Proceedings of the

Idaho State Bar

VOLUME XXXIX, 1965

Thirty-Ninth Annual Meeting

SUN VALLEY, IDAHO

July 8-9-10, 1965

PAST COMMISSIONERS

Western Division

JOHN C. RICE, Caldwell, 1923-25
FRANK MARTIN, Boise, 1923-25
JESS HAWLEY, Boise, 1927-30
WM. HEALY, Boise, 1930-33
JOHN W. GRAHAM, Twin Falls, 1933-36
J. L. EBERLE, Boise, 1936-39
C. W. THOMAS, Burley, 1939-42
E. B. SMITH, Boise, 1942-48
CLAUDE V. MARCUS, Boise, 1949-51
T. M. ROBERTSON, Twin Falls, 1951-54
WILLIS E. SULLIVAN, Boise, 1954-57
SHERMAN J. BELLWOOD, Rupert, 1957-60
GLEN A. COUGHLAN, Boise, 1960-63

Eastern Division

N. D. JACKSON, St. Anthony 1923-25
A. L. MERRILL, Pocatello, 1925-28
WALTER H. ANDERSON, Pocatello, 1928-34
E. A. OWENS, Idaho Falls, Pocatello 1934-40
L. E. GLENNON, Pocatello, 1940-43
PAUL T. PETERSON, Idaho Falls, 1943-46
R. D. MERRILL, Pocatello, 1946-49
RALPH LITTON, St. Anthony, 1949-52
L. F. RACINE, Jr., Pocatello, 1952-55
GILBERT ST. CLAIR, Idaho Falls, 1955-58
J. BLAINE ANDERSON, Blackfoot, 1958-61
WESLEY F. MERRILL, Pocatello, 1961-64

Northern Division

ROBERT D. LEEPER, Lewiston, 1923-26
C. H. POTTS, Coeur d'Alene, 1926-29
WARREN TRUITT, Moscow, 1929-32
JAMES F. AILSHIE, Coeur d'Alene, 1932-35
A. L. MORGAN, Moscow, 1935-38
ABE GOFF, Moscow, 1938-41
PAUL W. HYATT, Lewiston, 1941-44
E. H. KNUDSON, Coeur d'Alene, 1944-47
E. E. HUNT, Sandpoint, 1947-49
ROBERT E. BROWN, Kellogg, 1949-53
RUSSELL S. RANDALL, Lewiston, 1953-56
CLAY V. SPEAR, Coeur d'Alene, 1956-59
MARCUS J. WARE, Lewiston, 1959-62
ALDEN HULL, Wallace, 1962-65

Present Commissioners and Officers

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R. V. KIDWELL, Idaho Falls, Vice President
JERRY SMITH, Lewiston, Commissioner
JAMES B. LYNCH, Boise, Secretary

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Fifth District—James B. Green, President, Pocatello
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Ninth District—Herbert H. Ferguson, President, Idaho Falls, Idaho
Twelfth District—H. Reynold George, President, Rigby
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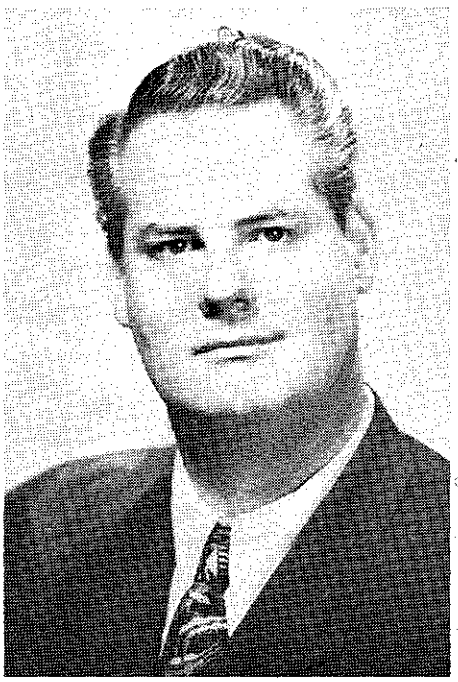
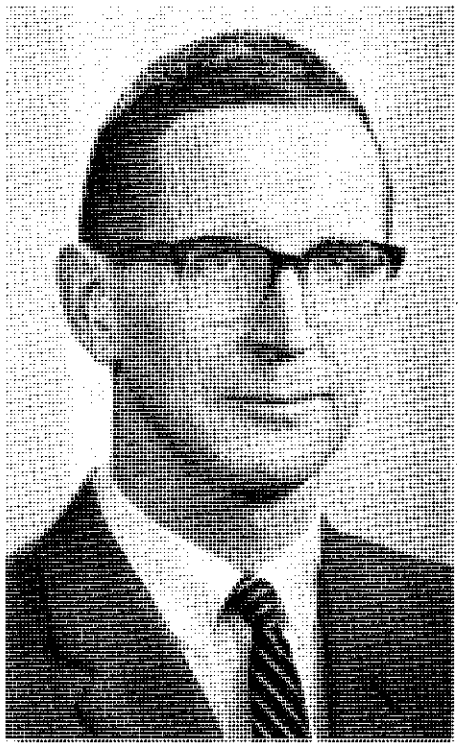


Joe H. Tonahill



John W. Reed

John C. Shepherd

John Gavin

THE IDAHO STATE BAR ASSOCIATION CONVENTION

July 8, 1965
1:30 p.m.

MR. HULL: It is my distinct honor to call the thirty-ninth annual convention of the Idaho State Bar. At this time I would like to call on the Reverend Eric Jungbauer of the Community Baptist Church at Hailey, who will give the invocation.

