adopted previously, had they not?

MR. DWORSHAK: By the A. B. A., yes, even in Idaho they were re-adopted in 1951 as changed as of that time.

MR. GEE: The second question we would like to consider with you this afternoon is No. 1.

May a lawyer, at client's request, assume conduct of a matter previously handled by another attorney before other attorney has given formal notice of withdrawal?

Do we have any discussion by members of the panel first of all?
From the floor?

ATTORNEY: You are talking about a court case, not office practice.

MR. GEE: We are talking about a court case, that is correct, speaking of a case that has actually been filed and there has been some appearance, something been done in the court.

MR. DWORSHAK: It seems to me it also raises the question about two situations, one where the client goes to another attorney and never has yet informed his former attorney and also the situation where the lawyer has already

advised his first attorney to terminate his services and he is going to go to the next lawyer as a client.

MR. GEE: Let's assume, first of all, the first situation where the client goes to Lawyer No. 2 without having consulted his first lawyer and without having discharged the first attorney.

ATTORNEY: You are assuming Lawyer No. 2 informed Lawyer No. 1 he is handling it?

MR. GEE: Yes, assume he tells Lawyer No. 2 he has previously hired Lawyer No. 1 but for some reason or other he is dissatisfied and wants a new attorney at that stage and in that proceeding. What can Lawyer No. 2 ethically do?

ATTORNEY: In my opinion he can do nothing.

MR. GEE: In my opinion, he can do one thing, tell the client to go back to his lawyer and explain to him that this ethical problem exists and that he can do nothing for the client until the first attorney has been formally discharged. The question is deliberately drawn this way to make a distinction between discharge of attorney and informal withdrawal. As we read the Canons of Ethics it is unethical for Lawyer No. 2 to take any steps at all to advise the client in any respect until he has a satisfactory disposition with Lawyer No. 1.

Would anyone challenge or disagree with that interpretation?

Are there any further thoughts or comments along that line? I will summarize the canon for you.

ATTORNEY: Before you leave this or summarize it. What should Lawyer No. 2 do? Is he to pre-emptorily advise this client of the other attorney, telling him he can't even talk with him? I want to draw from my own personal experiences just briefly now. I have had people come in, be at "outs" with their attorney, maybe have some matter which you can straighten out for them, in just talking to them. Is there any harm in that? I let them talk, half the time the client is right, isn't really a client but wants to talk and explain the situation, sometimes you can straighten the thing out and he goes back to the first attorney happy and rejoicing. I have had that happen, is that wrong? Should a person just say, "No, I can't talk to you until you have actually formally been released by the former attorney or he has withdrawn from your case."

MR. GEE: I think we would be doing a disservice, would we not, to the client and the profession if we told him we couldn't talk to him—we wouldn't even open our ears. As I read this particular canon that is involved it simply means that Lawyer No. 2 cannot assume anything in connection with that case, he shouldn't give any advice in connection with the case or tell the client how to advise Lawyer No. 1 how the matter ought to be handled but he can certainly listen and it would seem to me it is almost his obligation as a semi-public servant to be courteous to that extent but not attempt to run the case. Any further questions or discussion on that?

ATTORNEY: Suppose a situation exists where something has occurred between an attorney and client where the attorney avoids talking to the client first and the client tells him he is discharged but doesn't settle his account with him—they don't get together, and everytime the client comes in the attorney is not free. Now, he goes to somebody else and says, "I can't do anything with this fellow." You say,

"Have you discharged him?" "Yes, I told him." "Have you paid him?" "No, he won't talk to me any more." What are you going to do in a situation of that kind?

MR. GEE: Anyone have any suggestions? I believe the spirit of the canon, which is No. 7, and also, incidentally No. 44, would require Lawyer No. 2 in that instance to himself communicate with Lawyer No. 1 and explain just as fully as he can and still try to stay out of hot water, if possible. Anything else on that one?

MR. DWORSHAK: I would like to interject a collateral case, I know it is customary in a lot of districts to protect another lawyer on his fee in such a situation. I am wondering if anyone here had any idea that that was required of them by the Canons of Ethics.

ATTORNEY: It is just good common sense. You like to eat? It is good common sense.

MR. DWORSHAK: The only point I am making, there is nothing in the canon that would require you to protect another attorney.

ATTORNEY: You had better not cut his throat.

MR. GEE: Yes, there isn't anything in the Canons of Ethics that requires protection of the fee but there is the spirit of the canon which says that it is unworthy of members of the Bar to take advantage of another or to unduly encroach upon the professional employment of another lawyer; it uses that language.

MR. EIMERS: I have the question which is No. 16 on the sheet which you have.

Attorney X represented A in a divorce action based upon the grounds of desertion by the wife, B. B was represented by counsel in the trial of the action and was fully aware of A's testimony concerning the desertion. A decree was entered in favor of A. Three months after the entry of the decree A again seeks advice from X telling him that his testimony as to the date of desertion was false and that in fact the period of desertion was less than that prescribed by law as grounds for divorce, and that his former wife, B, was now threatening to disclose the true facts to the court unless A pays support money (which was not required by the decree).

The question involving support money appears to be blackmail which was not required by the decree.

Two questions are presented in that statement. What is X's duty to the court as an officer of the court, and what is his duty, or might better be said, what should be his attitude toward his client? Do either of the members of the panel have any comment?

MR. DWORSHAK: I would observe that if the lawyer revealed any of the matters which he received in confidence he would be disclosing confidential information and certainly would be violating the Canons of Ethics.

MR. GEE: And on the other hand, Canon No. 22 requires him to deal with the court with utmost candor and fairness and to call to the court's attention any violation of the law.

ATTORNEY: From what I gather from those facts, the judgment is final. What has happened is the client has come up and confessed perjury to the

attorney. It is a closed case. It would seem to me like it would be the duty of the lawyer to tell the client to get out of the office and stay out as far as the lawyer is concerned.

MR. EIMERS: You have answered the second question. The first question is, what is his duty to the court, if any.

MR. DWORSHAK: I don't think he has any. His duty to protect his client from confession of perjury is probably higher than his duty to reveal to the court where there has been fraud in a closed case. It might not necessarily have to be perjury, it doesn't have to be.

ATTORNEY: I think the point is if the attorney did not recognize that at the time he was before the court that perjury was being committed, it would have been his duty, had he realized it, at the time of the testimony, but now at this time that is involved it is his duty, not his privilege to his client, unless the client released him from the privilege.

MR. EIMERS: I think that the members of the panel have brought out the two points that are involved in the A. B. A. opinion on this, it is a conflict between duty to client and duty to court and it cites the canons which are involved, and the members who have spoken have the same viewpoint on it, it is a matter of conflicting loyalties under Canons 6 and 37 and under Canons 15, 22, 29, 32 and 41. The A. B. A. opinion in brief says that the attorney should urge his client to make a disclosure and if he refuses he should have nothing further to do with him but he should make no disclosure himself.

Does anybody have any further comment on this?

MR. DWORSHAK: The next question is one which I think frequently arises in Question No. 9.

Is it unethical for the Plaintiff's Attorney, in a divorce proceeding, upon the specific request of out-of-state Counsel for the Defendant, to recommend the name of an Attorney to represent the Defendant in the local Courts? Would it be unethical for the Attorney to recommend the names of two or more Attorneys?

I know in our own Third District it is a very frequent request, not only in divorce cases but other types of cases. Do any of you have any comments you would like to make?

ATTORNEY: Wouldn't he be in a rather awkward position, advising opposing parties of counsel?

MR. DWORSHAK: I think you have answered the whole thing, it would in effect be, or at least would appear to be collusion for the attorney to recommend names of counsel to represent the other side. I think that everyone will agree that it is quite improper to do that. That raises the other question of our collusive divorces, which I won't go into, but that is, I think, unless the members of the panel have other views, pretty generally the conclusion reached, that it is improper to do such a thing.

ATTORNEY: I have a question in that regard, if you are asked to recommend or name, not necessarily recommend, but name, other attorneys to handle business for you, whether they can or can't, how far do you go? Do you confine

it to your town or county, or would you look in Martindale and name a whole slug of them?

MR. DWORSHAK: This is not to represent the opposing side but to represent a client that you can't represent?

ATTORNEY: It could be in any situation perhaps where you are interested and you have been contacted to represent certain parties and your partner is representing somebody else—it could be corporation business, it could be a divorce, it could be anything.

MR. DWORSHAK: My own opinion is if there is a conflict that prevents the attorney from proceeding he shouldn't have to be recommending any attorney at all, but if he is *not* going to be involved in any way—

ATTORNEY: The other people have asked him to give them some names, not necessarily recommend them.

ATTORNEY: Don't clients usually interpret that as a recommendation coming from you, you know the lawyers in the community? I have in mind a specific matter where a New York attorney calls and wants to know if you can do a certain thing and you are already representing people who are interested in the transaction. He says, "Who can I get to do this?" "Who is handling it?" "Who is close?" "I don't know your attorneys." You don't like to get in the position of having to answer.

MR. DWORSHAK: Offhand I would say the safe thing would be to tell him you can't do it, you can't give him the names—refer him to one of our law directories, if he wants to write to another attorney who is not in any way involved, I think that is the way to proceed.

ATTORNEY: The reason for this position of saying that you wouldn't recommend counsel for the other side, is that based on your duty to your own clients, or duty to the public, what is the basic thing that is wrong with it?

MR. DWORSHAK: Well, I think it is your undivided duty or fidelity, not only to the public but to the courts.

ATTORNEY: Do you have a duty to your clients to recommend the worst lawyers that you can think of?

MR. DWORSHAK: So that there be no question about who you might recommend, that you give no appearance for collusion, or that there was any collusion—

ATTORNEY: The appearance for collusion, you are talking about the attorney for the other side who is from out of the state?

MR. DWORSHAK: Yes.

ATTORNEY: The conversation is between you and him, it isn't anything that the public generally has any knowledge of that would indicate that it would give the appearance of collusion—it is probably a very private conversation.

ATTORNEY: Isn't there this aspect of it, too, aside from the appearance of collusion is the practical matter of maybe the fellow that you recommend, or maybe you recommend several, and they select one, who doesn't do a particularly

good job and then you get kicked, so to speak, for making this recommendation, isn't there that aspect of it, you open yourself up for a little criticism—backfire?

MR. DWORSHAK: That is the practical aspect of it.

ATTORNEY: Which canon is this under?

MR. DWORSHAK: There are several involved, 6 and 29 principally. The lawyer in this particular case is confined only to the facts, that is, this divorce matter, and the A. B. A. in that particular situation observed as follows: "A divorce obtained by collusion between the parties is invalid; for a lawyer to assist a party to obtain such a divorce is improper and unethical; a lawyer should not only refrain from unethical practices but also from suspicion thereof.

"For plaintiff's lawyer in a divorce proceeding to recommend the name of another local attorney, or the choice of several, to represent the defendant in the local courts would naturally raise a suspicion of collusion which should be avoided."

And I think the same would be true whether it is a divorce case or not.

ATTORNEY: Isn't that in a divorce case where both parties want a divorce?

MR. DWORSHAK: That wasn't in the statement of facts but I think it is right. It is improper for two attorneys to collude together whether it is a divorce or not. It is just a requirement of it.

ATTORNEY: There is no mention of collusion except in divorce cases?

MR. DWORSHAK: Yes, that is true, except for the other angle, which I believe you injected, you may recommend attorneys and as long as that would raise any suspicion, maybe not towards collusion, but as to your own obligation to the court, as well as to your client and to the public generally, it should be avoided.

MR. GEE: The way to get around the problem, if you do respond to the letter is simply to say you don't recommend anybody, but here is a list of five good attorneys.

ATTORNEY: You are recommending five good ones, aren't you?

MR. GEE: They are all good.

ATTORNEY: I wonder if the question of ethics was in any way affected by the public policy of the state when the legislature enacted the short resident requirement for divorce?

ATTORNEY: I wonder, we are in a situation here, as I understand it, where the public policy of the State has been set by the legislature through its conflicting laws and in some ways collusion is still something not to be indulged in in divorce actions, but our legislature did see fit to make the jurisdictional requirement of residence sufficiently short to attract collusive divorces. I don't know why we skirt around it, why we don't talk about it, that is where we are right now, we are here in Sun Valley where the environment is right, I guess, for this kind of discussion.

MR. DWORSHAK: I would say this, I don't care what the Legislature did, they certainly can't, where we are officers of the court, legislate our Canons of Ethics and tell us impliedly, or infer, that something we know is unethical has their stamp of approval.

ATTORNEY: They can say collusion in divorce actions is not against public policy, the Legislature didn't say that; I think the courts are bound by it.

MR. DWORSHAK: It would still be my opinion that we, as attorneys, would not be bound by it.

ATTORNEY: I would like to speak on it because I think the practice must be different in some places than what I have experienced. I have had quite a number of divorces and I have never had any experience of, and I have never even heard of, a collusive divorce in our jurisdiction. Possibly they have some.

ATTORNEY: What are you going to do when you have an alien with a temporary visa here that wants a divorce?

MR. DWORSHAK: Here is my opinion on it; here is the thing, if a client comes in and wants a divorce, and she says: "I just got off a plane from Washington, D. C. I want you to get my divorce for me." Of course your first inclination is that she probably has a return ticket in her purse, and probably has made reservations about seven weeks hence. I think that you as a lawyer are obligated to inquire as to whether or not it is her intention to remain in Idaho. If you are convinced in your own mind that she is sincere in establishing a residence, that is probably about as far as your obligation goes, but if you know good and well that that client is here solely for a divorce and is returning to her home, frankly, I think you are violating the Canons of Ethics and you are not upholding the legality of the profession, or for that matter, the laws of the State of Idaho, if you proceed.

ATTORNEY: What about the "quickie" divorce practice where we call up Joe Blow on up the street and we say: "We've got \$50.00 in our pocket, will you represent So-and-So?"

MR. DWORSHAK: I think you are entering into a collusive divorce. It is done, but I don't think it is right.

ATTORNEY: What about after you talk to your client and you still are not thoroughly convinced, you have some misgivings as to the length of residence of your client in the State, or intention to remain, is it proper to discuss the matter with the District Judge, say, "I have a problem, can I go ahead and file the divorce?" and tell him the whole thing, and if he says yes, go ahead.

MR. DWORSHAK: I don't think the judge could approve unethical conduct and thereby relieve the attorney of his obligation to uphold the dignity of the profession. I don't think you should put the court in that position. It is up to you to decide whether or not your client is legitimate in establishing residence. If you are convinced that she is or he is you are within the Canons of Ethics.

ATTORNEY: I think that the reason for that kind of situation is that you question your client carefully to determine her intention and explain what the requirements are and then you watch the calendar to see who files for the divorce.

MR. DWORSHAK: That is the practical problem, you know if you refuse to take a case that some attorney down the street is going to take it, but strictly as a matter of ethics I think it is improper. If you want to go ahead and do it I don't think it makes it any more ethical even if you go to the District Judge and get his approval. There are the practical aspects, of course, in all of these ethical

problems, just like advertising in local newspapers, because it has been done for 20 years doesn't make it right. Local customs of practice don't override the Canons of Ethics or the long established custom and usage of the profession. If everybody is out of step but you, it doesn't make it any less ethical or any more. That's the ethics of it; as I say, there are practical aspects, too.

ATTORNEY: Do you think as a matter of approach to this thing you should not explain what the law is before you attempt to, through questioning the client, determine what they really intend to do or do you think before you ask those questions you should explain the law?

MR. DWORSHAK: In other words, save your conscience first and then go ahead and do it unethically?

ATTORNEY: How about when they write to you from another state to determine what the qualifications are? What do you write in reply?

MR. DWORSHAK: I think the best answer to that is back again to the practicalities of it. As we know, our Supreme Court has ruled that a person can establish a residency at any time, for a short period of time, if they are legitimate in establishing a residence, even though they may leave seven weeks later. Certainly it is a legitimate residency and it would be perfectly all right for you to go ahead.

ATTORNEY: It is the opinion of the committee then that if a client comes to the office and says, "I don't know, as soon as the divorce goes through I may have to go back," your view is the attorney should say, "I can't help you, you will have to get somebody else."

MR. DWORSHAK: I couldn't say it is the opinion of the committee because we haven't discussed it; that is my opinion. If there is any doubt in your mind about the legitimacy of the residency, then I think to be on the safe side you shouldn't obtain the divorce.

ATTORNEY: I can't help mentioning this problem. Having the Soldiers and Sailors Civil Relief Act, under certain circumstances you can get a default judgment against a serviceman. First you put in an affidavit that he is in the service. The court cannot enter a default judgment until it appoints an attorney to represent the serviceman. Say the judge says, "Will you recommend an attorney?" "Judge, I thought I should leave it up to the Court." "I am sorry, you will have to recommend an attorney," replies the judge.