REVEREND JUNGBAUER: Let us bow. Our Heavenly Father, we turn at this time to Thee and humbly thank Thee for all the blessings which Thou hast abundantly bestowed upon the people of this country. We thank Thee for the fact that we can assemble here as free men and women and raise our voices to Thee in gratitude and praise. Forgive us, Oh Lord, when in the swiftness of our daily living we have forgotten Thee. Forgive us the false beliefs that we so often have that all things depend on us when they in reality depend on Thee. We are assembled here in Thy sight as stewards and administrators of law, justice, and mercy and we sincerely ask for Thy guidance in all that we have planned here this and the following days. Grant us the wisdom, strength and the patience to perform the tasks at hand that they may glorify Thee, and serve us and our fellowmen well. Fill our hearts with Thy spirit that we may deal justly, live righteously and love mercy. We pray that Thou would bless each one of us here today with peace and happiness and watch over our loved ones at home. This we pray in the name of our Lord Jesus Christ. Amen.

I have been asked to say a few words. I feel honored to have this opportunity today to open our convention with an invocation and to say a few words of wisdom, if you would like to call it that way. There are only two occasions in my life when I have required the sevices of members of your honorable profession. The first one was in West Germany after I had escaped from behind the Iron Curtain. I was then a boy of sixteen and had been arrested for lack of identification and was prosecuted for illegally entering the country. The second time was in Montana. I had a little parish up there when I was illegally in the possession of a fishing license and this was promptly taken away from me. I had signed my name above the fine print which I never read, as usual, but which, in fact, said that the holder of this license was supposed to be an American citizen, which I never was. The reason for such few occasions might best be illustrated by the man from Scotland Yard who interrogated me before I was allowed to come to Canada. He asked me if I had ever been in jail, and I said yes. And then I proceeded to tell him where and when and what the circumstances were and he said, I know, but have you been in jail any other time and I answered, no. Upon which he replied, then the police must have been too good to you. Maybe that is the reason why I have had so few occasions to need the services of members of your honorable profession.

We live in a time in which we have become so businesslike in our professions and often only for one important reason, which can best be illustrated by the following story. Once on Saint Patrick's Day a schoolteacher offered a dollar as a reward to the first pupil who could tell

her who the greatest man was that ever lived and the first boy stood up and said, I know who it was, it was Abraham Lincoln and the teacher said, no, he was not. The next boy stood up and said, I know, it was Napoleon, and the teacher said, he was not. And then the little Jewish lad stood up and said, I know, it was Saint Patrick and the teacher replied, you're right, but how come you don't think that Moses was the greatest man who ever lived and the little boy answered, in my heart I believe that Moses was the greatest man who ever lived but business is business. (Laughter) We have often so little time to go beyond the mere business transactions of our professions and do not give it the little something of ourselves that may influence people for the betterment beyond our dreams. President Johnson said it would be easy to do what is right, the difficult thing is to know what the right thing is that one ought to do and we as men who are in important positions in our society, we must know what the right thing is that we are to do and if we don't know, we must search for them. You are people who can have a tremendous influence in our communities and which needs today the best influence that there is. We are not left in the dark as to what is the best as in the days of falsehood. Today our Lord has shown us what is good, namely, to deal justly, to love mercy, and to walk humbly before our God. May the days that you spend here together inspire you to leave thusly and may God give you His strength and wisdom; Thank you for this opportunity. (Applause.)

MR. HULL: Thank you, Reverend Jungbauer. I am sure that we all feel humble realizing the experiences that you have had and when we meet here together. At this time, it is traditional to introduce some of our friends and guests and whereas we haven't got a great delegation as yet I am going to start off at this time, anyhow. I have a letter from the Governor's office expressing his regrets and I would like to read it. It is addressed to me, dated June the 16th, "Referring to your cordial invitation to Governor Robert E. Smylie to attend the Idaho Bar Association Convention on July the 8th, 1965, in Sun Valley, I now find the Governor's schedule such that he will be unable to be with you at that time. The Governor asks that I extend his best wishes for a most successful convention and sincerely regrets that he could not join you. Cordially yours, Robert B. McCall." I would also like to read, too, at this time a telegram from Senator Church addressed to me dated June 30. "I very much appreciate your invitation to attend the annual meeting of the Idaho State Bar Association at Sun Valley July 8 to 10. Unfortunately, the Senate Leadership has advised that important legislation is coming up at that time which prevents my coming to Idaho until later in the month. Please convey to the Board and the Commission my thanks for thinking of me and my very best wishes for a successful session. Signed, Frank Church, United States Senate."

At the moment, I do not see any members of the Supreme Court here. I do see a man I would like to introduce to you, the United States District Judge, our newest one, Ray McNichols; will you please stand, Ray. (Applause.) I hope you will excuse the informality, your Honor. Is the Honorable Judge Charles Carr from the Southern District of California here; he is at Sun Valley. (Not present.) I hope I will have an opportunity to

introduce him later. Is Ray Christensen from the Utah Bar, present? I am advised that he is still on the golf course. Is Lewellyn Young, president of the Nevada Bar here? He is with Ray. (Laughter) At the same time I have received regrets from the presidents of the Washington and Oregon and Montana Bars who were invited to be with us but for various and sundry reasons could not be here today. There are other guests in the audience but they will be introduced in the due course of time. I want to acknowledge thanks to Mr. J. B. Halliburton, Judge Charles R. Donaldson's Court Reporter, for his taking of the proceedings this year. He has been with us on a previous session and we have had very fortunate results in his getting out of the proceedings. I am going to introduce to you now another select group; we are going to pay further tribute to them during the course of this meeting, and that is some of the past presidents who are with us. I just have to go out of order and let protocol go to the breeze when I introduce the immediate past president because he was my tutor and he weaned me in this job and that is my old friend, Wes Merrill; would you stand up, Wes? Wes is just sitting back there with the biggest smile on his face and I know how that feels because I am getting the same urge. I would like to introduce Abe McGreggor Goff, from Washington, D.C. Abe was a president twenty-five years ago; is that right, Abe?