MR. DWORSHAK: There again, it is a practical matter. If the judge tells you to do it well I suppose you better do it. I don't think the judge is proper in making that request.

ATTORNEY: Isn't our divorce practice, and our immoral or moral habits, established by the judge and the elder members of the bar in the jurisdiction where you happen to be practicing?

MR. DWORSHAK: I think that is right.

ATTORNEY: And you do what the rest of them do?

MR. DWORSHAK: That seems to be what everybody does. Again I say that the ethical aspects of it disregard that and don't make it any more ethical.

ATTORNEY: I think in connection with what has been said here we attorneys should remember we do not determine the ultimate facts; we do assume that they will be determined by the court or by the jury. We should not attempt to. I think the American Bar Association has ruled on it, and it comes up in your every day practice and it will come up in your divorce cases. I don't think we should act as judge or jurors. I think we also violate our Canons of Ethics whenever we presume to do that. Now in a lot of the questions and discussions here it is accepted we do that very thing and I don't think we should. The client testifies to the facts that will make him a bona fide resident in the state for the required length of time. The court will then determine the question, it is your duty to clearly present those facts to the court. He is derelict in his duty if he does anything else. If he prejudges and serves as the judge or the jury he can deprive a client and all of them of their rights.

MR. DWORSHAK: I think that is very true. I agree with you and think you are right. By the same token, take the obvious extreme case where, as I say, a client gets off an airplane and has a return ticket and comes to Idaho strictly for a divorce, makes no other pretense about coming to Idaho, in my opinion I think it is unethical for a lawyer to obtain a divorce.

ATTORNEY: No one would question that, I don't think.

MR. DWORSHAK: From there on it gets into the field where you are going to have to do the best you can on interpreting.

ATTORNEY: In the case where there is an out-of-state person who comes to the attorney, and establishes a 6-weeks' residency. Is it the attorney's duty to check daily on the client to see whether she has remained in the jurisdiction during the remaining 6-weeks' period?

MR. DWORSHAK: No question about that. I don't think it is your duty to shepherd your client or do other than accept their statements as being true. Unless you know of some crime involved, something like that, that is the only way I could see where you would be under any obligation to verify your client's actions and statements.

ATTORNEY: The fact that they come into this state; isn't that prima facie evidence they intend to leave as soon as they get the divorce?

MR. DWORSHAK: That is a matter of law I couldn't answer, I don't know.

ATTORNEY: I have a question, maybe some of you would say it would solve the problem, I wonder if it would, the next lawyer may think this is unethical. You find out a client is intending to leave at the end of the 6 weeks, the end of the divorce, let's say, you find that out so on the basis of that you tell your client, "I can't handle your case because I know that you are going to leave after the case is over." The client goes to the next attorney and on the basis of that, if wise at all, will not disclose that to the next attorney and because of that then you would say the next attorney is not acting unethically, only because he didn't know what the situation was.

MR. DWORSHAK: It seems to me that is the same question raised before on the perjury matter. You have two canons that are conflicting there; one the fact you obtained information through confidential disclosure and the other your duty to undivided fidelity to the court to disclose the information. I know what

you are doing, you are setting it up for somebody else so that he consciously isn't violating the ethics. I don't think the first attorney is guilty of anything improper, certainly the second one isn't.

ATTORNEY: Suppose a person from out of town calls at your office and naturally is in a hurry to get a divorce, explains to you that he or she just got in town that day or the day before and you go over the 6-week angle, explain they have got to be a resident for 6 weeks, they leave your office, the next day you see a divorce action filed by another attorney for the same person, alleging that the plaintiff has been a resident of Idaho for 6 weeks.

MR. DWORSHAK: That is the same question, in essence, that was raised under the perjury matter, you have got two conflicting canons, if the person obviously still isn't your client you can't give him any advice, the only thing you can do is just sit tight.

ATTORNEY: You have never been paid a fee, never been retained.

MR. DWORSHAK: Fee has nothing to do with disclosure as attorney-client.

MR. GEE: The next problem is question No. 5. Lawyer, in preparing final brief, discovers a Puerto Rico case directly adverse to his contentions. Is he obligated to call that case to the attention of the Court or his opponent? We are assuming in this case that there are initial briefs on all sides and he has the final brief, there is going to be nothing further before the court. Do we have anything from the panel first of all?

MR. DWORSHAK: First of all I would like to merely complicate it a bit by saying, let's assume in the alternative he discovers an Idaho case; the court ought to know that.

ATTORNEY: Duty to your client overrides your duty to the other attorney or the court.

MR. GEE: Someone practically gave the answer, who was it?

ATTORNEY: Mr. Worthwine, I think he is right, distinguish it in your own mind and forget about it.

MR. GEE: Distinguish it and extinguish it, that seems to be the practical approach. Unfortunately, the Canons of Ethics and the opinions of the American Bar Association are somewhat at variance with that, at least an earlier opinion, opinion No. 146, says that the attorney's duty to the court in that case overrides his duty even to his own client because it is in the same essence as a confidence. It is his duty to have the law properly interpreted, even though it might be against his client. The opinion does go on to say that, as Mr. Worthwine suggested, he should or may attempt to distinguish and they use the word "attempt," I presume, with the advisability that possibly you can distinguish it. And then in a later opinion by Judge Phillips, who incidentally participated in the first opinion, he wasn't quite so sure of his position in that case and said: Law is still an adversary proceeding and practice and it really shouldn't become the obligation of one attorney to do the other attorney's work. However, if the point is a decisive one—the one upon which the case will be decided, then he felt that it was the attorney's duty to disclose it, both to the court and to the opposing counsel.

Now that puts a practical problem on the attorney that might be difficult to decide. Is that case going to be decisive, and the question here we now raise, is

MR. EIMERS: The possibility of collusion seems to be the controlling thing in the mind of the A. B. A. Committee.

ATTORNEY: Does the opinion assume the attorney cannot represent the other freinds and neighbors of the mother even though the mother is not joined as a party defendant?

MR. EIMERS: Yes, the opinion is in these words. "If suits are required to be brought against the son by tho guests injured in the car, these suits should be brought by counsel, other than the counsel for the mother, who, as the owner of the car, might be made a party defendant with the son."

So the mere possibility is considered sufficient to prevent this attorney from handling it.

MR. DWORSHAK: We don't want to impose upon your good nature by prolonging this. Are there any of these that you specifically want to go into today?

ATTORNEY: How about discussing No. 19?

MR. DWORSHAK: No. 19 has been suggested. Attorney X, as public prosecutor for his county, has occasion to iinvestigate an automobile accident to determine whether crinninal action is called for. He determines that no criminal action is warranted. Later, he is consulted by one who was injured in the accident and who desires to bring action for damages against the person whose criminal liability X had iinvestigated. May X ethically accept employment?

Does anyone have any comment on that?

The A. B. A., as I recall, is of the opinion that he may not ethically except such employment.

"The attempted double role is fraught with many conceivable inconsistencies and antagonisms. Public duty and fcalty to private client, involving subordination of the interest of one over the other, may embarrassingly challenge the conscience of the lawyer who attempts to serve both.

"In the opinion of the committee a prosecutor who accepts employment in civil litigation under circumstances detailed in the inquiry evinces lack of appreciation of general ethical principles, overturns considerations of sound public policy, breaches the specific inhibitions of "Canon 36 and thereby subjects himself to just public criticism."

Anyone disagree?

"The investigation of the prosecutor was ostensibly in the exercise of official authority; information was obtained from persons, who may have felt, quite naturally, under a sense of coercion or respect for actual or supposed power. The person later sued as a tort feasor may thus have disclosed facts inimical to his best interests in a civil action. Unsuspecting, unshielded, and at serious disadvantage, he submitted to interrogation by one who later, as opposing counsel in a civil action, might use the knowledge thus acquired against him."

MR. GEE: I would like to spend just a minute on No. 8.

In the course of a pre-trial conference, the trial judge asked for a full disclosure of medical reports, special damages, resume of the evidence and the like

from both sides. In response, Lawyer A loaned to opposing counsel his trial brochure which contained photographs, medical reports, detailed statements of witnesses, including client's statement that Utah authorities were asking Idaho to cancel his driver's license on a charge for drunken driving in which client had forfeited bail.

Client refuses to pay more than one-half the agreed fee, saying his settlement was cut way below previous offers because of A's loaning the brochure.

What about it.

Any discussion from members of the panel?

We run into the problem, at least in Federal Court and in one of the District Courts—in the Sixth District the trial judge requires the exchange and a supplying of information almost as complete as this. You lay your cards completely out on the table. Sometimes inadvertently or maybe sometimes in the spirit of co-operation something of this nature is disclosed and previous settlement offers are whacked way in half. In doing it we are following the insistence of the court, likewise in doing it we are disclosing something that—that maybe our client wouldn't authorize us to disclose.

As a practical problem, supposing the client refuses to endorse the check which is made out in both of their names, does the client have any recourse and does the attorney have any recourse?

If the attorney were to file suit, wouldn't the client have the defense that the contract of faithful representation had been breached and that confidences had been violated and he might have a complete defense to the attorney's suit?

ATTORNEY: I would like to know what district requires a disclosure of that kind?

MR. GEE: Sixth. This is a rule that has been adopted by the court supposedly in consonance with the new rules.

ATTORNEY: You are not required to reveal your own private investigation.

MR. GEE: I don't mean his own private investigation, at the request of the lawyer he can't be required to do it. This is where the trial judge tells you that as a matter of the pre-trial conference that you are going to show everything that you have.

ATTORNEY: The lawyer should refuse to do it.

MR. GEE: I am just asking you what you do in Boise in the Federal courts when you are asked at a pre-trial conference to supply a resume of the testimony of every witness. If anything new is discovered you are required to advise the court and opposing counsel of the gist of that testimony before that witness will be permitted to testify.

What is the suggestion of this partieular case as to a solution between lawyer and client? It doesn't have to be a hypothetical case, it can be an actual case.

ATTORNEY: I would assume that if the lawyer gave that information at the direction of the judge, certainly then his client should not allow that.

I think in the actual case the lawyer wasn't required to go quite that far because that particular point, the fact that the client was having his driver's

license suspended on a drunken driving charge was not the part of any testimony of a witness that was expected to be adduced at the trial. So in that particular instance, he possibly unwittingly, I honestly think in this case he unwittingly, disclosed a confidence. But as a practical matter, what should the lawyer do?

ATTORNEY: Should he not strictly comply with the court's order and supply the information required? Is it clear or not from the question whether the court would require him to produce this particular bit of evidence?

MR. GEE: The question should have said that the court didn't require that particular information, just a resume of the expected testimony of all witnesses to be produced.

ATTORNEY: He shouldn't have given it then.

MR. GEE: He shouldn't have produced it, that is right. As I say, it was possibly unwitting or in a spirit of generosity when he just said, "Here is my whole file."

ATTORNEY: The lawyer should charge half the fee.

MR. GEE: I think possible Mr. Ware's solution, charge half the fee and be grateful for it would be the proper out. Anyone make any objection to that? I will take half the fee.

MR. EIMERS: Ladies and Gentlemen, we have used up quite a bit of your time and we don't intend to impose on it further unless someone has something special along the lines discussed in this meeting.

MR. EIMERS: We feel, as we have said here today, this business of ethics is pretty much a matter of common sense, at least it should be a matter of common sense. We agreed prior to preparing this meeting that we would not take up individual questions, for obvious reasons, and if there are some specific questions of ethics which need answering and you will address them to us we will take care of them.

We thank you for your helpfulness and your attentiveness and turn the meeting back to Sherm Bellwood. (Applause).

JUDGE BELLWOOD: I thank the Standing Committee on Professional Ethics of the Idaho State Bar for devoting their time to preparing and putting on this program. It is not our intention to suggest that anyone needed education on ethics in the State Bar of Idaho but we felt it would be of some interest to the members.

You will note from your program the events that are to take place this evening and the buses leave from the Lodge for Trail Creek Cabin about 6:30. If there is nothing further, we will be adjourned until tomorrow morning.

(NOTE: The meeting was reconvened on Friday, July 10, 1959, at 9:30 a.m., at which time the President, Clay V. Spear, introduced the Honorable E. B. Smith, Justice of the Idaho Supreme Court, who in turn introduced the Honorable John D. Randall, President-Elect of the American Bar Association, who gave an address. The introductory remarks and address are not printed in these proceedings, but are on file in the office of the State Bar Secretary.)

JUDGE SPEAR: Thank you, Mr. Randall. It is obvious why Mr. Randall has been chosen to lead the American Bar for the next year, and as you can see, it is going to be in mighty capable hands. We are very happy to have you, Mr. Randall, and your lovely and gracious wife with us at this meeting.

At this time, ladies and gentlemen, we are going to take about a 10-minute break. Our next speaker will be one of the finest speakers ever to appear before a State Bar meeting. We will take a 10-minute break.

(Following which the Convention resumed).

(NOTE: Judge Spear then introduced Mr. Tim Robertson of Twiu Falls, a past-President of the Idaho State Bar, who in turn introduced Mr. John P. Frank of Phoenix, Arizona, who spoke to the Convention about the United States Supreme Court. The introductory remarks and Mr. Frank's address are omitted from these proceedings, but are on file in the office of the State Bar Secretary.)

JUDGE SPEAR: Thank you, Mr. Frank. The applause, of course, tells you more graphically than anything I can say how much we appreciate this discussion. We certainly appreciate having you and Mrs. Frank with us and hope that you enjoy your stay here.

I think Mr. Ennis you are the one to make this next announcement--our affable secretary, Mr. Ennis.

MR. ENNIS: I believe this is also the time, Mr. President, for the announcement of the results of the Canvassing Committee. Is Boh McLaughlin here? Bob, would you come down and make that announcement first?

MR. McLAUGHLIN: The Canvassing Committee received the ballots from Mr. Ennis yesterday and met at Room 233-A of the Sun Valley Lodge at 4:00 P. M., in open session. A total of 57 envelopes containing ballots were presented; 8 of those envelopes had been opened by mistake prior to receipt by the committee. The ballots were first removed from the envelopes and then counted; we counted the sealed ballots first, 49 votes for Marcus Ware and 1 write-in vote for T. M. Tuscon. Of the unsealed ballots received by the committee, 8 votes were cast for Marcus Ware, and no disseuting votes.

The total vote was 57 votes for Marcus Ware and 1 vote for T. M. Tuscon.

The confusion resulting in the mistake of opening the ballot envelopes we believe resulted from failure to clearly indicate on those envelopes the nature of the contents. It is suggested in the future, that regular envelopes, self-addressed to the secretary, be printed which clearly indicate the ballot is contained therein and a line printed thereon for the endorsement of the voting attorney.

JUDGE SPEAR: As indicated by the report of the committee, the attorneys in the Northern Division have elected Marcus Ware as the next commissioner for that division. Mr. Ware, would you care to come and either accept or reject this? (Applause).

MR. WARE: I will be very brief, brethren of the bar. No attorney in Idaho could help but be personally pleased, thrilled and inspired by the opportunity to serve the bar of his state as a member of the Bar Commission. I assure you that I will endeavor to be worthy of the confidence that the boys in the Northern Division have imposed in me.

(Applause).

MR. ENNIS: Ladies and Gentlemen, I don't know whether you have noticed it as much as I have, but the inefficiency of the incumbent secretary has certainly come to attention today, first with the mention that Mr. Frank's picture appears

above Mr. Randall's name; secondly, the opening of these envelopes, which shouldn't have been done, and then, as Mr. Frank called to your attention, the fact that I had not gotten all the required information. I might say here, Mr. Frank, that this is the first year that I haven't gotten it and the reason that I quit was that last year when I wrote to one of our principal speakers, acknowledging that it might be a little impertinent and perhaps a little too personal, I nevertheless asked that he please send me the brassiere size of his wife. He was very gracious. In responding he said he thought about seven and a quarter would do it. Of course, I'm not very familiar with measurements of that type, but I assumed the lady would be very petite and, with Harry Benoit, I thought the two would make up a championship team. When she got here, however, she was quite matronly and so the first opportunity I had I said to our speaker, "How in the world did you ever come up with that seven and a quarter figure?" "Well," he said, taking off and looking at his hat, "that's about the size of it, I thought." That is the reason, ladies and gentlemen, that I quit.

(NOTE: Mr. Ennis then introduced Mr. Kline D. Strong, Salt Lake City attorney, who spoke about "Sans-Copy," a new method for attorneys for keeping time records and other account records. The introductory remarks and Mr. Strong's talk are not printed herein, but are on file in the office of the State Bar Secretary.)