MR. GOFF: That is right.

MR. HULL: Would you stand please, Abe. Many of us remember Abe and he was very active in the political world and we're certainly pleased that he took the time to come out here from Washington, D.C. As most of you know, he is now with the U.S. Commerce Commission and has a very busy schedule. Mr. R. D. Merrill, I see you out there; will you stand up. (Applause) Gilbert St. Clair and J. Blaine Anderson; Blaine, would you stand. (Applause) And lastly but not least, Sherm Bellwood. (Applause) As others join us, I'll take the liberty of introducing them.

As you observed your program, you'll notice that at this time we're going to call on the A.B.A. delegates of the Idaho State Bar. We have two delegates and if I am correct in my statements here, I hope they will take the liberty of correcting me. Sherm Bellwood is representing the Idaho Bar and he was appointed by the Commission as a representative of the Idaho State Bar. Blaine Anderson is our other delegate and he is elected at large by the members of the A.B.A. in Idaho. The Commission felt that these gentlemen had something to tell us and so we have arranged for the time upon the program. I understand you have decided Sherm would be first. Is that correct?

MR. LYNCH: Correct.

MR. HULL: Sherm Bellwood from Rupert, Idaho. (Applause)

MR. BELLWOOD: You can see what an operator Blaine is in this business. He wants to see what I am going to say so he'll know what to say. I am going to leave quite a bit for Blaine to say. I would like to tell you that, regarding the division of authority, so far Blaine and I haven't concelled each other's votes in these meetings and we have gotten along pretty well. The American Bar Association, of course, has been

accused of a lot of things but it has never been accused of failing to take a leadership in matters of considerable public importance. It is a real pleasure to be able to represent all the lawyers of the State Bar as I do in my capacity.

In speaking of matters of public affairs that the American Bar Association has taken an interest in, you probably read in the last one or two daily papers about the question of presidential inability being passed by Congress and sent to the various states to be ratified by the requisite number to become an amendment to our Constitution. The American Bar Association, I think, probably can bear considerable responsibility for that proposed amendment. The American Bar Association saw the need and after much study came up with the proposition which has been adopted by the Congress almost in its entirety. On the other hand, the American Bar Association does a lot of things for the individual lawyer, too. One thing they're working on real hard now is this question of attorneys fees and proceedings before federal agencies and you're probably all familiar with the various limitations there are on attorneys fees and requirements for filing agreements. Compensation agreements for clients have to be approved by the federal agency. The American Bar Association feels pretty strongly about that and is trying to get rid of it. I just cite these two examples to give you an indication of the range of topics that are taken up by the American Bar Association.

I can report that Idaho ranks somewhere around fourteenth for the number of the attorneys who are members of the American Bar Association. That is pretty good ranking, I think. Nevertheless, there are approximately forty-five per cent of the lawyers in Idaho who are not members. Those who are members get all the various news bulletins and the Journal and presumably know what goes on in the American Bar Association. The other forty-five per cent do not get that information. I would like to say to them that regardless of what their feelings might be about belonging to an organization that large, some hundred and twenty thousand lawyers, I think, belong to it. Regardless of what their interests are in the practice of law, they will find something some place in the American Bar Association program that will be of considerable interest to them. I am not here to plug for memberships as such; I wasn't sent here to do that, but I would like to say that forty-five per cent are missing a good bet. When the House of Delegates meets twice a year, they have an agenda of some one hundred and five items which takes in pretty much the whole range of American law. Someplace in there is a place for lawyers in Idaho who do not now belong to the Association. They can receive something and they can also contribute something for the general welfare of the entire legal profession and for the public. There are approximately seventeen sections in the American Bar Association which you can belong to or not as you see fit. The dues are minimal for those sections. There are specialized sections on the narrow branches of the law. Those members who do not belong can certainly find something of interest there and could contribute to it and I think if any of you here today do not belong, I think you should seriously consider it, because the American Bar Association is a leader in public opinion and public affairs in this country. Again, I would like to say, that Blaine and I work real hard to avoid this little

duty which was put upon us today. And Blaine works so hard at it, that he brought a gentleman out from Chicago that he is going to introduce to you later to take our place and they told us that this is just fine, you fellows won't have to do anything. About eleven o'clock last night they said, you're on, so Blaine, I hope I have left a little something for you to say. (Applause)

MR. ANDERSON: Thank you. First of all, I would like to express my appreciation to all of you for the confidence that you have reposed upon me. This is the first opportunity that I have had since elected to House and I'll do my best to merit your confidence. Sherm has told you correctly the position that we were put in and I think Sherm has covered pretty much the field and the important points that properly ought to be in any report by the two delegates to the House. He mentioned the sections of the American Bar Association. I wrote something of the general practice section that I think was in the May issue of the Advocate and I want to refer to it again. You know, for many years, the American Bar Association was criticized for not having something for the general practitioner. I don't think that criticism was justified but in recognition of that, four years ago, at San Francisco, a general practice section was formally recognized and organized within the framework of the A.B.A. John D. Randall, former president of the A.B.A. who has attended at our Bar, Sherm Bellwood and Judge Smith and a number of others who were instrumental in bringing about the formation of that section. They publish quarterly what is known as the Law Notes of the General Practitioner and it's just exactly what the title would import. It has received wide acclaim. It has a board of editors that are the elite of the profession in all of the fields of law. It has been said that it is a more practical publication for the general practitioner than the Practical Lawyer which I am sure some of you subscribe to. I believe that will conclude my report. When Sherm and I were advised that we were going to be called upon to make a report, we panicked and started to scurry around for somebody to take our place whom we felt would have a real message for you and we think we have found him and he is here today and I might say without expense to our small Bar which we appreciate.