JUDGE SPEAR: Thank you, Mr. Strong. I am sure that anything that teaches these lawyers how to make more money is welcome. As Paul told you, he is going to be here this afternoon at 1:30, that is all there is going to be on hand. He will be here to take charge of the meeting himself, those of you who would like to avail yourself of this, please come.

One more announcement I want to remind the past presidents that they are having a luncheon in the Ram this noon. We will now adjourn until tomorrow morning at 9:00 A. M., and I mean 9:00 A. M. We have got a big business session tomorrow morning and also want to hear from the Chief Counsel of the Senate Rackets Busting Committee. Just when he will appear, we do not know. He is on a real tight schedule. They are flying him down here from Boise by chartered plane. But when he gets here he will speak to us. In the meantime, we will take care of our business and will kind of have to play that by ear tomorrow as we go along. But we are going to start at 9 o'clock.

In keeping with the custom of the last two years there will be nothing scheduled this afternoon, simply the program Mr. Strong has for you if you would like. I don't need to remind you, I suppose, that at 6:30 this evening there is the cocktail hour at the Lodge. I shall see you at the cocktail hour. I thank you.

Saturday Morning, July 11, 1959, 9:00 A. M.

JUDGE SPEAR: We will proceed with the business at hand this morning and will interrupt our meeting whenever Mr. Kennedy arrives.

I suggest that all of you gather in groups of your local bar associations because shortly we will be voting on matters that involve policy of the bar, and as you know, that vote must be taken by Bar Districts instead of by voice vote or standing vote or anything of that kind.

The meeting will please come to order.

Is there anyone here from the Judicial Conference designated to give a report

on the activities of that conference? Judge Tway, would you please come forward and give your report please?

JUDGE TWAY: Mr. President, Members of the Bar, and Ladies and Gentlemen: Justice McQuade kindly volunteered for me to give this report, I suppose because I was newest in line.

Of course this is the first conference that I have ever attended but I understand this is probably the most successful and best judicial conference that has been held in Sun Valley in many years.

We had three Supreme Court Justices and 14 of the District Judges present in Sun Valley this year, which I understand is quite a record.

The Conference this year was actually a seminar on the Idaho Rules of Civil Procedure, and this seminar was conducted by Professor Philip Peterson of the University of Idaho law college and was very informative and very interesting, and we certainly want to thank Dean Stimson and the College of Law for so kindly having Professor Peterson come down.

I want to tell you starting Monday morning we will really start pleading and dealing under these new rules because he really gave us the pitch on them. Professor Peterson did a very fine job and it is my personal suggestion that if any of you local bars want information on the new rules you should try to arrange for Professor Peterson to talk to you because he is very, very fine.

Following the seminar the judicial conference was permanently organized and a permanent organization was created. This year we have Judge Merlin Young as the Chief Judge and Judge Gilbert Norris along with Justice McQuade, who is presently the coordinator of the courts, and they will handle the business of the conference until the next annual meeting of the bar next year. One of the things that they will do will be to work on uniform District Court Rules and see if we can't get some uniformity into the District Court Rules, along with the new Rules of Civil Procedure which we adopted last year.

Now, I think that is about all of the business that the Conference conducted that you will be interested in. As I say, we now have set up a permanent organization and we plan to have another seminar or program next year such as we had this year. That is all. Thank you.

(Applause).

JUDGE SPEAR: Thank you, Judge Tway. Is there someone here to report for the Prosecuting Attorney's section? They have been meeting, at least their notices have been up on the bulletin boards. Did anyone attend any of the meetings so that they can give us a report? Perhaps the member designated to give the report will volunteer later, so we will pass that order of business at this time.

At this time I move the adoption, ladies and gentlemen, of the report of the President which is contained in the June, 1959 issue of the Advocate. Will someone be kind enough to second my motion?

JUDGE TWAY: I will second it.

JUDGE BELLWOOD: All those in favor of the motion as seconded signify by saying Aye. Opposed, No. The motion is carried.

JUDGE TWAY: Mr. President, I move the adoption of all printed reports.

MR. ARNEY: I second it.

JUDGE SPEAR: I suppose in order to keep this record straight we had better start immediately, anyone moving, seconding, or otherwise addressing the chair, will you please rise, state your name and place of residence so that the reporter making the transcript of this meeting will have that information. It is necessary, of course, that she have it so that the record will be complete.

So that you will understand this particular motion, the reports that were published in the June, 1959, Advocate, other than the President's Report are these: That of the Secretary and the following standing committees of the Idaho State Bar: Continuing Legal Education; Professional Ethics; Legislative; Public Relations; Economics of Law, and Inferior Courts. All of those were published in the June issue of the Advocate, in order to give all of you an opportunity to study them, to make comments on them if you wish, or move for amendments or corrections, of any kind. So the motion is in for discussion.

MR. DWORSHAK: Mr. President, are we to understand that if we approve this motion adopting the reports that it would include an approval, for example, of all of the resolutions that are proposed in the various reports?

JUDGE SPEAR: I looked these over this morning with that in mind, and I do not believe so. For instance, the Inferior Courts Committee was one that concerned me and I don't believe it would include that. Which ones did you have in mind?

MR. DWORSHAK: Besides the Inferior Courts Resolution, of course, there is the resolution prepared by the Economics Committee and also one by the Committee on Professional Ethics. If it is the president's ruling that this motion would approve the various resolutions I would so like to amend the motion.

JUDGE SPEAR: So that it would not approve the resolutions, is that what you had in mind? And you make a motion to amend to that effect, do you?

MR. DWORSHAK: I do.

JUDGE TWAY: Mr. President, I made the motion and all it was was to receive and file the reports, not to approve them, particularly the resolution of the committee on Inferior Courts.

JUDGE SPEAR: You concur in the proposed amendment that your motion of approval of the reports does not carry with it an approval or adoption of the suggested resolutions, is that correct?

JUDGE TWAY: Yes.

JUDGE SPEAR: Do I hear a second to that amendment?

MR. ARNEY: I will second the motion.

JUDGE SPEAR: You have heard the motion and the amendment. We will vote on the amendment first. You understand the question? Is there any discussion?

All those in favor please signify by saying Aye. Those opposed? The amendment has been carried, namely that the resolutions contained in any of the reports of the standing committees as published in the June issue of the Advocate are not included in the adoption of the reports if they are adopted and approved.

Now we will vote on the original motion that all of those reports as listed, namely that of the secretary and all of the standing committees, be approved as contained in the June issue of the Advocate. Any discussion on that motion?

All those in favor signify by saying Aye. All those opposed? Unanimously carried.

The next order of business is the presentation of the report of the resolutions committee. If you will come up and start this now, Mr. Larson. And incidentally, this committee has worked real hard this year and they deserve a vote of thanks right now.

(Applause).

MR. LARSON: Mr. President, our first resolution reads as follows:

Resolution No. 1

IT IS HEREBY RESOLVED By the Idaho State Bar that all resolutions to be proposed for consideration at an annual meeting of the Idaho State Bar be submitted in writing on or before June 1 next preceding the date of the Annual Meeting to the chairman of the Resolutions Committee appointed by the Board of Commissioners of the Idaho State Bar with a copy thereof to be filed with the Secretary of the Idaho State Bar; and it is hereby

FURTHER RESOLVED that a copy of each such resolution be forwarded forthwith by the Secretary to each president of the local bar associations in order that the same shall be available to each local bar association for consideration at a local bar association meeting held in June preceding the Annual Meeting; and it is hereby

FURTHER RESOLVED that notice of the procedure herein provided for with respect to resolutions be given to the members of the Bar of the State of Idaho by announcement thereof in an issue of the Advocate no later than the April issue thereof in each year; and it is hereby

FURTHER RESOLVED that during the month of April preceding each annual meeting notice of the procedure herein provided for with respect to consideration of proposed resolutions shall be given in the Advocate or by written notice mailed to each member of the Idaho State Bar, and it is

FURTHER RESOLVED that no resolution shall be submitted to the members for consideration and action at an Annual Meeting which has not been submitted to the chairman of the Resolutions Committee within the time herein required, except upon the affirmative vote of two-thirds of the members of the Resolutions Committee or, if such resolution shall be proposed from the floor, by a two-thirds vote of the membership.

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

JUDGE SPEAR: Is there a second to the motion.

MR. ELDER: Mr. President.

JUDGE SPEAR: Yes, Mr. Elder.

MR. ELDER: I would ask the unanimous consent after I have moved my resolution. We have had an occurrence in Coeur d'Alene, Idaho, which is un-

usual to the State of Idaho. We have a distinguished member of the Bar who has been raised to quite a position in the Elkdom, Judge Bill Hawkins of Coeur d'Alene. I would like to offer a resolution to the effect that the Bar of Idaho congratulate him on his election as Grand Exalted Ruler of the Elkdom of the United States, and I don't think that I would have any objection if that could be passed temporarily.

JUDGE SPEAR: Mr. Elder, in due course I am sure that the Bar will consider it but unfortunately I will have to rule it out of order at this time.

In considering Resolution No. 1 just read by the chairman of the Resolutions Committee, is there a second to that motion resolving that it shall be adopted?

MR. COUGHLAN: I will second that.

JUDGE SPEAR: It has been moved and seconded that Resolution No. 1 be adopted. Is there any discussion? Ready for the question: All those in favor signify by saying Aye. Those opposed? Unanimously adopted.

MR. LARSON: Mr. President, Resolution No. 2 reads as follows:

Resolution No. 2

BE IT RESOLVED that the Idaho State Bar extend to the Hon. Robert F. Kennedy; Hon. John D. Randall, Hon. John P. Frank; Kline Strong; and the members of the panel discussion, Paul G. Eimers, Merrill Gee, Calvin C. Dworschak, their most sincere thanks and grateful appreciation for honoring us by their personal appearances at our annual meeting and delivering to us their inspiring, interesting, and instructive addresses.

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

All those in favor of Resolution No. 2 signify by saying Aye. Opposed? Unanimously carried.

MR. LARSON: Mr. President, Resolution No. 3 reads as follows:

Resolution No. 3

BE IT RESOLVED that the Idaho State Bar express its appreciation to the Commissioners and Officers of the Bar who have served during the past year, for their contribution of time and effort, which has resulted in accomplishment of an active and productive year of Bar activities.

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

JUDGE SPEAR: Would you mind putting that to the body?

MR. LARSON: All those in favor of the adoption of this resolution signify by saying Aye. Opposed? Unanimously carried.
(Applause).

MR. LARSON: Mr. President, Resolution No. 4 reads as follows:

Resolution No. 4

the Voter Publishing Company have courteously donated various legal publications for door prizes at this annual meeting,

BE IT RESOLVED That the Idaho State Bar extend its thanks and appreciation to these companies for their generous prizes which contributed to the interest of those attending the convention.

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

JUDGE SPEAR: All those in favor of Resolution No. 4 please signify by saying Aye. Opposed? Unanimously adopted.

MR. LARSON: Mr. President, Resolution No. 5 reads as follows:

Resolution No. 5

BE IT RESOLVED that the Idaho State Bar express its sincere and grateful appreciation to the employees of Sun Valley for their efficient and courteous service to the members of the Idaho State Bar, their wives and guests, during the annual meeting at Sun Valley.

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

JUDGE SPEAR: All those in favor of Resolution No. 5 please signify by saying Aye. Opposed? Unanimously adopted.

MR. LARSON: Mr. President, Resolution No. 6 reads as follows:

Resolution No. 6

WHEREAS, Paul Ennis has served as Secretary of the Idaho State Bar Association for the past eight years, and,

WHEREAS, Paul has been forced by the press of private practice to resign this post, and

WHEREAS, he has brought to all Idaho attorneys an increasing awareness of the importance of the activities of its Integrated Bar, and,

WHEREAS, he has been instrumental in the expansion of the activities of the Integrated Bar of the State of Idaho, notably in the field of Continuing Legal Education, and

WHEREAS, he has brought to a difficult and often thankless job efficiency, courtesy, and good humor,

NOW, THEREFORE, BE IT RESOLVED, That the Idaho State Bar Association does extend to Paul B. Ennis its sincere and heartfelt thanks for a job well done.

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

JUDGE SPEAR: All those in favor of the resolution please signify by saying Aye. Opposed? Unanimously carried.

(Applause).

Resolution No. 7

WHEREAS, a vacancy exists in the Ninth Circuit Court of Appeals by reason of resignation of Justice William Healey, and

WHEREAS, tradition and common fairness dictate that this vacancy be filled by the appointment of a member of the Idaho Bench or Bar, and

WHEREAS, there are many Idaho jurists and attorneys eminently qualified morally, ethically and professionally to fill such vacancy,

NOW, THEREFORE, BE IT RESOLVED that the Integrated Bar of the State of Idaho urges the appointment of an Idaho jurist or attorney to fill the vacancy now existing in the Ninth Circuit Court of Appeals and pledges its support to those working to such end, and

BE IT FURTHER RESOLVED that the members of such Integrated Bar would oppose any efforts by any individual or group to defeat such appointment and would consider any such activity to be an affront to the legal profession of the State of Idaho.

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

JUDGE SPEAR: All those in favor of the resolution please signify by saying Aye. Those opposed? Carried unanimously.

MR. LARSON: Resolution No. 8.

Resolution No. 8

WHEREAS, there have been efforts through the years to obtain legislation enabling self-employed persons to set aside a portion of their income in a retirement fund, which could not be taxable until withdrawn after retirement, and,

WHEREAS, there has been introduced and passed in the House of Representatives H. R. 10, known as the Keogh-Simpson Bill, which embodies these provisions, with the limitation of \$2,500.00 per year, and

WHEREAS, there has been introduced in the Senate, S. 1979, the Smathers Bill, which accomplishes the same result as the said Keogh-Simpson Bill, and,

WHEREAS, passage of the said H. R. 10 or the said S. 1979, or some similar legislation is necessary to provide self-employed persons with retirement benefits similar to those benefits which have been enjoyed for many years by labor and industry under tax deferred employee pension plans,

NOW THEREFORE, BE IT RESOLVED that the Idaho STATE BAR ASSOCIATION does approve the principles of such legislation, and does urge the passage of such legislation in the Congress of the United States, at the earliest possible time.

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

Is there any discussion on Resolution No. 8. All those in favor signify by saying Aye. Opposed? Unanimously carried.

MR. LARSON: Mr. President, Resolution No. 9 reads as follows:

Resolution No. 9

WHEREAS it appears that Section 10-1110 of the Idaho Code, relating to the lien of judgments, is ambiguous and uncertain in that it is impossible to ascertain therefrom in what manner judgments are to be filed and docketed by the County Recorders of this State, so as to constitute a valid lien, and

WHEREAS, it appears that each County Recorder is forced to make his own interpretation of the said Section, and that there exists a lack of uniformity in the handling of instruments presented to the County Recorders of the various counties of this State for filing under the provisions of such statute, and

WHEREAS, by reason of the uncertainty of said Section, no judgment creditor of this State can be certain he has acquired a valid lien against the real property of his judgment debtor.

NOW, THEREFORE, BE IT RESOLVED that the Legislative Committee or other proper committee of the Idaho State Bar Association be instructed to take the necessary steps, in the discretion of such committee, either to secure a decision of the highest Court of this State as to the proper method of filing and docketing judgments under the said Section, or draft remedial legislation to be presented at the next session of the legislature of this State.

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

JUDGE SPEAR: Is there any discussion on Resolution No. 9?

All those in favor of adopting the resolution please signify by saying Aye. Opposed? Unanimously carried.

MR. LARSON: Resolution No. 10.

Resolution No. 10

WHEREAS, the Fifth District Bar Association in conjunction with the Southern Idaho District of the Idaho Society of Certified Public Accountants and Idaho State College has entered into the sponsorship of a Tax Institute to be held at Idaho State College on Friday and Saturday, September 25 and 26, 1959, and

WHEREAS, it is the purpose of the Institute to bring before attorneys, accountants, and other professional persons practical problems and solutions relating to the tax field, and

WHEREAS, it is the desire of the Integrated Bar of the State of Idaho to support through attendance, publicity, and otherwise, said Institute,

NOW, THEREFORE, BE IT RESOLVED that the members of the Idaho State Bar do endorse said Tax Institute, and encourage the attendance at said Institute of all members of the Integrated Bar.

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

JUDGE SPEAR: Is there any discussion on Resolution No. 10? All those in favor signify by saying Aye. Opposed? Unanimously carried.

MR. LARSON: Resolution No. 11.

Resolution No. 11

WHEREAS, the Supreme Court of Idaho, acting in concert and cooperation with the integrated Bar of the State of Idaho, has heretofore studied and subsequently promulgated rules of civil procedure for the Courts of the State of Idaho, which said rules of civil procedure attempt and purport comprehensively to cover and deal with matters of procedure in the District Courts of the State; and

WHEREAS, the judges of said District Courts, pursuant to said Rules, are authorized to promulgate local rules for their particular and respective District Courts and, pursuant to said authority, a number of the judges of said courts have acted in that connection; and

WHEREAS, in many instances rules of the District Courts promulgated since the adoption of the Idaho Rules of Civil Procedure are inconsistent one with the other and in numerous instances deal directly and extensively with matters provided for and comprehensively dealt with in and by the said Idaho Rules of Civil Procedure; and,

WHEREAS, it is the opinion of the Idaho State Bar that rules of procedure for the District Courts of this State should be limited to matters of a purely local nature and that wherein local rules are promulgated for the District Courts, the same, to the fullest possible extent, should be uniform throughout the state; and

WHEREAS, it is the opinion of the Idaho State Bar that, insofar as change or modification of the Idaho Rules of Civil Procedure may be indicated, the same should be accomplished by further exercise of the rule-making power of the Supreme Court of this state by addition to or amendment of the said State Rules and not by promulgation of local rules; and

WHEREAS, it is the opinion of the Idaho State Bar that rule-making powers of the Supreme and District Courts of the state should be exercised by the judges thereof in consultation with the State and District Bars of Idaho;

NOW, THEREFORE, BE IT RESOLVED by the integrated Bar of the State of Idaho, at convention, at Sun Valley, Idaho, this 11th day of July, 1959, that the Rules Committee of the Idaho Supreme Court be and it hereby is directed and authorized to act for and on behalf of the integrated Bar of the State of Idaho:

To study, review and evaluate heretofore promulgated rules of the District Courts of this state and, so far as possible, presently contemplated and proposed District Court rules;

To meet with the justices of the Supreme Court and to offer its recommendations and findings in connection with the desirability and advisability of such rules and their promulgation in such manner and at such judicial level;

To take an active, interested part in the study of indicated, uniform local rules and, to the fullest possible extent, render its aid and assistance to the several District Courts and District Bars of this state in the interest of uniform rules of civil procedure on state and local levels best designed to meet the ends of justice; and

To take all other action in furtherance of the foregoing and the recital hereof in accordance with the advice and instructions of the Commissioners of this Bar; and

BE IT FURTHER RESOLVED that the several District Bar Associations of the state are requested likewise to appoint or activate standing committees of said District Bar Associations to work in cooperation with the said Rules Committee of the Idaho Supreme Court and to take a similar position and interest in connection with said matter of rules of the District Courts of the State; and

BE IT FURTHER RESOLVED that the lawyers of the State of Idaho strenuously urge the several District Judges of the State of Idaho to consult and confer with the District Bar Associations, their committees and the above-mentioned Committee regarding the promulgation of rules of civil procedure for the District Courts and the retention and/or modification of such local rules heretofore promulgated and now in effect.

Mr. President, I would move the adoption of Resolution No. 11.

JUDGE SPEAR: This is a rather lengthy resolution and so it may be acted upon intelligently the chair is going to now declare a recess so that any of the presidents or other members that would like to peruse this during the recess and be better advised as to the contents may do so.

(At this time a recess was declared, following which the Convention was resumed).

JUDGE SPEAR: So that those of you from the general public will know, one of the principal speakers at this year's meeting, and the only speaker for this morning's session, is the Honorable Robert F. Kennedy, who has been somewhat in the news of late. We should be especially appreciative of Mr. Kennedy's presence this morning because he comes at a great personal sacrifice to himself. He has been up all night flying out here from Washington, D. C.; we arranged for a chartered plane from Boise to fly him to Hailey, we picked him up by automobile there and rushed him up here and he arrives sleepy, but I guess undaunted.

For your information, Mr. Kennedy, I would like to advise you that probably you have never spoken before a more representative group of people, geographically speaking; we have invited, in addition to our regular members and their wives of the Idaho State Bar, all of the guests of Sun Valley. And if you will look at the license plates around here you will see they come from everywhere. It is a great pleasure to have you with us, Mr. Kennedy.

Mr. Carl P. Burke from Boise, who is acting as our official host, will introduce our distinguished speaker.

(Applause).

(NOTE: Then Mr. Carl Burke of Boise introduced Robert F. Kennedy, Chief Counsel for the Senate Select Committee on Improper Activities in the Labor or Management Field, who addressed the Convention on the work and findings of his committee, and then answered questions from the floor. The introductory remarks, address and questions and answers are not printed herein but are on file in the office of the State Bar Secretary.)

JUDGE SPEAR: I think we have imposed on Mr. Kennedy long enough, so I am going to call a halt to this question and answer period. I know that the members of the Idaho State Bar are fully in accord with your program, Mr. Kennedy, and I think the rest of the people who are guests here at Sun Valley are fully in accord with it. Let's give him a round of applause, shall we?

(Applause).

I think that expresses it more eloquently than I. Indeed we are sorry that your stay is going to be so short with us but we hope that it will be enjoyable and, if you will, please let us know what we can do to see that it is more enjoyable. But we certainly appreciate your being with us.

We will take a 10-minute break before continuing with our business.

(At this time a 10-minute recess was declared, following which the business meeting was resumed).

JUDGE SPEAR: Continuing with the business at hand and discussing Resolution No. 11 which had been offered by the chairman, do I hear a second?

MR. DWORSHAK: I will second the motion.

JUDGE SPEAR: Any discussion on Resolution No. 11?

JUDGE TWAY: Mr. President, apparently there are more of you here now than there were when the report of the Judicial Conference was made this morning, it was rather early, and I would like to remind you that the Judicial Conference has felt the need for proposal and adoption by the District Courts of the Uniform Rules and a committee of the Judicial Conference will be appointed to look into that matter. Judge Norris has advised me that the committee will be pleased to have any recommendations by any member of the Bar in Idaho and you may send those recommendations either to Judge Merlin Young in Boise, Judge Norris in Weiser, or Justice Henry McQuade in Boise.

JUDGE SPEAR: Judge Tway, one question, is there anything in the resolution that is adverse or contrary to the action that was taken by the Judicial Conference?

JUDGE TWAY: No, but there is probably no necessity for the adoption of this particular resolution.

JUDGE SPEAR: You feel the action taken at the Judicial Conference makes unnecessary the passage of this resolution, is that it, Judge Tway?

JUDGE TWAY: Yes.

JUSTICE SMITH: Mr. President, I don't intend to speak in favor of or against the resolution. I merely point out that the resolution, as it now stands, if it is to be considered by this body, should be amended to include the rule-making committee of the Supreme Court also; that has been omitted. That Rule Committee consists of five members of which Oscar Worthwine is Chairman. That is not a bar committee.

JUDGE SPEAR: Any other discussion?

MR. A. L. MERRILL: I see no reason for additional rules of the District Court. Why can't they all be uniform? A lawyer in one county goes into another county he has different rules to contend with.

JUDGE SPEAR: That is one of the basic purposes of this resolution—to accomplish that, is it not, Mr. Chairman?

MR. LARSON: Yes, and to eliminate the differences between the various district courts.

JUDGE SPEAR: Yes, that is one of the present vices that that is tending to eliminate.

MR. A. L. MERRILL: At the present time it requires more study of the rules of the various courts than it does of the case you are going to try.

JUDGE SPEARS: Any other discussion? Ready for the question?

JUSTICE SMITH: Mr. President, in view of the fact that nobody has moved to amend that resolution I move that it be amended before being submitted to a vote that the Supreme Court Rules Committee also be included as one of the committees for studying the rules.

MR. MERRILL: I second it.

JUDGE SPEAR: Apparently in discussing this with members of the commission and the chairman, one paragraph, the one to which you have alluded here, Justice Smith, "Now, Therefore, Be It Resolved by the integrated Bar of the State of Idaho, at convention, at Sun Valley, Idaho, this 11th day of July, 1959, that the Rules Committee of the Idaho Supreme Court be and it hereby is directed and authorized to act for and on behalf of the integrated Bar of the State of Idaho." Now what was intended there was the Supreme Court Rules Committee. Will this satisfy you then that it be amended to read: "That the Rules Committee of the Idaho Supreme Court, . . . ?"

JUSTICE SMITH: That would be satisfactory. The reason is that no rule is subject to being presented to the Supreme Court and certainly not to be considered for adoption until and unless it does pass through that Committee and until and unless that rule is approved by the Bar.

JUDGE SPEAR: The motion has been made and seconded that this one paragraph be amended to read: "The Rules Committee of the Idaho Supreme Court" instead of "The Rules Committee of the Idaho State Bar," as was originally written and presented.

All in favor signify by saying Aye. Opposed?

Now we will take Resolution No. 11, as amended, all in favor signify by saying Aye. Opposed? Unanimously adopted as amended.

MR. LARSON: Resolution No. 12.

Resolution No. 12

WHEREAS, The Committee of the Idaho State Bar on the Economics of the Practice of Law has made a study of the lawyers' earnings throughout the State of Idaho and has concluded that the same generally are depressed and inadequate, resulting in unreasonably low incomes to the individual attorneys and infringement upon the high professional standards espoused by the Idaho State Bar and its membership; and

WHEREAS, it is the conclusion of said Committee and of the integrated Bar of the State of Idaho that concerted uniform action is called for and justified to bring fees and incomes of attorneys in this state into line with the practices and incomes of other businesses and professions and to adjust many of the standard fees ordinarily charged by attorneys for services rendered in keeping with the inflationary trend of the past several years; and

WHEREAS, in accordance with the foregoing, it is found and concluded by

the integrated Bar of the State of Idaho and its membership and has been recommended by the Committee of this Bar on the Economics of the Practice of Law that an advisory fee schedule shall be promulgated and approved by the integrated Bar of the State of Idaho in convention, and such an advisory fee schedule having heretofore been compiled by said Committee of this Bar and being attached to this resolution as "Exhibit 1";

NOW, THEREFORE, BE IT RESOLVED by the integrated Bar of the State of Idaho duly assembled in convention at Sun Valley, Idaho, July 9 through 11, 1959, that the advisory fee schedule attached hereto and marked "Exhibit 1" be in all respects promulgated, approved, adopted and used by the lawyers of the Bar of this state as an advisory fee schedule in the billing of clients for services rendered, the same to be recognized, consulted and considered by Idaho lawyers in billing clients as a schedule of customary charges of the Bar for similar services under and in connection with Canon 12 of the Canons of Professional Ethics having to do with the determination of a proper, ethical fee charge for professional services; and

BE IT FURTHER RESOLVED, that a copy of this resolution, including the attached "Exhibit," shall be mailed to every member of the Bar in the State of Idaho in a form readily and conveniently usable by practicing attorneys, and the commissioners of the integrated Bar of the State of Idaho are hereby directed and authorized to cause the same to be so compiled and distributed in compliance herewith. (Note: See amendment, page 42)

Exhibit I

Idaho State Bar Advisory Fee Schedule

The basic factor in computation of fees is time spent. The older, more experienced lawyer is normally entitled to a higher charge than the lawyer just commencing his practice. The following schedule is intended to furnish a proper basis upon which time charges may be figured, using the length of practice as a yardstick for fixing reasonable time charges:

SERVICE	FEE SCHEDULE
I. TIME CHARGE	
Lawyers with up to 2 years practice	\$10.00 per hour
Lawyers with 2-5 years practice	15.00 per hour
Lawyers with 5-10 years practice	20.00 per hour
Lawyers with 10 years and over	25.00 per hour
(It is understood that additional charges should be made for experience, skill and specialties).	
II. U. S. COURTS OF APPEAL	
Appearance and Brief	At least 400.00
Oral Argument	At least 250.00
III. STATE SUPREME COURT	
Appellant: Perfecting Appeals and briefs, time charge with	400.00 minimum
Respondent: Appearance and brief, time charge with	300.00 minimum
Oral Argument, Petition for rehearing, time charge with	150.00 minimum
Original Proceeding, time charge with	350.00 minimum

IV. U. S. AND STATE DISTRICT COURTS

Pleadings:	
Complaint	At least 125.00
Answer	At least 75.00

MOTION UNDER RULES

Conferences, preparation for and drawing motions	At least 50.00
Conferences, preparation for and drawing and serving motions for trial for summary judgment	At least 150.00
Conferences, preparation for drawing and serving of any motions for new trial for amended filings or for judgment notwithstanding the verdict	At least 100.00
Court appearance on any of the above motions contested	At least 100.00
Court appearance on any of the above motions uncontested	At least 50.00

Change of Venue:

On Affidavit	At least 50.00
On motion	At least 100.00
	if appearance made

Discovery Procedure

Appearance at deposition hearing	Time charge with 50.00 minimum at least
Preparing or answering interrogatories	Time charge with 40.00 minimum at least

Pre-trial Conference:

Preparation for, attendance at pre-trial conference	Time charge with 100.00 minimum at least
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Third Party Practice:

Conferences, drawing of pleadings	At least 125.00
Court appearances	At least 50.00

Trial

Per day or part thereof: Court	150.00
Jury	200.00

Perfecting Civil Appeal Municipal, Justice of the Peace and Probate Courts

Civil Appeal	50.00
Criminal Appeal	50.00

Dissolution of partnership or corporation

150.00

Divorce:

Default	175.00
With custody provisions	Add 50.00
With custody and property provisions combined	Add 75.00
With property provisions	50.00

Time charge with

Defendant: Negotiating Settlement	125.00 minimum at least
Contested cases	400.00 and up
Modification of Decree	125.00

Foreclosures:

Chattel mortgage and Mechanic's lien—	
	first 1,000 20%)
	next 1,000 15%)
	next 3,000 10%) \$150.00 minimum
	all over 3,000 5%)

When contested, regular Court rates for trial and preparation.

Real Estate Mortgage:

First 10,000 or part	10%)	
Second 10,000 or part	7%)	
Third 10,000 or part	5%)	250.00 minimum
All above	3%)	

Conditional Sales Contract (Same as Contingent fees)

V. JUSTICES AND PROBATE COURTS

Appearance: Civil and criminal	50.00 per day
Preliminary hearing	100.00 per day
Trial: civil and criminal	100.00 per day

VI. PROBATE COURT

Adoption-Related	100.00
Non-related	125.00
Guardianship:	
Person	100.00
Person and estate, time charge with	100.00 minimum
Annual account, time charge with	50.00 minimum
Minor compromise settlement, time charge with	75.00 minimum

Probate of Estate:

Statutory fee up to 10,000 all community property; over (10,000) 1/2 statutory fee; plus fee for extra-ordinary service (EDITOR'S NOTE: To be based on all the separate property, all the community property up to \$10,000, and one-half the remaining community property; additional fees for extra-ordinary services.)

Contesting Probate of Will	Time charge with 200.00 minimum
Exceptions to account	Time charge plus per diem as in District Court

VII. EXECUTIVE OR LEGISLATIVE BODIES, FEDERAL OR STATE and per diem:

County or city, _____ Time charge plus per diem

VIII. ATTORNEY FOR RECEIVER OR

TRUSTEE:	150.00 minimum plus regular Court fee for litigation		
First 5,000	7%	Next 25,000	3%
Next 10,000	5%	Next 25,000	2%
		All over 25,000	1%

IX. CONTINGENT FEES:

Damage cases:			
Settled without action	25%	Settled during or after trial	35%
Settled after action	30%	Settled during trial	40%

X. COLLECTIONS:**Wholesale Accounts:**

On the first \$100.00	33 1/3 %
On the excess of \$100.00 to \$500.00	25 %
On collections over \$500.00, rate subject to agreement between attorney and client.	

(The above wholesale account percentages are not to the local attorney. Forwarders, including forwarding attorneys, are expected to receive their fee out of the proceeds of collection after payment of the fees listed).

Retail Accounts:

On the first \$40.00 collected	50 %
On the excess over \$40.00	33 1/3 %
Skip or stale claims	50 %

For suit:

A suit fee of \$20.00, plus 33 1/3 %
(Suit fees are not contingent and do not include disbursements)

XI. OFFICE BUSINESS**Corporations:**

Organization of, time charge with	\$400.00 minimum
Dissolution	200.00
Amendment of Articles	100.00
Merger	250.00
Annual Meetings and Minutes	75.00
Deed—Time charge	10.00 per hour
Bill of Sale—Time charge	10.00 per hour
Assignment of Contract and Deed—Time charge	7.50 minimum
Affidavit—Time charge	7.50 minimum
Lease: Residential	Time charge
Business	Time charge

Costs and expenses

Costs and expenses are always in addition to the fees set forth in the schedule.

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

MR. DWORSHAK: I second the motion, Mr. President.

MR. JUSTICE SMITH: May I ask a question of the chairman, Mr. Glen Coughlan, the question is this: Do you deem your committee as having functioned and requesting discharge, or would you consent the committee be a continuing committee with the consent of the bar?