The man is Robert E. Allard of Chicago, Illinois. He is from there most of the time. Bob has received his law degree from the University of Chicago. His wife, you might be interested in knowing, is a practicing lawyer and general council for a large corporation, world-wide corporation, with offices in Chicago. Bob is director of special projects for the American Adjudicator Society. For over fifty years the Society has been the leader in judicial reform and administration and kindred subjects, such things as rules of criminal procedure, civil procedure, judicial selection, tenure and administration and anything to do with the courts. About five years ago a joint committee on judicial selection, tenure and administration was organized. Tom C. Clark, Justice Clark, was named chairman. Bob at that time was with the American Judicature Society and this was a combination of organizations such as the A.B.A. section on judicial administration and the Trial Lawyers Association.

The American Judicature Society started this program of citizens con-

ferences which are designed to arouse the citizens of each state or a community to the need for various judicial reforms. There have been over ten such conferences held. The most recent one, I believe, was in Florida and with amazing success. Bob is organizer of these conferences; he is the whip and, believe me, he does a job. Now you know the problems in our Bar in trying to accomplish court judicial reforms and legislative reforms dealing with the courts constitutional reforms. We have facing us in all probability a constitutional convention. All of this is within Bob's field. If there is any one man in the United States who knows the whole works about judicial selection, tenure and administration, it is Bob Allard. You may not agree with everything that Bob says or the proposals he would make. Gentlemen, if it excites your interest and makes you think and sends you back to your communities or puts pressure through you to your Commissioners to get us a conference in Idaho to help us, then Bob's time will have been well spent in the interest of justice. At this time I would like to present Robert E. Allard of Chicago, Illinois. (Applause)

MR. ALLARD: Gentlemen, as relaxed as you get out here in Sun Valley, I would be real tempted just to talk to you but I made the mistake of releasing some remarks to the newspapers in Idaho and I have learned a lesson, when you tell a newspaper man that you are going to say something, you get it said even if you just talk to yourself, but somewhere you say it. I want to talk to you quickly about the national movement for court reform and why.

Justice under law in the United States today is very close to the brink of bankruptcy, not because business is bad but because business is too good. We are just on the growing edge of a law explosion that is already threatening to engulf our metropolitan courts. We have courts today where delays are up to eight and nine years before cases get to trial. In certain of our courts where the accused cannot afford bail, they may stay in jail for six months before they get a trial. A single judge in certain traffic courts may be required to handle as many as four hundred accused in a day. Look, that's fifty an hour for eight hours without even a coffee break. Just recently a single judge spent three days returning guilty findings against 632 defendants and announced that he would take three days to sentence them in groups of one hundred. Divorce cases are on a production line and juveniles are being handled like so many widgets. And the point is, it's going to get worse instead of better because the administration of justice has always been big business, and it's going to get bigger. As a result of this, I would allege on the basis of my experience many of our courts are already in the first stages of bankruptcy.

Now why? Well, let me paraphrase Justice Clark. Recently he told a group of citizens that most state courts are organized and run like the Nineteenth Century general stores where half of the help spend most of their time trying to find lost items while the other half sit around the pot-bellied stove and do nothing and the customer, that is the public, wait. There is little organization, less business-like management, obsolete methods and inadequate facilities and personnel who too often are more to be commended for durability than distinction. It's little wonder at the conclusion of four days of deliberations seventy representative citizens

representing twenty states across the country issued a report which began with this conclusion: the administration of justice in the United States is in trouble. Now why? Well, first there are more people. Look, in 1930 we had a population of roughly a hundred and twenty-two million; in 1960 it was a hundred and seventy-nine million. Now, that is forty per cent increase in less than thirty years and we have only started. Our population is going to double before the end of the century. All right; more people need more courts. Secondly, most of those people are congregating in urban areas. Now, it wasn't too long ago when less than fifty per cent of our population lived in so-called urban areas. Today, it's seventy per cent, before the end of the century it's going to be eighty per cent and when you get more people in more restricted space you have more court business. The cities have always been the best source of court business in any habitat. It was true in Rome, it was true in Paris, it was true in London, it is certainly true here in this country because when you double or triple or quadruple the number of people, you are going to more than double, triple or quadruple the number of automobile accidents, the number of family breakdowns, the amount of crime, the amount of juvenile offenders, the amount of civil disorders.

I mean, look, you haven't as far as I can gather yet a real example of civil disorder in Idaho but you ask Mr. Christensen, they had one in Salt Lake City. Now, I have been in Salt Lake City and boy, that is a pretty hot swinging town. I lived in the South side of Chicago right in the middle of the black belt and let me tell you this is going to be a long hot summer. It started over a month ago and I don't know when it's going to be over.

Third, our accelerating scientific and technological and industrial society are throwing at you and at your courts a whole host of new problems that we haven't even thought about. Just one example: Less than ten years ago space law was the esoteric hobby of a few law professors. I remember I went to the first national conference on space law and it was sparsely attended by the practicing bar. But look, last month when I was down near the Cape when it happened when Gemini 4 went off, the Early Bird was up there transmitting live pictures of that takeoff across the Atlantic and we have only begun. I mean, the moon is only tomorrow and this means more and complex problems for our courts to solve.

Fourth, whether we like it or not, there is a growing persuasion in our society that is already beginning to be reflected in legislation that everyone has the privilege to legal services whether they can afford them or not. Now Gideon and his accompanying decisions are undoubtedly here to stay and there are probably going to be more of them. Already the war on poverty program has given grants on legal assistance.

Fifth and most important, the reason for our courts being in the shape that they are: Lawyers and judges individually and collectively have systematically failed to face the facts and the issues of court modernization. Now look: In 1906 Roscoe Pound told the A.B.A. what the facts were and if you read that speech today, and every lawyer ought to be required to read it every fall before he starts practicing, and every judge, all you do is change a few names and the facts still stand. 1906; that is fifty-nine years ago. Now, you know the law moves slow, that is, its function in

society. I mean, we're agents of a cultural lag. All right, but gentlemen, you know, after all, sixty years is a little long. The church is slow, too, because it is also an agent of cultural lag in the sense of conserving values, but I must say with all indifference as compared with the lawyers and the judges, the clergy does get on the stick, they are usually only twenty-five or thirty years behind society.

All right; in 1914 the American Judicature Society published its State-Wide Judicature Act which embodied the basic principles that Pound had set forth. In 1914, fifty-one years ago. All right, today there is not one state in the Union that has a state court system which embodies all of the principles that were set forth in that model act and it wasn't until 1962 that we got the House of Delegates in the A.B.A. to ratify those principles when they adopted this model State Judicial Law.

Now, let's not say there hasn't been some progress in the last fifty years. Now, in the late thirties the federal courts set up an administrative office and started in on modernizing rules of procedure. Today most of the states have taken some steps toward modernizing their rules of procedure and about half of them have set up some kind of an administrative office and as I understand it Idaho might have joined that majority except that there was a veto on a certain bill. Incidentally, Connecticut just passed; the legislature just passed a bill that sets up an administrator who becomes an associate justice of the Supreme Court and has full responsibility for the administration of every court in the state including the so-called courts of limited and special jurisdiction. Now, back to the past. Missouri got around to facing the issue of judicial selection in 1904. New Jersey started and got most of it done in terms of unified state court organization except in the lower courts in 1947. The World War II intervened and things stopped. In the late 50's we began to move again; in 1960 California got around to being the first state to adopt a really effective method of involuntary retirement and removal of judges, so that there is some progress has been made and there was some progress made before 1962 but I think it can be said at best this was a glacial pace. No one could accuse us of being in the jet or the rocket age, but we finally are starting to get on the move. Now, I take 1962 because it hopefully will become a watershed year. In 1962 the A.B.A. did adopt its model judicial law. Colorado and Illinois both adopted statewide unified court systems from top to bottom, including all the lower courts. Iowa and Nebraska finally got around to being the first two states to adopt by constitutional amendment merit selection for all of their state court judges. In that same year the joint committee about which J. Blaine spoke was set up and began to operate on two fronts; one, on continuing judicial professional education through a series of judicial seminars which resulted in the establishment now of the National College for State Trial Judges which is in session right now. The other side of the coin was a program of citizen education of the courts. This evolved itself into a court modernization conference for non-lawyer civic leaders which have now been held in fourteen states and within ten of those states permanent citizens organizations have either been formed or are being formed to carry on a continuing concern about the administration of justice, and just as important, in every one of those ten states there is now some major court reform measure either in the legislature,

passed by the legislature or being prepared for the legislature and this fact underlines the basic premise of court modernization. The seventy citizens who attended the American Assembly on The Courts and the Public and the Law Explosion recently about which I spoke concluded their report with this decision: Justice is everybody's business and every American has a stake in the affairs and the efficient operation of their courts. In the final recommendation the assembly came up with the conclusion that citizens committees on the courts should be formed in every state to enlist the informed and active support of the public in the cause of judicial reform. Now, they simply underline what men like Henry Luce and Samuel Rosenman of New York and Justice Clark have been saying for quite some time, that there is no real hope for significant improvements in the administration of justice until there is informed, concerned and militant civic leadership, and on the basis of considerable experience, I can assure you that when your citizens become informed, they become both concerned and militant.

Now, let me put a question to you. Are the civic citizen leaders of Idaho —I'm talking about the men and women who provide the educated civic leadership in your state—informed about the administration of justice in the courts of Idaho today? Now, on the basis of absolutely no information I will baldly assert that they are almost without exception functionally illiterate about their courts, how those courts operate and how they can be informed and improved. And if they are not functionally illiterate, then they are certainly different than the more than two thousand such leaders that I have worked with in the fourteen states during the past three years. Now, if they are ignorant, how can we get them informed? Now, let me—this is in the text but let me paraphrase it. What we do is this: You bring together fifty to a hundred of the top leadership of your state representing all segments of state life and all geographic areas. Now, I haven't been here very long and I don't know anything about Idaho but I certainly learned that there is a north land up there and that there are some Mormons down there and that there is an Idaho Power Company some place and I have been in enough bars to know that the liquor interests have something going. (Laughter) The teachers, I don't know how well they are organized but they are always around. You have bankers and you have newspaper editors. There are thirteen dailies in the state; these people I am talking about, I want the top, you know. You bring them together. Before they come they are given a book, a book that is specially printed. It contains a chapter on the facts today, the fact that in this so-called non-partisan elective state, if my figures are right, only one member of the Supreme Court went on the bench originally by election. That is eighty per cent another way. And of all your judges, twenty-seven, only twenty per cent, went onto the bench by election originally. How about the other eighty per cent? They were appointed. Now, you say you have an election; I say look at the facts. And I'll lay a little money that your people don't know these facts. They don't know your JP courts and who staffs them and how much experience they have had and what kind of administrative control you have got over them, or your probate courts. They don't know the disparity of workloads among your several district courts; they don't know what the conditions are on the Supreme Court right now. If they found out and if they found out how

those courts were operated —let me put it this way; I'll wager you haven't got; if you have a businessman client that employs more than twenty-five persons that if he tried to operate his business like you operate your courts, you would be filing a petition of bankruptcy for it, if not now, within six months. Just the facts, no judgments.