MR. COUGHLAN: Justice Smith, we discussed that some, I am happy you raised the question. We felt that perhaps this committee had outlived its usefulness but we do feel that the committee should be one of a continuing or standing nature for the reason that this subject requires continual supervision and will require in the future, of course, amendment and change, and we consider it, of course, a matter of extreme importance to this entire bar and would be very happy if the bar so felt disposed to make this a standing committee which would have authority over this schedule.

JUSTICE SMITH: Do you have any objection, Mr. Coughlan, if I suggest such an amendment to this resolution?

MR. COUGHLAN: I would welcome it.

JUSTICE SMITH: Mr. President and Members of the Bar: My interest in this is very vital by virtue of the fact that I am on the National Committee of the American Bar Association on Economics of the profession, and I am, at my own request, rather than a full member of this committee, acting in an advisory capacity; I deem that the work of the committee thus far is very excellent. I do, however, make this observation, that in the states in which I have had experience these fee schedules must be under a study and surveillance from time to time and there must be improvements in them from time to time and certainly they must be a clearing house for suggestions by the Bar from time to time. Now particularly with reference to our own fee schedule and with reference to a great many fee schedules in other states which I have studied, the detail is not sufficient, that is, I will say it is not deemed sufficient in the opinion of the members of the national committee. I will state this by way of background and experience, for many years in this State I worked rather closely with medical alliances and medical committees and more or less in close alliance with insurance companies who had to pay medical fees and workmen's compensation in which every year during the month of April there would be a meeting of the medical committee in conjunction with the insurance committee on which I acted. And through the years, from a fee schedule which represents the one which we are presenting here this morning the medical committee was able to bill to that schedule until it covered a myriad of detail and quite a number of pages so that ultimately the so-called element of hourly time spent on a given job found its way into the aspect of a reasonable charge for a service.

In conclusion, the point being that I am raising, but not asking you to pass on at this time, is that of a so-called hourly fee schedule, when the public looks at it, and when they say, "Well, here is \$10 an hour," or, "Well, here is \$25 for an hour," "How can a lawyer or anybody else, including a plumber, be entitled to that much money?" That is the illustration, so to get me off my feet, Mr. Chairman, I move an adoption to this resolution by way of amendment that the Idaho State Bar Committee on Economics of the Practice of Law be continued.

MR. LARSON: Mr. Justice Smith, I proposed an amendment here during the course of your remarks as follows:

And be it further resolved that the Idaho State Bar Committee on the Economics of the Practice of Law continue in existence to perform all such tasks as may arise out of the use of the above-mentioned advisory fee schedule.

JUSTICE SMITH: And as a clearing house for suggestions that may be presented to the Bar from time to time, both state and local bar. That is satisfactory, isn't it?

MR. LARSON: Is there a second to the proposed amendment?

MR. DWORSHAK: I second the motion.

MR. LARSON: It has been moved and seconded that an amendment be made to Resolution No. 12 as follows:

And be it further resolved that the Idaho State Bar Committee on the

Economics of the Practice of Law continue in existence to perform all such tasks as may arise out of the use of the above-mentioned advisory fee schedule and to act as a clearing house for suggestions as to revisions that may be required from time to time.

Is there any discussion on the amendment? If not, all those in favor of the amendment signify by saying Aye. Opposed No.

MR. HAMILTON: Mr. Chairman, in the wording of that amendment, or rather the motion itself, did you use minimum fee schedule anywhere?

MR. LARSON: No, sir, it is advisory.

MR. HAMILTON: Has there been any thought placed on that? At least in our particular area many claim that any fee schedule tends to become a minimum; if that were called the minimum that might eliminate that.

MR. LARSON: As I understand it, the word "minimum" has caused a great deal of concern to the committee, and this came to us with the specific recommendation that any reference to this schedule as "minimum" be eliminated and the word "advisory" schedule as adopted as being more satisfactory and creating less problems than the word "minimum."

If I am in error on that, would Mr. Coughlan please advise me.

MR. COUGHLAN: That is correct as stated, Mr. Chairman, that is exactly the reason we asked it be advisory.

MR. LARSON: Resolution No. 12, as amended, has anybody moved the adoption of this report by anyone other than me and seconded by Mr. Dworshak? Is there any question or discussion on Resolution No. 12 as amended? All those in favor please signify by saying Aye. Opposed? Carried.

Mr. President, Resolution No. 13 reads as follows:

Resolution No. 13

WHEREAS, the Idaho State Bar Committee on Inferior Courts has prepared and submitted for the consideration of the Idaho State Bar, an exhaustive and well written report relating to the subject of inferior courts in the State of Idaho; and,

WHEREAS, the objectives sought to be accomplished require more refinement and detailed specification of the type of court or courts to be established, and the duties, authority and jurisdiction of such court or courts; and,

WHEREAS, considerable additional work is required to determine the definite objectives to be accomplished in the field of inferior courts; and,

WHEREAS, it may be necessary or advisable to prepare and submit a report as hereafter provided, containing alternative proposals; and,

WHEREAS, legislation and constitutional amendments will be required to accomplish any ultimate objectives established; and,

WHEREAS, the additional work required cannot be effectively and efficiently accomplished without a fund hereafter mentioned;

NOW, THEREFORE, BE IT RESOLVED that the Idaho State Bar Committee on Inferior Courts continue its study so as to establish objectives sought to be attained and thereafter prepare a subsequent report including such objectives as may be feasible and desirable, and attach to such report appropriate proposed legislation and constitutional amendments to accomplish any or all of such objectives, or the alternative objectives, and that the same be prepared and distributed to each of the local bar associations on or before January 1, 1960, and that the Idaho State Bar establish an adequate fund with such money as may be available or appropriated to accomplish the work to be done by the Idaho State Bar Committee on Inferior Courts as required by this resolution;

AND BE IT FURTHER RESOLVED that the Idaho State Bar Committee on Inferior Courts solicit and, if possible, obtain the response from each local bar association and that said committee thereafter submit a final report, containing recommendations as to objectives to be accomplished together with the appropriate legislation and constitutional amendments to accomplish each such objective, to the Idaho State Bar at its annual meeting in July, 1960.

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

JUDGE SPEAR: Is there a second to that motion?

MR. DWORSHAK: I will second that.

JUDGE SPEAR: Is there any discussion on Resolution No. 13? If not, all those in favor, please signify by saying Aye. Opposed. Unanimously adopted.

MR. LARSON: I want to thank particularly each and every member of the Resolutions Committee who diligently worked to make this task possible and commend the Bar for adopting Resolution No. 1 relating to acceptance of the procedure suggested by the Idaho State Bar Commissioners. I believe that is a great step forward in our meetings this year as against those that I have been fortunate to attend in the past. There was more intelligent discussion, more thought had been given to these resolutions to be considered, some resolutions were brought to us late and did not pass the two-thirds vote of the committee and were not considered and perhaps no particular harm has been done this year, not being a legislative year, and I am satisfied that the Bar's resolution henceforth will mean a great deal more than they have in the past because they have been given more thought and more consideration that would not have been possible without the excellent help of Mr. Ennis, Mr. Smith and Mrs. Olive Scherer.

Mr. President, I move that the Resolutions Committee for this annual meeting be discharged from further duty.

JUDGE SPEAR: Is there a second to that?

LAWYER: I second that.

JUDGE SPEAR: All those in favor please signify by saying Aye. Opposed. Unanimously carried. Your committee is discharged with all due honor. They have done a real fine job for us, ladies and gentlemen, I think they deserve a hand. (Applause).

Are there any resolutions to be offered from the floor? As you may recall from Resolution No. 1, resolutions can be offered from the floor upon two-thirds vote of this body and only with the consent of the two-thirds vote. Are there any

MR. SIDNEY SMITH: Mr. President, I rise for the purpose of renewing a motion which was previously made during the time the resolutions Committee was reporting and was at that time declared out of order. The mover of that motion is not present at the moment. Being from our district I would like to renew the motion, which was to the effect, and by way of background for those of you who might not have been in attendance, we have from Coeur d'Alene in the last week received a singular honor, not only to Coeur d'Alene but to the profession, in that one of our number as a practicing attorney, William S. Hawkins, has been elected to head the Fraternal Order of Elks and is now the Grand Exalted Ruler. And at this time feeling that we should recognize a member of our body who has achieved such a signal honor, I would move that we would acknowledge his achievement and send him a congratulatory message.

JUDGE SPEAR: Is there a second to that motion?

MR. COGSWELL: I second the motion.

JUDGE SPEAR: Any discussion? This must be passed unanimously or we must go back and vote by local bars, so if there is no question, all those in favor please indicate by saying Aye. Opposed. Unanimously carried. I believe Brother Bill Hawkins will appreciate the action you just took.

Any other resolution to be offered from the floor?

MR. GEE: There was submitted to the Resolutions Committee a resolution proposed and I think properly published in the Advocate by the Committee on Legal Ethics of the Idaho State Bar largely as the result of hearings directed by the Commissioners of the Bar in Boise relating to the conduct and ethical practices of public officials who are also members of the bar. The Committee on Resolutions apparently failed to get a second for this and as a member of that committee I should like now to propose this resolution before the body of the bar.

JUDGE SPEAR: What is the resolution?

MR. GEE: It is rather long, I think I would like to read it.

JUDGE SPEAR: Would you come up and read it please?

MR. GEE: WHEREAS, The members of the Idaho State Bar are ever mindful of their obligation to uphold the integrity of the profession and maintain the public confidence in the professional integrity of attorneys; and

WHEREAS, it is the desire of the Bar to establish certain guideposts for the conduct of its members who occupy public office;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Idaho State Bar, by appropriate action, seek the approval of the Supreme Court of the State of Idaho of the following Canon of Ethics, to wit:

"When a lawyer is elected to the legislature, or to any executive or other public office of any kind, or holds any public employment, by election or appointment, his duty as the holder of such office or employment requires him to represent the public with undivided fidelity. It is improper for him to act professionally for any client which is actively or specially interested in the promotion or defeat of legislative or other matters proposed or pending before the public body of which he is a member or by which he is employed, or before him as the holder of a public office or employment

Neither he nor a member of his firm or associate, in the broadest sense, should accept any employment which will impair his independence of judgment in the exercise of his official duties. He should not accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority, nor should he disclose such information, or use it to further his personal interests. He should not use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others. He should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor "in the performance of his official duties. He should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust."

That is the end of the resolution. The resolution, incidentally, by way of information, is one which has been adopted by other jurisdictions.

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

JUDGE SPEAR: Is there a second?

MR. DONART: Mr. President, I will second the motion.

JUDGE SPEAR: Under the procedure adopted this morning under Resolution No. 1 in order for such resolution to be acted upon by this body we must first determine by vote of at least two-thirds that it be considered. So our first vote, it appears to me, ladies and gentlemen of the bar, is that determination and that is all. The only question which you now will vote on is whether or not this body will give any consideration to the resolution just offered. We will vote by county bar associations.

MR. SHEPARD: Is the question upon which we are now going to vote open for consideration or deliberation?

JUDGE SPEAR: Yes, if you desire.

MR. SHEPARD: Mr. Chairman, Ladies and Gentlemen: I assume that this resolution comes out of a rule which was formulated in the last legislature and while this resolution is changed from that rule and while it is rather all encompassing, as a matter of fact, to the point if one is against the resolution one is against God and mother. I think we should consider, in the light of what Mr. Larson said a few moments ago, to the effect that our resolutions here should come to mean something and be considered by people, and also as it was said by you, Mr. Chairman, some resolutions in previous years have been ill conceived. I feel this is such. For many years lawyers have, I think, come to be known in the eyes of the public as leaders, particularly in public office. I think if the members of the Bar will analyze this resolution they will find that it will be impossible for a lawyer to maintain any type of practice and run for any public office, particularly the legislature, because you would be unable to accept any fee upon a continuing basis by means of retainer and hold public office. And as I understand the resolution and heard it read, I feel it is bad; I feel it is designed to remedy an evil, but I don't think it will do so. I don't think it is fair to consider it and I feel if it is considered it should be voted down.

JUDGE SPEAR: Any further discussion?

MR. EBERLE: I would like to add an additional comment. I think there is nothing wrong with the first sentence of this particular resolution, I believe it states a general principle that exists, that a holder of office owes a duty of undivided fidelity to that office, and as Mr. Shepard has pointed out, from there on this resolution has a number of other things in it and it particularly says that you cannot represent a client who is actively or specially interested in legislation. What those words mean is highly questionable. If I am only passably interested as a client, then perhaps I can have a lawyer in the legislature, but further on it says you should not accept any employment which will impair his independence of judgment in the exercise of his official duties. That would mean that no prosecuting attorney could have any private practice while in office for the simple reason that one of his clients might become interested in a criminal case. It would also mean that the legislator would have to terminate his entire private practice because during the session some bill might be introduced which specifically concerns a client of his. And what is he to do at that point? And I would like to point out to this body that there are also a number of ethics on the books which are presently applicable to lawyers in Idaho. There is Canon No. 6, which is adverse influences and conflicting interests, which adequately covers either unfair divulgence of confidences of the client or of the legislature. There is Canon 11 on fiduciary relationships which applies equally. There is a particular canon, Canon 26, which I will refer to later. There is also a canon that says once a public employee retires he cannot represent clients in matters that he has passed on, which creates a further complication. If you pass a bill for a client, under legal ethics, you could never represent that client thereafter in that particular matter.

I would like to read to this body briefly a letter from the former president of the Third District Bar, Mr. Hawley.

"It seems to me that if the Committee found unethical conduct on the part of any of the members in the Legal Profession in either the Idaho Senate or House of Representatives, then that party should be subject to disciplinary action on the part of the Idaho State Bar Association. If no such breach of ethics was found to exist, then the matter should be dropped.

"The Canons of Ethics of the American Bar Association adopted by the Idaho State Bar, plus Rule 150 of the Rules for Conduct of Attorneys of the Idaho State Bar adequately cover the conduct of attorneys elected to the Idaho State Legislature.

"I refer particularly to Canon No. 6--ADVERSE INFLUENCES AND CONFLICTING INTERESTS; Canon No. 15--HOW FAR A LAWYER MAY GO IN SUPPORTING A CLIENT'S CAUSE; and in particular, Canon No. 26, which I quote in part:

"A lawyer openly, and in his true character may render professional services before Legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action."

"Also applicable to the general conduct of...

Then the writer cites Section 59-401 of the Idaho Code, which is the legislative oath, and then he states:

"If such a lawyer has violated his oath as an elected official of the state, or has violated any of the Canons of Ethics and these violations can be proved, disciplinary action should be taken against him in an orderly and proper manner."

And I think the report of the Investigating Committee is a proper matter to be considered by this body. It was the Senator from Payette who brought forth these charges on the floor of the Senate. If these charges are justified then he should draw up a complaint. If the charges are unjustified then appropriate action should be taken in regard to the statements made in the Legislature.

I feel that the present ethics are adequate and the passage of this resolution would complicate matters and prohibit members from running for the Legislature.

JUDGE SPEAR: We are now voting only on the question of whether or not this suggested resolution will be considered by this body. We will vote by Bar Associations, and the members who are designated to vote will please rise and indicate either yes or no. No means we will not consider it, yes means that we shall consider it.

Shoshone Bar Association, 18 votes.

BOB ROBESON: No.

Clearwater Bar Association, 66 votes.

TOM FEENEY: No.

Third District Bar Association, 173 votes.

CALVIN DWORSHAK: 172 yes and 1 no.

Fourth and Eleventh District Bar Associations, 78 votes.

CHARLES CREASON: 78 no.

Southeastern Bar Association, 73 votes.

ART OLIVER: That is now the Fifth District, 73 votes no.

Sixth District Bar Association, 19 votes.

C. WALKER LYON: 19 votes no.

Seventh District Bar Association, 52 votes.

JAMES DONART: Seventh Judicial District Bar votes yes, 52 votes.

Eighth Judicial District Bar Association, 48 votes.

DAR COGSWELL: We vote no.

Ninth District Bar Association, 39 votes.

JOHN BLOEM: 39 votes no.

Twelfth Judicial District, 16 votes.

MEMBER: 16 votes no.

The results of the voting, according to my colleagues who have done all of the computing and for which I will assume no responsibility, is 222 votes for, and 350 against. It would have taken 376 to constitute the necessary two-thirds majority and therefore the vote is "no" and the resolution will not be considered by this body.

Are there any other resolutions to be offered from the floor?

REED WILLIAMS: I am wondering if anyone in the audience knows what the qualifications are for being appointed to the Federal Judiciary?

JUDGE SPEAR: If you will bear with us, you will have an explanation a little later.

Are there any other resolutions to be offered at this time?

REED WILLIAMS: Would it be too late then to make a resolution?