Then a chapter of readings on each of the major issues that you have got. Namely, you have selection; you have retirement and removal; you have got organization in your courts; you have business administration in your courts, and you have a real problem, it seems to me, maybe not now but tomorrow in the staffing and operation of your so-called minor courts where lawyers seldom appear but most of the people get their taste of what justice is. All right; bring these people together and we put them into separate groups; home rooms of about four or five groups. Then there are teams of lawyers and judges including lawyers and judges from other states who have either faced these problems and tried to solve them or are facing these problems and working at it and doing something about it. These teams rotate, each team on a particular topic, so that everyone at the conference by the time it's over has discussed all these major issues. When I say discussed, I mean discussed, this is not a typical panel discussion. I mean, these people really have a chance to talk to one another. The discussion leaders are there only to answer questions and to show other possibilities and to raise additional problems. At the conclusion of this conference, this group comes together as a whole and adopts a set of recommendations, a summary statement, and invariably this statement calls for a formation of a continuing citizens effort to improve the courts and with the right kind of Bar back behind the scenes leadership and stimulation, this group then becomes the effective means by which you start talking to the legislature.

Now, I don't know about Idaho but in a good many states any bill that can be tagged as a lawyer's bill, it's thumbs down—just like that. But you take a hundred leading citizens of your state and have them as the apparent and real sponsors and have them in their own home communities go to their representatives and senators, they start thinking differently about this. And incidentally and parenthetically, and this is not in here; just let me say this, in those states where we have carried out these conferences, I think without exception that the informed Bar leadership will gladly admit that it was the finest public relations program in which they have ever indulged. Look, let's face it, and I'm not going to win a popularity contest for this but I am going to say it because it's the truth; the people do not have a too high regard for members of the legal profession and that is being very kind. Every survey that we have had that wasn't an attempt to whitewash has shown that people don't trust us. Now, and when we give to them at best an image of high man on a pile of manure, they are still not going to trust us because they do not perceive us as public servants because in many instances we don't perceive ourselves as public servants.

But we are officers of the court and this type of a conference gives the legal profession as a whole and the lawyers as individuals an opportunity to stand up and to be counted as persons concerned about something that is important to the people; namely, their life, their liberty and their

property because that is what is at stake every day on the line in our courts. All right now, we tried this the first time in Missouri in 1940 and it worked. This is the way the merit selection was first adopted. They put theirs through with a thousand member lay committee with a leading editor as its chairman. New York used its citizens for modern courts with the chairman of the board of the Chase-Manhattan Bank as its head. Oklahoma has incorporated an Institute for the Administration of Justice and Colorado just formed a Citizens Counsel for Non-Political Courts with a retired college president at its head. Pennsylvania has a Modern Constitution for Pennsylvania headed by the president of a major department store at its head and the Florida citizens' organization is headed up by a very well known doctor in the state. In Texas we have got 3,500 members of the League of Women Voters now studying discipline and removal, which got through the legislature, and merit selection and I am convinced that without regard to the fifteen thousand members of the Texas Bar we're going to get something done in Texas because those thirty-five hundred women are worth five times their weight in lawyers. (Laughter)

Now, this is the whole story; I have started out by saying it was a national movement; let me take you on a trip around the country. Let me start out at the Pacific Northwest. I was there ten days ago meeting with a committee of judges and lawyers studying a revision of their whole judicial article and constitution. I have real hopes that the committe is going to come up to the Bar and say we don't want a patchwork, we need a complete revision; let's get with it. Arizona, the Bar that has got their courts fairly well unified and now implemented, they are going to work on merit selection. Their recent poll showed two to one for it. New Mexico, we had a conference; we have eliminated justice courts and a citizens organization is being formed to carry on the fight for merit selection, discipline and removal, and administrative reforms.

Let's go to Texas next. The legislature just passed a modified California plan for discipline and removal of judges and selection is next. Arkansas: The Governor's Commission has just completed a two years study of their state court system and they have come up with a whole new judiciary article and we will have a conference there in September to go to work on that. Kentucky now has a commission now studying the revision of their judiciary article. Tennessee just passed legislation that will beef up their administrative office and make it effective. Florida got retirement and removal through the legislature that will go to the in November; a citizens organization is being formed to go after court reorganization and selection. Georgia, we were just there. We think in the next year that something is going to happen in the selection. We go on to Pennsylvania, where we have a Bar that has approved a whole new judiciary article and a citizens organization has been formed and I think they will be in there in the next session of the legislature. Maryland passed a retirement and removal plan and there is a citizens group working on merit selection. New Jersey, we have a hassle between the Governor and a couple of senators on advice and consent of the senate for filling vacancis. They have got a backlog and the Bar has finally started to work on selection. New York, where Mayor Wagner has used a voluntary selection committee for nearly three years, there is now a proposed constitutional