JUDGE SPEAR: Well, I suppose it could be re-opened.

MR. WILLIAMS: Well, with that in mind we would like to reserve our resolution.

JUDGE SPEAR: Any other resolutions to be offered?

MR. DONALDSON: I would like to propose a resolution that the Idaho State Bar urge the congressional delegation in Washington, D. C., to get behind and support and pass the Kennedy-Irwin Bill that is now pending in the House of Representatives and that copies of the resolution be forwarded to other State Bars in the United States.

JUDGE SPEAR: You have heard the resolution, is there a second?

MR. EUGENE THOMAS: I second it.

JUDGE SPEAR: We must go through the same procedure in voting. Is there any discussion first? The only question to be determined again is whether or not this body will consider the proposed resolution. If not, we will vote on a yes or no basis again.

Shoshone County Bar Association, 18 votes.

BOB ROBESON: I am going to pass.

Clearwater Bar Association, 66 votes.

TOM FEENEY: 66 votes Aye.

Third Judicial District Bar Association, 173 votes.

MR. DWORSHAK: May we pass for the moment?

Fourth and Eleventh Districts, 78 votes.

MR. CREASON: Pass.

Fifth District Bar Association, 73 votes.

ART OLIVER: Fifth District passes.

Sixth District Bar, 19 votes.

C. WALKER LYON: Yes

Seventh District Bar, 52 votes.

JAMES DONART: Pass.

Eighth Judicial District, 48 votes.

DAR COGSWELL: Pass.

Ninth District Bar, 39 votes.

JOHN BLOEM: Ninth District Bar votes 1½ yes and 1½ no.

Twelfth District Bar, 16 votes.

MEMBER: Twelfth District Bar

Now I will go back and take the passes in order.

Shoshone County Bar Association, 18 votes.

BOB ROBESON: I will vote yes.

Third Judicial District Bar.

CALVIN DWORSHAK: 173 votes yes.

Fourth and Eleventh District Bar, 78 votes.

CHARLES CREASON: Votes yes.

The Fifth District Bar.

ART OLIVER: 73 votes yes.

Seventh District Bar, 52 votes.

JAMES DONART: May we pass temporarily?

Eighth Judicial District Bar Association, 48 votes.

DAR COGSWELL: 48 yes and 1 no.

The only one remaining to vote is the Seventh District Bar.

JAMES DONART: We vote $\frac{1}{2}$ yes and $\frac{1}{2}$ no.

The computation of votes apparently was with this result: 534 $\frac{1}{2}$ yes and 45 $\frac{1}{2}$ no. Obviously more than two-thirds have passed and we will now consider the proposed resolution in this matter. Is there any discussion?

MR. McNICHOLS: I ask for unanimous consent that the prior vote be used as the vote on the motion now before the body.

RALPH BRESHEARS: I second the motion.

JUDGE SPEAR: You have heard the second on the motion, is there any question on the motion? All those in favor say Aye. Opposed No. It is so recorded then, 534 $\frac{1}{2}$ for the resolution and 45 $\frac{1}{2}$ against; therefore, the resolution is passed and it will be regularly drawn and forwarded to the congressional delegation.

Are there any other resolutions to come from the floor?

We have one other matter, so far as I know, in the way of business to come before this body but it is a highly important one that has been kicked around by a good number of people who haven't the slightest idea what they are talking about.

It arose out of the June 24 article in the Boise Statesman by John Corlett. Among other things, he states:

"Idaho attorneys have been pretty upset the last two weeks when word came out that the Justice Department and the American Bar Association decided that not a single Idaho lawyer had the professional qualifications for a circuit judgeship," and then later on in his article he says, "The big question now is:

"If the Justice Department agrees that an Idahoan shall be given the circuit court job, who is it going to be?"

"Does the American Bar Association mean that Idaho does not have judges who are professionally qualified for the circuit court post as well as no qualified attorneys?"

Well, when the Honorable John D. Randall, President-Elect of the American Bar Association arrived here we had a session that morning and thoroughly briefed him on this matter with as many facts as we had at hand. He could see the gravity of the situation and why Idaho attorneys and judges were justifiably upset so he set about to determine what the facts were, particularly with regard to the American Bar Association, he cannot speak for the Justice Department and he has no particular interest in what the Justice Department said or didn't say; he was interested in what the American Bar Association was purported to have said, and so that you will get his report first hand I am going to call at this time on the Honorable John D. Randall to tell you what he found.

Would you please come to the podium?
(Applause).

MR. JOHN D. RANDALL: Thank you Mr. President, Ladies and Gentlemen of the Idaho State Bar:

I think it was a very gracious act on the part of my friend, Clay, here, to give the American Bar Association an opportunity to speak before they are condemned. I received a copy of the letter that Justice Smith sent to Attorney General Rogers and Ross Malone, the President of the American Bar Association, and Bernard Siegel, who is the Chairman of the Federal Judiciary Committee. The letter that I received contained the clipping of what the correspondent for the Idaho Statesman had said, and I read it with considerable amazement, because it was obvious to me as it would have been to anyone who has been in American Bar Association work that it just could not be true and I felt, of course, that by the time I would get to Idaho the entire matter would be settled.

I came here and on the morning after my arrival I saw Justice Smith and I saw your president, and they were gracious enough to say "We would like to sit down with you and go over this entire situation so that you would know what the facts are and so that you could get the matter straightened out." Now in the first place it would seem to me it would be helpful to us in our thinking if we know exactly what function the American Bar Association plays in connection with these judicial appointments. The American Bar Association has no function except with respect to names which are submitted to the Federal Judiciary Committee—the Federal Judiciary Committee is headed by Bernard Siegel of Philadelphia, Pennsylvania. There is one representative from every circuit, the gentleman who represents you in this circuit is George Bennett of San Francisco, California. I have only met Mr. Bennett once; however, I can say unequivocally that the time that I met him I was extremely favorably impressed. Of course, I could be wrong, but nevertheless I merely state that for the record.

I do know something about how the Federal Judiciary Committee works because the Federal Judiciary Committee has worked in Iowa in two instances. In the first place, the United States District Judge for the Southern District of Iowa died and a new one was selected and the representative, that is the Eighth Circuit representative circularized some 200 lawyers in the Southern District of Iowa for the purpose of having them pass upon the qualifications of I believe it was three names which the senators from Iowa had submitted to the Justice Department and the Justice Department in turn had submitted to the Federal Judiciary Committee. The result of this particular inquiry was then forwarded to the Chairman of the Committee, it was considered by all of the members of the committee on the basis of investigation and the chairman of the committee was the one who

transmitted that information to the Justice Department. Now I suggest that to you because, if I understand from what I read, the gentlemen stated that the American Bar Association had made some statement. Now we also had a Circuit Judge who was to be selected and the gentleman who had resigned was a gentleman from Iowa, consequently we were in the same position that you are and the same situation also existed with regard to the investigation made, excepting the investigation was made statewide and the recommendation, if you please, again went in to the Chairman of the Committee and was considered by the entire committee. As I mentioned to you yesterday, the American Bar Association does not speak excepting through its House of Delegates. Consequently, if there was any statement which was made, and of course when you speak on a subject of this sort you are somewhat helpless because of the fact that you don't know to whom the person was referring and in that connection I am reminded of an incident which I would like to tell you. We had a gentleman who was a lawyer and who was also the president of a publishing company, I was complaining most bitterly because of the way the newspapers at times would bring out something sensational and I told him I didn't think it was fair, that if some poor fellow committed some little mistake why they would blow it up and if someone lived a life of rectitude and good works why nothing ever was printed, and he said, "John, let me tell you something about this, we are in the business of making money, just like anyone else. Supposing Mr. and Mrs. Jones had lived in a community for 20 years, she was on the Red Cross and he was a vestryman in his church, and over these 20 years they were living together they were both doing good work," he said, "Do you think that means anything to a newspaper?" I said, "No." Do you think there is anything about printing the sewing circles that people like to read about?" I said, "No." "Well," he said, "If this Jones runs off with a chorus girl, that is something that the neighborhood will talk about, that is why newspapers print that sort of thing."

I suppose the attention of the people in Idaho would be attracted by something that the American Bar Association had done, but that is not the way it works and let me tell you something else. You know in the legal profession there are a number of organizations where the members are selected because of ability, now one of them is called the American College of Trial Lawyers and that is supposed to be composed of 1½ percent of the lawyers in the various states, in other words, they are selected because of ability. There are gentlemen from Idaho selected there and are well considered and highly regarded, consequently, that answers one of the questions with regard to professional ability. There is the International Association of Insurance Counsel, that is another one where they select or acknowledge people of ability, the gentlemen from Idaho are represented there and highly respected. There is also the American Law Institute, there are members of that organization among the lawyers in Idaho and in voting on the membership there are members of those organizations who are members of the American Bar Association. And it seems to me those illustrations in and of themselves show that nationally the gentlemen from Idaho are recognized for their ability. Let me say finally that one does not become a member of the board of governors of the American Bar Association unless he is regarded as a man of professional ability and my friend and your friend, A. L. Merrill, was on the Board of Governors of the American Bar Association representing your circuit. Those illustrations are enough to show you that, as far as the American Bar Association is concerned, it highly regards the ability and the integrity of the Idaho lawyers.

I called Ross Malone, President of the American Bar Association. He had been

in New York, I didn't catch him in New York, I chased him to Dallas. I missed him in Dallas. Finally, this morning I got him at his home and I told Ross what has gone on. He said, "John, there isn't a single word of truth to that," he said, "no one representing the American Bar Association or purporting to represent the American Bar Association has ever said that. May I point out to you that I have friends in the Idaho State Bar Association and I know that I recognize their integrity and recognize their professional ability and I know that you do too" and I said, "That is true, but what I need to give to the gentlemen of the Idaho State Bar Association is a formal statement of the President of the American Bar Association," and gentlemen, you have it.

(Applause).

JUDGE SPEAR: Thank you, Mr. Randall, we in Idaho appreciate people who talk straight forward. You did, and we appreciate it.

Our state delegate has asked for time to express what he has been able to find out. Would you tell us what you have observed? (NOTE: Then followed the remarks of the Honorable E. B. Smith).

JUDGE SPEAR: Gentlemen, we are going to have to terminate this sometime. We are already 30 minutes over our allotted time. Thank you very much, Judge Smith.

I am now going to turn the meeting over to Judge Bellwood.

JUDGE BELLWOOD: Thank you very much, Clay. I am indeed honored, of course, to be President of the Idaho State Bar Association for the coming year. I am going to miss you, Clay, and Paul, and I am looking forward to working with Marc and Tom Miller, and with Blaine again, and all of you interesting lawyers.

If there is anyone here who has any desire to have a speech on an occasion such as this, I respectfully direct your attention to past issues of the reports of proceedings of these meetings where you will find remarks that will be appropriate for any desire you might have. I will now entertain a motion to adjourn.

MR. ROBESON: I make the motion.

MEMBER: I will second it.

JUDGE BELLWOOD: Without a vote, we are adjourned.

Appendix

Report of The President

In keeping with the custom established by my immediate predecessors, I am submitting my annual report to the membership for publication in the June issue of The Advocate. This serves two good purposes; it provides the membership an opportunity to study it and make suggestions thereon at the annual meeting, and it saves the time otherwise required to submit such a report orally during the business session of the meeting at Sun Valley.

As your vice president and then president, I was privileged to represent the Idaho State bar at the mid-winter meeting of the American Bar Association at Atlanta, Ga., in February of 1958, the meeting of the Interstate Council in San Francisco, and the ABA Annual Meeting in Los Angeles in August. Additionally, I will have visited each of the local Bar Associations in Idaho during this year after a meeting with the First Judicial District.

There is but one exception I must note. It appears that someone neglected to inform the members of the 7th District of the joint meeting with the 3rd District, the first of the series of such meetings on my tour in southern Idaho last October. I won't mention the guilty party's name, but his initials are Jack Hawley, and I hereby tender his apologies to the members of the 7th District Bar Association. In any event, meeting and visiting with lawyers throughout the United States, and particularly those in Idaho, has enhanced my appreciation of our profession. It is truly a great one, and you need only rub elbows as I have with the high caliber of men who have unstintingly devoted their time and efforts to the Bar programs to realize how responsible and reliable our members are. This has been an experience I wish all of you could have shared with me.

From July until July (1958-1959) the Board of Commissioners will have met eight times for the transaction of the business of the Association. Certainly no president has been blessed with two members any more effective or cooperative than Commissioners Sherman J. Bellwood and J. Blaine Anderson. I shall be eternally grateful to both of them for the assistance they have given me, and this Association is indeed indebted to them for the unselfish devotion to duty they have constantly displayed.

It is my understanding that each of the chairmen of the standing and special committees of the association has been requested to make a report to the secretary for inclusion in this same issue of *The Advocate*, so I shall not duplicate their efforts by summarizing their respective activities. However, I do wish to mention some new committees that were appointed this year. The Economics of the Law Committee was established to follow up the presentation of the ABA Committee at last year's annual meeting. Allan Shepard of Boise was named chairman, but his legislative duties made his participation impossible, so Glenn Coughlan of Boise was named to succeed him. Fruits of the work of this committee are contained in the May issue of *The Advocate*, the publication of a suggested Advisory Fee Schedule and Questionnaire forwarded to each member. The schedule has been included in a resolution which has been regularly presented to the Resolutions Committee (the presidents of the local Bar Associations or their designees) headed by Bert Larson of Twin Falls, and I am sure it will be given every attention at the annual meeting in Sun Valley. We also created a Committee for World Peace through Law with Orval Hansen of Idaho Falls as Chairman and Carl P. Burke (Boise), Lloyd J. Walker (Twin Falls) and Scott W. Reed (Coeur d'Alene) as the other members. I am happy to report all of them attended—at their own expense—a regional meeting of the ABA Committee in San Francisco the latter part of April. The work of this and similar committees throughout the world may well provide the solution to settling disputes of nations in a manner other than the destruction of civilization. How more important a project can you get. The third new committee is that on Cbent's Indemnity Insurance headed by James E. Schiller of Nampa. It is thought this subject has great potential in the field of public relations.

Three of our hardest working standing committees have been Continuing Legal Education (Wes Merrill, Chairman, Raymond D. Givens, and Herbert Berman); Unauthorized Practice headed for most of the year by the late James W. Wayne, now by Sherman Furey, Jr., with Bill Goodman and Tom Feeney assisting; and the Ethics Committee (Paul Eimers, Chairman, Merrill Gee and Cal Dworshak). Their reports will speak for themselves but I assure you many, many hours of hard work have been expended by the members of these three committees.

In disciplinary matters the Board heard one case, recommended suspension for one year and the Supreme Court followed our recommendation. Wayne Loveless of Blackfoot was the erring member. Additional, the Board considered eight other complaints, but decided, after thorough investigation, that no formal action was deemed either necessary or proper. After much study and consideration of other procedures used in sister associations the Board concluded our present procedure, with but two exceptions, was just as workable as any other. To expedite matters, it appears desirable to afford some remuneration for the prosecuting committee (usually comprised of one member only). The Board would then be in a little better position to demand more prompt action and eliminate some of the delay for which we have been criticized in the past. Investigations made by the commissioners themselves seems to produce more expeditious proceedings also, and this is to be encouraged.

The exceptions mentioned in the preceding paragraph resulted, upon recommendation by the Board, of the adoption of Amended Rules 164 and 165, permitting the accused in any disciplinary matter to move for a voluntary suspension without the necessity of a hearing, and relaxing the rules relative to securing evidence from the accused and other witnesses in keeping with provisions of the new rules of civil procedure.

The Board of Examiners selected, gave and corrected examination questions to twenty-eight applicants this year, fifteen thereof being successful. The petition for review by one of the unsuccessful candidates was denied by the Supreme Court and allowed in the instance of two others. The results of re-grading by the Court have not yet been announced.

Idaho participated fully in the Law Day, U.S.A. Program for 1959. The state wide essay contest, sponsored jointly by the Bar and the faculty members of the College of Law at the University of Idaho, was most successful, and every local Bar Association provided speakers for schools, clubs, lodges and the like wherever possible. I have no doubt the people of Idaho were well informed of the full meaning of living under the "Rule of Law" as compared to that of the "Rule of Men" this year. I want to thank each and every one of you who participated in this program; you performed a mighty valuable service for the Idaho State Bar.

The program on which has been placed the most emphasis by the Board for the past three years is that of Continuing Legal Education, and I am pleased to report we are on the threshold of developing the kind of program we have for some time known was the right one for Idaho. The University of Idaho had budgeted \$3,000.00 for the next biennium under its adult education program, and while there are some details to be worked out, we feel reasonably sure these funds can be made available for salary of a part-time Director for Continuing Legal Education. Then we can begin to pattern our institutes after the system which has been so successfully used in California. We have high hopes of bringing to the Idaho Lawyers a program for their education and information that will be such they cannot afford to miss it; then it will be placed on a self-sustaining basis and can be of the permanent nature we have all desired for so long.

By these remarks, I do not want to be understood to in any way belittle the efforts of our present Committee. They have performed yeoman service for this Bar as evidenced by the fine institutes held this year in Moscow and Idaho Falls. Those members who attended can so testify; they know those programs were well worth the time and money of any Idaho lawyer.

One of the most distressing duties of your president and the Board members this year was the selection of a new Secretary. Paul Ennis has been an intimate friend of mine for nearly 25 years. In Bar work, frankly, we had become to regard him as the indispensable man for Idaho. All of us leaned too heavily on Paul simply because he was so efficient and effective. To lose him was a blow, but his situation was clearly understandable, and we had no alternative but to seek a substitute. Fortunately, out of a field of eleven applicants, we are able to find a young lawyer whom we are certain will fill Paul's shoes most adequately after a bit of tutoring at the hands of the old master. I refer to Tom Miller whose office is adjoining Paul in the First Security Building in Boise, and for whom the Bar is now providing a full-time stenographer, Mrs. Oliver Scherer. Paul kindly consented to remain on the job until after the next annual meeting, July 9th-11th, 1959, and then Tom Miller takes over the reins. We feel he will provide the Idaho State Bar with the same inspired unselfish service as his predecessor.

As I told you on my visits with the Local Associations, my being elected President of the Idaho State Bar was the greatest honor ever conferred on me. I have thoroughly enjoyed attempting to resolve the many problems that have arisen since I have been privileged to sit as a member of the Board of Commissioners, and if I have contributed anything to the benefit of the Bar, I am indeed happy, for it has been a most rewarding experience for me.

Clay V. Spear
President
Idaho State Bar

Annual Report of Committee On Continuing Legal Education

The Committee on Continuing Legal Education of the Idaho State Bar is pleased to present its report covering the activities of the Committee during the year 1958-1959.

Under the sponsorship of the Committee, the Fourth Annual Idaho Law Institute was held at the College of Law, University of Idaho, on October 10 and 11, 1958. The Institute was devoted to corporate practices in Idaho and the following subjects were presented:

1. Why Incorporate and Practical Problems of Organizing Closely Held Corporations, by Harold W. Coffin, Spokane, Washington.
2. Restricting Stock Transfers by Carl M. Brophy, Medford, Oregon.
3. The Corporate Secretary, by Thomas L. Smith, Boise, Idaho.
4. Instruments of Voting Control in Close Corporations, by Robert N. Elder, Coeur d'Alene.
5. Conferences with Internal Revenue Service on tax problems of small corporations, by a panel.
6. Corporate Re-Organization, by Alfred H. Stoloff, Portland, Oregon.
7. Funding of Buy and Sell Agreements through Life Insurance, by Piatt A. Hull, Wallace, Idaho.

The Fourth Spring Law Institute was sponsored by the Committee and held in

Idaho Falls on April 24 and 25, 1959. This Institute was also devoted to corporate practices in Idaho, but the Committee re-organized the subject matter, and it is felt, improved the program.

The subjects were:

1. Why Incorporate and Practical Problems of Closely Held Corporations, by Milton Zener, Pocatello, Idaho.
2. Techniques in the Transfer of Corporate Stock or Assets, by William D. Eberle, Boise, Idaho.
3. Tax Aspects of Buying and Selling Agreements, by Tim Robertson, Twin Falls, Idaho.
4. Liquidating Shareholder's Interest, by Robert Troxell, Boise, Idaho.
5. Conference with Internal Revenue Service on tax problems of small corporations, by a panel.
6. Restricting Stock Transfers and Voting Control, by Richard Jennings, Berkeley, California.
7. The Steps in Formation of a Corporation, by Vern Kidwell, Idaho Falls, Idaho.

The Committee is greatly indebted to the members of the Second and Ninth District Bar Association for their splendid cooperation in conducting the two Institutes. By deliberate programming, the same general program was used in both institutes. This is in recognition of the general difficulty involved in attempting to reach all attorneys within the State by the Institute. The response received at both Institutes has convinced the Committee that such a plan is not only feasible, but most practical. In the opinion of the Committee, the two Institutes were highly successful, and it is felt that the program is becoming stabilized and accepted with great enthusiasm by the members of the Bar.

In order to carry out the advanced planning of these Institutes, the Committee held meetings on August 16, 1958, January 24, 1959, and April 25, 1959.

Preparations are well along for the Fifth Annual Law Institute which will be held in Moscow in cooperation with the College of Law during October, 1959. A program dealing with "Creditor's Rights" has been selected. One of the most valuable portions of the Committee's work is the preparation of the written material which is made available to each member who attends the Institute. We strongly urge that this phase of the work be continued and enlarged upon.

The Committee acknowledges the complete cooperation and support of the Bar Commission, the splendid work of Paul Ennis, Secretary, and the fine acceptance of the program by the individual members of the Bar. Our special thanks go to those members who so ably handled the speaking assignments.

Respectfully submitted,
W. F. Merrill

Report of Committee on Professional Ethics

Your Committee on Professional Ethics submits its report of its work during the Association year 1958-1959, as follows:

From the questions and inquiries addressed to the Bar Association Secretary, and to the Committee, six opinions were written, which in the Committee Files are numbered from 9 to 14, inclusive. One inquiry was considered by the Committee to pose a question which was directly answered in a Decision of the American Bar Association Committee. This question was therefore covered by Decision No. 1, under the category of Decisions not Embodied in Formal Questions.

All formal opinions were published in the Advocate as they were released.

The Committee held one meeting at Boise, on February 7, 1959. The Committee was commissioned by your body to inquire into matters concerning Senate Rule 28, pursuant to a resolution of the Ninth District Bar Association. The Committee was requested to ascertain whether or not any lobbying activity engaged in by members of the State Bar Association, before the State Legislature was, or has been, in violation of the Canons of Ethics, and, secondly, to determine whether any individual who might appear before the committee, or the committee itself, might make, or have any recommendations to make concerning the matter.

Seven witnesses were heard on February 7th, and at an adjourned session on February 21st, 1959, conducted by Calvin Dworshak, Esq., five more witnesses were examined.

A transcript of the proceedings has been filed with the Secretary of the Bar Association.

This Committee finds no evidence in the testimony of the twelve witnesses examined to indicate that there has been any violation of the Canons of Ethics as they now exist.

The Committee feels, however, that in order to clarify and emphasize the standards by which the members of our profession must conduct themselves makes desirable the adoption of a Canon of Ethics as a guidepost for those of the profession who undertake to serve the public in an appointive or elective office as a public servant; and for that purpose the Committee will offer a resolution to the Resolutions Committee of the State Bar Association, a copy of which is attached to this report.

In view of this Committee having been commissioned to make an inquiry into the matters concerning Senate Rule 28, it is desired to point out that the scope of the inquiry was of a broad nature, to include matters for consideration of the necessity or desirability of the formulation of a Canon of Ethics to cover the matters which gave rise to the resolution of the Ninth District, hereinabove mentioned.

It is also desired to invite the attention of the Commissioners of the State Bar Association, and to the members of the Bar, that this Committee is not an investigating body concerning disciplinary matters.

Respectfully submitted,

Committee on Professional Ethics
Paul G. Eimers, Chairman
Calvin Dworshak, Merrill K. Gee

Report of Legislative Committee

To The Honorable Commissioners of the Idaho State Bar

Gentlemen:

It will be remembered by the members of the Idaho State Bar that in the 1957 legislative session this committee undertook the project known as a State Bar Legislative Advisory Committee and recommended in 1957 that if such Advisory Committee was to be continued, some provisions should be made for necessary office facilities, secretarial assistance and supplies. The Commissioners decided for the 1959 Session to discontinue the Legislative Advisory Committee, so no activity along this line was endeavored as in past Legislative Session.

There were only four major projects under consideration by the State Bar Legislative Committee, other than the general service of acting as watchdog for all legislative bills which would obviously adversely affect the practice of law. The first was to accomplish the adoption of a uniform manual for preparation of legislative bills. This manual, which was prepared by Oscar Worthwine, Sam Kaufman, Blaine Evans and Raymond D. Givens, was adopted in the opening days of the 1959 Session by both the Senate and the House of Representatives. Copies of the manual were mailed to every member of the Idaho State Bar. We trust that this manual will continue to be used uniformly from session to session so that at least some of the confusion we have experienced in the past in the preparation of legislative bills will be gradually eliminated.

The second project was to undertake the preparation of a bill pursuant to Resolution No. 8, adopted at the 1958 annual meeting relating to the preparation, delivery and circulation of documents or instruments simulating a summons, complaint or other court process. This bill was prepared and presented to the Legislature, but was discarded immediately and no action was taken. In other words, the Legislature refused to even introduce the measure.

The third project involved the preparation of a bill pursuant to Resolution No. 9, adopted at the 1958 annual meeting relating to a legislative proposal making it unlawful for any person with the intent of instituting a suit to seek or solicit business for the collection of any claim or damages for personal injuries sustained within the State or for the death resulting therefrom. An appropriate legislative bill was prepared on this matter and it likewise was turned down by the Legislature.

The fourth major project involved the preparation of legislation providing that no elective or appointive officer of the federal, state or county government shall be qualified to be a Commissioner of the Idaho State Bar Association. This resolution was adopted at the annual meeting in 1957 and the language therein contained did not appear to the committee to accomplish what was intended by the proponents of the resolution, in that there are many elective and appointive officials in Federal, State and County government occupied by lawyers who are not necessarily members of the judiciary, but who might certainly be otherwise qualified to be Commissioners of the Idaho State Bar. Consequently, because of the confusion of the language as directed in the resolution and furthermore because it was the unanimous opinion of the Legislative Committee that we were having enough trouble within the Legislature without airing the internal affairs of the integrated Bar before the Legislature, our Committee re-requested permission from the Commissioners that the Bar undertake to solve this problem by means other than through the state Legislature.

The Committee, consisting of Randall Wallis, Willis C. Moffatt, Bruce Bowler, George Greenfield, Calvin Dworshak and the undersigned, first met in October, 1958, and from January through March, 1959, met once each week during the legislative session. In addition to the above mentioned projects, the Chairman unofficially, at the request of the Taxation Committee of the House of Representatives and the Association of Certified Public Accountants of the State of Idaho, gathered together a team of about 13 lawyers who were given certain assignments in the preparation of the revision of the Idaho State Income Tax Law, which, among other things, had the effect of adopting the definition of "Taxable Income" under the 1954 Federal Internal Revenue Code. Although this was not an unofficial function of the Idaho State Bar Legislative Committee, that Committee did receive a gracious thank you from James W. Monroe, chairman of the Revenue and Taxation Committee of the House of Representatives, for public service rendered toward this voluminous project.

Respectfully submitted this last day of June, 1959.

DAVID DOANE, Chairman

Report of Committee on Revision of Criminal Rules of Procedure

Mr. Paul B. Ennis, Secretary

Idaho State Bar

Dear Mr. Ennis:

Report of Committee on Revision of Criminal Rules of Procedure.

The report of this Committee is that no meetings have been held nor has there been any activity of the Committee because of the nature of Resolution No. 2 (page 56, Idaho State Bar Proceedings of 1958), and that the Committee is standing by waiting for further instruction and assignment.

Gilbert C. Norris, Chairman
Committee on Revision of
Criminal Rules of Procedure

See Page 84, Bar Proceedings—1958

SECRETARY'S REPORT

The Secretary is requested to make a report at the Annual Meeting on the financial condition of the Idaho State Bar and provide other statistical information concerning membership in the Bar, admissions to practice, deaths of members, and activities of the Commission. This happens to be the eighth and last Secretary's Report to be submitted by me.

The books of account maintained in my office and which are regularly audited by the State Auditor reflect the following with respect to expenditures and receipts for the year ending June 1, 1959, concerning the special Bar Fund, a dedicated fund under the control of the State of Idaho.

Expenditures June 1, 1958 to June 1, 1959

Personal Services	\$ 5,657.12
Travel Expense	6,508.48
Other Miscellaneous Expense	4,781.68
Capital Outlay	44.55

Social Security Transfer	112.53
General Fund Transfer	350.48
Total	\$17,454.84

Receipts

June 1, 1958 to June 1, 1959	\$15,721.00
Balance June 1, 1958	23,939.54
Subtotal	39,660.54
Less Expense	17,454.84
Balance June 1, 1959	\$22,205.70

The item of Personal Services covers salaries of a part-time Secretary and a stenographer on a part-time basis. Additionally, the Commission authorized the payment of salary to the editor of the Advocate when the income to the Idaho State Bar Foundation, which publishes the monthly newspaper for lawyers in Idaho, is sufficient to pay such salary expense. Such salary expense is also included. On May 4 of this year, the Board of Commissioners authorized the employment of a full-time stenographer, and it is anticipated that the future work of the Commission and of the Secretary will require a continuance of this full-time employee. Travel Expense includes all costs of travel for the Commissioners, the Secretary, members of Standing Committees, speakers of the Annual Meeting and a portion of the travel expense of the State Bar delegate attending the meetings of the House of Delegates of the American Bar Association, and meetings of the Interstate Bar Council are also included. The item of Other Expenses includes the cost of printing the Annual Proceedings of the State Bar and that portion of the cost involved in the publication and distribution of The Advocate which exceeds the funds available to the Idaho State Bar Foundation, other printing costs on various mailings to Idaho lawyers and office expenses, such as rent, telephone, postage and supplies. The Social Security transfers represents the State Bar's payment as an employer with respect to the above mentioned employees. The item referred to as General Fund Transfers, represents the amount deducted from the State Bar Fund by the State Auditor's Office as a charge for rendering bookkeeping services, as authorized by law.

Total expenditures for the year ending June 1, 1959, were \$2,272.33 more than in the preceding year. The increases were as follows:

Personal Services	\$ 764.37
Travel Expense	1,221.20
Other Expense	224.54
Capital Outlay	44.55
General Fund Transfer	41.88

Receipts were \$655.09 less than for preceding year.

Personal services were increased by reason of the payment of salary to the editor of The Advocate during the past year and the necessity of employing additional stenographic help in the secretary's office at the time of the resignation of Margery Whipple, who had served as a part-time secretary in the Secretary's office for approximately six years. The increase in Travel Expense may be accounted for, in the main, by reason of travel costs incurred by members of the Examining Committee attending the grading session at Idaho Falls. In the previous year the grading teams did not travel to a central place but graded in separate places within each division. Furthermore, in the past year, more travel expense of speakers

attending the Institutes were paid out of the State Bar Fund than from the receipts from registration fees at Institutes as compared to the previous year. Increases in the other items mentioned represents the inflationary trend of the cost of operating an office. Receipts, on the other hand, were \$655.09 less than for the preceding year. This may be accounted for by reason of the decrease in total membership of the Bar, a decrease in examination fees received, and increase of delinquency in payment of annual license fees.