amendment in the legislature to make this permanent. Vermont just passed merit selection for its appellate judges and to reform the lower courts. Governor Volpe of Massachusetts has pledged voluntary use of the commission plan for selecting new judges. Now, let's start back this way; Ohio, there is both a court reorganization and merit selection proposed in the legislature; I don't know where it is. I mean, I haven't been in touch in the last five days. Indiana, who had a conference there and there is now a bi-partisan commission set up to study the courts for two years with an appropriation of fifty thousand dollars a year and I think I know where they are going to come out. In Michigan we have got a new judiciary article under a constitutional convention but we have got to implement their minor courts provision and that will be worked out. Illinois, we got complete court reorganization through and merit retention of judges but not selection; it's now recommended, we're going to work on selection. Wisconsin, the governor's commission has just recommended merit selection. Minnesota: I was there two weeks ago; they got defeated on a county court bill to reorganize the lower courts; I think we're going to go after the whole package. North Dakota: We got through the legislature a constitutional amendment on merit selection for all of their state court judges. I was there in the last two or three weeks and we are now going to work not only on retirement and removal but also on a complete study of administration and the structure of courts. South Dakota; a legislative committee has finished a two years study and have come up with a proposal for a whole new court system. We'll have a conference there in October to consider this and get ready for the 1967 session. Iowa got their merit selection through in 1962; they got discipline removal through in 1963 and we have gone to work on minor courts this year. Missouri: We'll have a conference there in October. The Bar Committee has already come up with a retirement and removal plan. Kansas: After a conference, a whole new judiciary article was introduced into the legislature; it was a little late but I think we got some of it through, I haven't checked in the past few days. Oklahoma, where we had the dubious privilege of a miserable scandal that set the courts back in terms of public confidence about twenty-five years to put it mildly; we're going to get through the legislature we think minor court reform and merit selection. We may get a hearing; if not this session, at least in 1967. Now, I have to come back up. Colorado has put through their court reorganization in 1962. They have got it implemented now. It includes both a plan of selection and plan for discipline removal, a citizens organization has been formed but I think they are going to go to the initiative group because they can change their constitution by initiating a petition and a vote from the people.

Now, where am I, Montana? No, Wyoming. In Wyoming they are holding a conference there this fall. We have some hopes that at least the merit selection and discipline removal can be considered. Montana: I have been working with the Bar there and again there is some hope that something will happen. Utah has got a constitutional convention in the foreseeable future and they better get busy because they have some problems, too. Now, let's come to Idaho. If I hear it right you have a constitutional convention in three years and let me tell you something, in a constitutional convention there are really always two sexy issues; one is the apportionment of political power and the other is finance. You can

always count on it that these are the things that everything else is going to be bargained for and they will horse trade anything in order to come up with what they want on those two issues and unless you have got a constitutional amendment, a judiciary article already worked out that is what you think is the best and unless you have already sold that to a sizeable proportion of the thought leaders of your state, you're liable to end up with worse than what you have got now. It's happened before; it happened in Michigan. They had a miserable constitutional provision for their courts. Their judiciary article was as most in the United States, something of the early Nineteenth Century. They brought in a draft of a fairly workable, I thought, new system except they hadn't bothered to even educate the lawyers what was in it and they certainly haven't let any citizen leaders know about it. All right, so they went into a convention so in the flurry of the last day of adopting the convention people started horse trading and they came out at best a hodge-podge. Some of them like to say it's pretty good but I don't think any disinterested observer could honestly admit and most of the lawyers there when they stopped putting on their front and started leveling admit that it's something less than desirable.

All right, you have one coming. I say to you that you owe it first to yourselves as lawyers and secondly to the administration of justice, and remember this is as far as I am concerned your only serious professional obligation as an officer of the court, and thirdly to the people of this state to it when and if a constitutional convention is convened that every member of that convention is already persuaded and educated that what you have proposed to them is the finest answer that any state could have as you look forward to the next twenty-five years of your existence, and I thank you very much. (Applause)

MR. ANDERSON: Gentlemen, we have about five minutes if you would like to direct some questions to Bob I am sure he can bat them down for you and give you the answers to them.

MR. SHERWOOD: Bob, how are these citizen committees gathered together or selected as a rule?

MR. ALLARD: You mean of the conference, initial step?

MR. SHERWOOD: Yes, how is it started?

MR. ALLARD: The way it starts, all thirteen or fourteen conferences have been where the state Bar co-sponsors this. All right, a committee of lawyers and judges is formed to be responsible under the thing. This committee gets together and says okay we're going to cover these topics and we want this number of persons. All right, then the committee goes out through its commissioners through, in this case probably your district Bar Associations and whatnot and says, all right, give us the name of any number of people in your community. Tell us two things: One, what are they; you know, dentist, lawyer or whatnot; secondly, how important are they in your community. Now, for example, in Kansas there was a druggist and a banker invited to this conference, not because they were a druggist and a banker but because they were very high in the councils of the United Drives. Now, the United Drives in Kansas just happened

to have one of the most powerful lobbies in Topeka and we knew if these two men agreed in principle to this that when it came through their council and with what stand they would take their council would go along. Now, they were not officially invited as representatives of their organizations, they are invited as interested citizen leaders. These names come in and the central screening committee takes this and works it out so that one, there is a geographical representation that makes sense. For instance, in Florida, all the population down the southern half of the state already had the merit selection, for example in Dade County in the local courts and we knew we had it. On the other hand, the real opposition was up in the legislature; was up in the red neck area. All right, we had about fifty per cent of the citizens from that northern tier of counties even though simply because in terms of political density they were critical. All right, then you want a broad cross section. You want every power group in your state represented and you make this decision, I don't. I mean, all I do is just ask questions but I will take cattle, mining, lumber, sheep, grain—I don't know about grain, I haven't checked that one out; transportation, power, banks, insurance, teachers, the Mormons and whatever other church groups that have some influence; your educators, not only teachers but your institutions of higher learning, League of Women Voters or whoever it is and then when you make a decision on your first choices then those names are sent back to the local lawyer and he goes and makes a personal call and says, okay, now look, I want you, you owe it to yourself and to this community to go up there and get this message, so that the individual recruitment is done on home base.

MR. ANDERSON: Laurel, do you have a question?

MR. LAUREL ELAM: What type of merit selection has been worked out in Missouri, for example?