The status of the Bar Trust Fund, a special fund not controlled by the State by reason of the fact that receipts are collected from sources unrelated to official funds, is as follows:

ASSETS		6-1-58	6-1-59
Cash on deposit, Idaho First National Bank, Boise Branch		\$2,352.29	\$1,891.46
Accounts Receivable			
State of Idaho	105.68		392.28
West Coast Airlines (excise tax refund)	2.53		- 0 -
Loss:			178.76
	\$2,460.50		\$2,460.50
Loss:			
1958 Fall Institute	280.90		
Secretary's Bond	5.00		
Law Day	310.50		\$ 596.40
Gain:			
Unexpended registration fees, 1958 Annual Meeting	\$ 247.18		
Unexpended registration fees, 1959 Spring Institute	172.46		
Total			\$ 419.64
Loss			\$ 178.76

The loss in the Trust Fund is attributed to the costs of the State Bar's participation in Law Day activities. Prize money in the amount of \$250.00 was authorized to be paid out of the trust fund by the Commission to the winners of the Law Day Essay Contest sponsored in high schools throughout the state. An additional \$60.50 expenditure for Law Day was authorized to pay the cost of reproducing Law Day Pamphlets which were distributed to high schools throughout the state. The 1958 Fall Institute resulted in a loss, whereas the 1959 Spring Institute had a profit as shown above. The Continuing Legal Education program has operated on a self-sustaining basis, more or less. The membership of the Idaho State Bar is as follows:

	1958	1959	Increase or Decrease
Northern Division	132	132	0
Western Division	307	303	1.3%
Eastern Division	153	147	4 %
Military	2	2	0
Out-of-State	30	29	3.4%
Total	624	613	1.8%

On the basis of Local Bar Associations, the distribution of membership for determining voting power of each Local Bar under Rule 185, at the 1959 Annual Meeting is:

Shoshone County Bar Association	18
Clearwater Bar Association	66
Third District Bar Association	173
Fourth and Eleventh District Bar Association	78
Southeastern Bar Association	73
Sixth District Bar Association	19
Seventh District Bar Association	52
Eighth District Bar Association	48
Ninth District Bar Association	39
Twelfth District Bar Association	16
Sub-Total	564
Out-of-State	29
Military	2
Total	613

Since the last Annual Meeting of the Bar the following deaths have been reported:

NAME	PLACE OF DEATH	DATE OF DEATH	ADMISSION TO BAR
Leo McCarty	Lewiston	June 11, 1958	October 7, 1913
P. E. Caveney	Los Angeles	May, 28, 1958	May 6, 1907
Karl Paine	Boise	June 22, 1958	April 23, 1897
Percey Groom	Rigby	July 27, 1958	August 27, 1917
John R. Smead	Boise	August 16, 1958	February 2, 1909
Hernan F. Beyer	Los Angeles	December, 1957	June 9, 1922
Parker P. Carver	Boise	October 23, 1958	September 14, 1929
John H. Barnes	Twin Falls	October 29, 1958	May 7, 1923
Royal M. Dawson	Lewiston	March 26, 1958	
Erle Hoyt Casterlin	Pocatello	January 10, 1959	July 1, 1918
James W. Wayne	Coeur d'Alene	March 18, 1959	October 17, 1907
Henry M. Hall	Jerome	February 27, 1959	June 5, 1908
Tom F. Alworth	Filer	March 27, 1959	January 22, 1940
Judge P. Thatcher	Blackfoot	March 25, 1959	November 6, 1936
Ralph S. Nelson	Coeur d'Alene	March 16, 1959	April 5, 1911
Frank A. McCall	Rigby	April 13, 1959	May 9, 1910
Harry Keyser	Boise	April 27, 1959	March 5, 1909

Two examinations were administered during the past year, one in September, 1958, and the other in April, 1959. In the first examination there were a total of twelve applicants, six passed and six failed. In the April examination, there were sixteen applicants, nine passed and seven failed. Of the twenty-eight applicants, fifteen passed and thirteen failed, for a percentage of success of approximately 54%.

Five complaints charging Idaho attorneys with unethical conduct were pending as of the last annual meeting. One of such complaints is still pending with action thereon being deferred until civil litigation involving the same alleged facts shall have been determined. One of such complaints resulted in the suspension of Wayne L. Loveless from the practice of law in Idaho for a period of one year, from February 19, 1959, with reinstatement being conditioned upon payment of costs of prosecu-

tion. The remaining three complaints were dismissed upon completion of preliminary investigation. Since the last annual meeting, several informal complaints have been filed, most of which were disposed of on an informal basis by voluntary withdrawal of the complaint by the complainant after the attorney involved had been informed of the charges and action was taken by him obviating the necessity of further consideration. Two verified complaints were filed since the last annual meeting. Both were dismissed after preliminary investigation, leaving only one complaint still pending before the Commission.

One case charging unauthorized practice against Mr. O. K. Merservy was prosecuted to completion through the Supreme Court. The charge was not sustained. One other such case was instituted and is still pending.

PAUL B. ENNIS
Secretary, Idaho State Bar

First Amended Report Inferior Courts Committee

The Idaho State Bar Association Committee on Inferior Courts herewith presents its First Amended Report which supplements and amends the original report submitted last year. The original report has been amended to reflect the following:

1. Legislation that was enacted by the last legislature.
2. Some of the thoughts of the Idaho State Supreme Court.
3. Additional ideas of members of the Committee.

The Committee met and compiled its report without the benefit of any comment from the District Bar Association because no communications were received from any of said associations.

The committee feels that the inferior courts of the State of Idaho are probably the most important, from the public standpoint, of all courts. More people come into contact with the inferior courts throughout their lives. Therefore, the impressions gained from observing the operation of the inferior courts are the basis for the general public feeling and opinions as to the operation of the whole judicial system.

The Committee on Inferior Courts is composed of a cross-section of lawyers and judges of the Idaho State Bar. It includes probate judges, a justice of the peace, practicing attorneys, an ex-assistant attorney general, a prosecuting attorney, a district judge and a U. S. district judge.

The major premises upon which this First Amended Report are based are as follows:

1. That with the exception of Ada County and perhaps a few others, the probate court now assumes the greatest role in the administration of justice. That is to say, that civil cases of lesser amounts are generally filed in probate court rather than in justice courts and that criminal matters of any importance are generally handled through the probate court.
2. That the character, jurisdiction and reputation of the probate courts should be elevated and the jurisdiction of the justice of peace courts reduced or eliminated altogether where advisable.
3. That justice must be administered by qualified personnel.

4. That some court must eventually become a family or domestic relations court in the State of Idaho.
5. That the inferior courts, including municipal courts, should be integrated into the general court system of the State of Idaho.
6. That procedures in traffic cases are in drastic need of substantial change.
7. That the administration of justice should be fast and efficient and flexible for counties of any size, large or small, in population or area.

In proceeding to accomplish the objectives supported by the premises above, the committee decided to abandon any distinction between a long range and short range plan and to proceed forthwith upon final approval of the bar to accomplish the objectives of the bar in reference to inferior courts.

Accordingly, the committee now recommends that the following be accomplished as expeditiously as possible:

1. Provide that all courts, eventually including any court operated exclusively within the limits of any municipality, be under the administrative authority of the Idaho State Supreme Court through the co-ordinator of courts.

EXPLANATION: This recommendation serves the philosophy of integrating the judicial system. The inclusion of municipal courts would create an economy by reducing the number of inferior court judges in the respective courts and at the same time permit the payment of adequate compensation to those judges who remain which in turn would attract qualified people to the office.

2. That the present probate court be established as a county court (and that the name of the court be changed from "probate court" to "county court") with jurisdiction as follows:

- a) Jurisdiction of all matters of probate and administration of estates as at present (subject to the alternatives listed below).
- b) Jurisdiction over family laws including juvenile, guardianships and adoptions as at present, and divorce (all of which is subject to the alternatives listed below).
- c) Concurrent jurisdiction with justice courts in small claims.
- e) Exclusive jurisdiction in indictable misdemeanor cases.
- f) Exclusive jurisdiction as committing magistrates.
- g) Concurrent jurisdiction with the justice courts in traffic cases.
- h) Jurisdiction in civil cases involving \$5,000 or less.

EXPLANATION: This recommendation serves the policies that some court must be a family court and that the probate court should be elevated. It also contemplates the entire elimination of justice of the peace courts in some counties by making all of their remaining jurisdiction concurrent with the probate (county) court.

3. That in the alternative, present probate court jurisdiction be transferred to district court as follows:

- a) All probate and administration of estates.

b) All family law, including juvenile, guardianships and adoptions.

EXPLANATION: This recommendation also serves the policy that some court should have all original family law jurisdiction. If the district courts take probate and family law, probate should be made essentially a clerical operation to be handled by the clerk of the court as in a great many of the western states. To handle the family matters, some district courts may need referees or commissioners and probation officers to hear and supervise juvenile matters.

4. Provide that any justice courts have the following jurisdiction only:

a) Concurrent jurisdiction with the county court in small claims.

b) Concurrent jurisdiction with the county court in traffic matters.

EXPLANATION: This recommendation serves the policy of reducing the number of justice courts by eliminating some of their major jurisdictions. It also serves to elevate the county court by giving it more responsibility. This should operate as an economy and also justify the payment of higher salaries to county judges.

5. Adopt (by Supreme Court Rule if possible) the Model Rules Governing procedure in Traffic Cases, drafted and approved by the National Conference of Commissioners on Uniform State Laws (July, 1957).

EXPLANATION: Traffic Procedure in the State of Idaho creates much ill will toward the legal system. The present procedure builds disrespect for all law and impairs any program of traffic safety on the highways. The Model Code would serve to correct these situations.

6. That the State Constitution be amended to provide that the county judge be elected or selected as the legislature may provide.

EXPLANATION: This recommendation would authorize the legislature to determine whether county judges should be elected or appointed. This would permit the development of alternatives for later consideration. Several alternatives were discussed by the members of your committee which could not agree, so it was concluded that the matter should be left to the legislature.

7. That the State Constitution be amended so that more than one county judge may be elected or selected in each county but that every county in the state must have at least one county judge.

EXPLANATION: This recommendation is necessary because of the increased business that would come into the county court. The recommendation departs from the idea of creating county court commissioners or referees for juvenile cases as we recommended last year. Some lawyers object to any commissioner system.

8. Provide that the county judge be qualified under one of the following alternatives:

a) Be an incumbent probate judge.

b) Be admitted to the Idaho State Bar.

c) Pass a written examination compiled and given by and under the direction of the Idaho State Supreme Court.

EXPLANATION: This seems to be one solution to the question of qualifications

that may be compatible with the opinions of local officials who claim it would be impossible to obtain law trained probate judges for all counties.

9. Provide that appointments to fill vacancies in the office of county judge be made by the senior district judge of the judicial district in which the county is located.

EXPLANATION: This recommendation serves the policy that the inferior courts should be integrated into the general court system of the state.

10. Provide for salaries of county judges to be based on the county population in accordance with the following schedule based on the last federal census:

a) Counties of less than 10,000 population, the salary of \$5,500 annually.

b) Counties of 10,000 to 25,000 population, the salary of \$6,500 annually.

c) Counties of 25,000 to 50,000 population, the salary of \$8,000 annually.

d) Counties of over 50,000 population, the salary of \$9,000 annually.

EXPLANATION: The substantial increase recommended in salaries would be justified on the basis of the increased volume of business that would flow into the county court because of the elevation of the court and the increases in the responsibility and jurisdiction of the court. The elimination of many justice of the peace courts would be possible through the adoption of your committee's recommendation, their functions to be assumed by the county court. This consolidation of jurisdiction would justify the payment of higher salaries to county judges. Also, fair salaries are needed to attract qualified people to the office.

11. That filing fees in county court be raised and simplified.

12. Eliminate the trial de novo in all appeals from the county court and provide the county court with such equity jurisdiction as may be necessary to carry out its family court responsibilities. This would require the establishment of an appellate division of the district court. Also, the county court would need to be provided with a court reporter and facilities for transcribing testimony.

EXPLANATION: Trial de novo on appeal should be eliminated because the increased jurisdictional amount would cause every large case to be tried anew on appeal this making the county court a mere dress rehearsal court. Trial de novo on appeal would drastically increase the costs of litigation and is probably unnecessary for the protection of litigants in view of the new rules. Appeals should be on matters of law only.

WHEREFORE, Your Inferior Courts Committee by and through its chairman moves that its report be adopted and that said committee be authorized and instructed to cause the preparation of drafts of proposed legislation and constitutional amendments for submission to the next convention of the Idaho State Bar Association for said association's final approval and upon said approval that your committee be authorized and directed to take such steps as may be necessary to cause the same to be enacted into law, and further, that the Idaho State Bar Association appropriate the sum of \$----- to the said com-

mittee to be used for the purpose of drafting such proposed legislation and constitutional amendments.

Respectfully,
George E. Redford
Chairman

Report of Public Relations Committee, 1958-1959

The public relations committee welcomed as a successor to Alden Hull in the Northern District, Mr. E. L. Miller of Coeur d'Alene, Idaho.

At an organizational meeting the last of October, the committee met with the State Bar Commissioners and Secretary Paul Ennis.

At that time, in committee meeting, the committee completed approval of drafts of pamphlets to be printed by the State Bar, three additional pamphlets recommended being:

"Sign here . . . and do you?"

"Facts you should know about everyday business Transactions."

"Meet your lawyer. The law . . . and Lawyers."

"Buying a Home."

Printing of a pamphlet prepared by Herman Bedke and approved by the 1957-58 committee was completed and recommended that distribution be made throughout the state on the following basis: 5,000 to the districts represented by Mr. Bedke, 3,000 in the Southeastern Districts, and 2,000 in the Northern District, and the committee members each took a proportionate share to start distribution in their areas.

The Public Relations Committee recommended to the State Bar Commissioners that since this program had been worked on for two years by the committee headed by Alden Hull, and that considerable time and effort had been spent, that the program be carried out rather than embark upon another phase of planning and action.

The Public Relations Committee further recommended to the State Bar, that all of the other Bar Associations of the State adopt the Speakers Bureau set-up of the Third District Bar; that the local bars utilize the legal films available in the film libraries at the Idaho State College, Boise Junior College and the University of Idaho, and that a list of these films be compiled and released to all of the bar associations for use.

As points of distribution, the committee recommended that each local bar, upon receipt of pamphlets published and to be published, distribute them to title insurance offices, banks, real estate offices, farm bureaus, farm implement sales offices, small loan companies, car dealers, and labor union halls.

The State Bar Commissioners agreed to complete the plan set in motion by the previous committee and authorize printing of 10,000 of each of the three pamphlets and requested the committee to make a test distribution on the 10,000 copies of the pamphlet already published.

The committee recommended, and the State Bar approved, the publication of

26 articles selected from State of Michigan releases "It's the Law," running under the title of "If you're like me" to be distributed through the Idaho Press Association to all the newspapers of the State every two weeks.

Twenty-six such articles were selected and conformed to the Idaho Law, and publication has started. To date, nine of the selected articles have been released and printed in the various papers throughout the state.

In addition to these releases, the Public Relations Committee has joined hands with the same committee of the Oregon State Bar. The Oregon State Bar has retained the public relations firm of Goodrich and Snyder to prepare these releases for publication in the farm journals.

Mrs. Betty B. Schrick has been the liaison between the publications and the bar association, and an article has been submitted and published every month in the "Idaho Farmer" a farm cooperative publication. The articles are prepared in Oregon, submitted to Mrs. Schrick, who in turn submits them to the Idaho Bar to be conformed, and they are conformed and returned for publication.

The Committee knows they are being read because of the mail response one particular article stirred up.

Upon the recommendation of the State Bar Commissioners, the committee is preparing a report upon the use of the "Annual Legal Check-up" kit, used by the Michigan State Bar. And having completed the publication of the pamphlets, and needing only to complete the distribution to conclude that phase of its work, the new committee will undertake to forward the "check-up" project.

In closing and speaking as chairman of the committee and on my own behalf, I want to thank the committee members with whom I have worked for their fine cooperation and assistance.

And again, speaking only for myself, I would strongly recommend to the bar and urge it to get each member of the bar to participate in this program. Three committee members, or the members plus the local public relation chairman cannot carry the load effectively, do the work that needs to be done in the public relations field. Each individual member of the bar must contribute and participate, or the efforts of the committeemen and the funds of the bar being spent by them are lost and to no avail.

Currently, there are 30,000 pamphlets to be gotten into the hands of the public and from which distribution, the bar is to benefit all through the state.

Finally, the pamphlets printed for the Bar by the Department of Law Enforcement "Your rights in traffic court" have all been distributed, and a reprinting of 10,000 used. The bar should make certain that another printing of these is had and distribution is available *and distributed* in all city and justice and probate courts of his area.

Respectfully submitted,
R. Don Bistline, Chairman

P.S.

As a postscript to the foregoing, it should be noted that the banks are carrying on the program begun under the Chairmanship of Alden Hull, of advertising the use of attorneys' services in preparation of wills and estate planning.

And the Committee wishes to thank the Commissioners for their help, and particularly grateful thanks to Secretary Paul Ennis for carrying out the details of the committee plans in publishing the pamphlets and newspaper articles.

Report of Economics of Law practice Committee

As a result of a number of meetings by the Committee on Economics of Law practice, studies of bar schedules of different areas of the state, and the bar schedules of surrounding states, the Idaho State Bar Advisory Fee Schedule was drawn as printed in an earlier issue of THE ADVOCATE.

The committee has published in THE ADVOCATE articles with the view of acquainting lawyers with the function of the committee with the purpose in mind that an informed Bar would be in a better position to consider the recommendations of the committee for adoption of the State Bar Advisory Fee Schedule.

In connection with the work of the committee on the fee schedule, an anonymous survey is being made of the lawyers to determine their annual income and the manner in which they practice, whether it be as sole practitioners, by partnership or association. The information to be obtained from this survey will be of great value in showing the reason for an advisory fee schedule. All lawyers are urged to respond promptly.

The local district bar association resolution to be submitted to the membership in connection with the advisory fee schedule and the resolution to be submitted to the State Bar meeting in this connection are printed herewith. It is suggested that the lawyers check these resolutions so they will be able to vote on them without the necessity of detailed explanation at the time they are presented.

Respectfully submitted,
Glenn Coughlan, Chairman

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