MR. ALLARD: Well, let me talk two things; one, there are specific plans and two, there are principles. I would like to talk principles first. We know as a matter of fact that over fifty per cent of our judges in our socalled elective states are initially appointed to the bench by the governor. This is one main judicial selection. In Idaho you have a higher percentage than this. All right now, the basic principle of merit selection is that the governor or the appointing officer should not be put in the position of being exposed to having to pay off political debts in order to fill judgeships. So, in between the governor and his political creditors we put a nominated commission who gives him three or four names. Now, it doesn't make any difference on the number; the traditional pattern has been three; many states today think that is too few and are giving five or seven but see to it that these are qualified men on the basis of their own merit from which he then has the privilege of choosing one but he can't choose anybody else, he can't go outside of the limits of the names that are submitted to him. These men then go on the bench. Now, that is selection. The other side of the coin is retention. That is when a judge comes up at the end of his term of office how can it be best set up to determine whether or not he shall remain in office. Federal system, appointment not for life but for good behavior. The typical political situation is that he runs unopposed or against a candidate; in merit retention as it's been worked out he runs against his record. The voters have the privilege of

saying, shall Judge So and So be retained in office; yes or no. If more than the majority vote no, there is a vacancy which is again filled through this nominating process. I mean, this is basically what I am talking about when I say merit selection.

MR. ELAM: Has any state made provision with the Bar Association for example that would submit those three or four candidates?

MR. ALLARD: Yes, sir; two states have and in both instances the constitutional amendments were voted down resoundingly by the people. But on the commissions typically the Bar has representation, usually about fifty per cent. Well, it varies from state to state but the classic pattern, I mean model pattern is fifty-fifty, half lawyers, half laymen and typically a presiding judge is the chairman with or without vote. Any questions?

MR. HOMER MARTIN: There is one question; does this committee have a list of lawyers that have made application for or placed on the list or do they at the time there is a vacancy go out and try to select one?

MR. ALLARD: Well, it varies from commission to commission but let me give you my experience that I have had with one, very close experience that I had with one in Missouri. This commission filled vacancies on the trial of Jackson County which is Kansas City. Here you have a commission of two lawyers, two laymen and a presiding judge of the intermediate appellate court. I mean these five people serve as a screening committee. They do two things; one, they announce publicly that any lawyer who wishes or any person who wants to nominate a lawyer may do so. In addition to this, the commission members themselves on their own motion go out and find persons out of their own experience, and this includes the lay members as well as the lawyer members, that they think ought to be considered. In one instance I know when they got around to closing their list to begin deliberation they had fifty-nine names which had to go down; in this case they were filling two vacancies; had to go down to six names because they are obligated to present three names for each vacancy. Now, they didn't have a great deal of trouble selecting out the first twelve or fifteen they thought would be the best, but when they started to go from twelve to six, they really began to sweat because it was no longer a matter of legal ability. They had chosen lawyers who had demonstrated legal ability. It then became, how would this man behave on the trial bench and you take an area like Kansas City, the judges really earn their; well, they earn more than their salary and you have a human factor to determine here. Now, on this particular commission, the laymen, one was the executive vice-president of a national steel corporation who had a plant in Kansas City and this man hired and fired more personnel that most—well, than you'll ever hire and fire in Idaho in fifty years. I mean, this man knew personnel. The other was a leading doctor in the town. They went out and personally interviewed all of these men and put them deliberately under stress situations to see how they would react. They formulated their independent opinions, the lawyers did, they finally came out with six men. And the important thing was this, tbat of those six, they were convinced that no matter who the governor appointed, they were going to get a better than mediocre judge.

MR. ANDERSON: That is all the time we have. Sherm and I would like to add one thing to our report, and that is merely to remind you gentlemen that there is an A.B.A. regional meeting at Seattle Washington, on September 16th, 17th and 18th. This is the educational program of the American Bar Association brought to the region to reach the lawyers. Just coincidentally the University of Idaho-Washington football game is on Saturday afternoon, September 18th; hope you will be there. Thank you, Bob. (Applause.)

MR. HULL: Thanks you very much, Sherm. You certainly had a good backstop for your report and we are very appreciative for Bob Allard taking time to come to Sun Valley to bring us his message. It doesn't take much stretch of the imagination to know that Bob is a real crusader. Before we proceed to the next speaker I want to make this announcement. At the annual meeting as you know it is traditional to announce the selection of the new commissioner and it's my duty to appoint a committee to canvass the ballot submitted by the attorneys in the northern division this year. On that committee I would like to have Frank Joseph for the western divison and ask if he will serve as chairman; to have James B. Green to represent the eastern division, and Ralph Hailey of Orofino to represent the northern division. If you gentlemen will meet with Jim Lynch in Room #233-A at the conclusion of today's session he will have the ballots there and it will take just a few minutes I'm sure to tally those. At this time I would like to call upon Jerry Smith to introduce the next speaker.

MR. SMITH: Thank you, Mr. President. It gives me great pleasure to introduce our next speaker to you. He is no stranger to us or to the State of Idaho. He worked his way through the University of Washington by scrubbing blister rust in the north Idaho forests. I first met this gentleman some years ago when I was a witness in a lawsuit which he was trying. And he was very busy and is a very busy lawyer and so he couldn't entertain the visiting firemen on this particular evening after the first day of the trial, so he turned us over to opposing counsel for entertainment. The fact that the case was ultimately lost, I'm sure, had nothing to do with this but I think it's illustrative of the confidence that Mr. Gavin has of his fellow counsel, and in his talk today, A Tribute to the Legal Profession, I am sure you will see evidence of that. At this time I should like to ask Mr. Gavin to step forward. I am sure he will give us an inspiring talk. (Applause) I want to say this about John, too, that he was with us last year as the visiting President of the Washington State Bar, served on the Board of Governors of the Washington State Bar and is the immediate past President and he graduated from the University of Washington in both undergraduate work and took his law degree at the University of Washington and scholastically was a Phi Beta Kappa there—Mr. Gavin. (Applause)

MR. GAVIN: Thank you, Jerry. Members of the Board and members of the Idaho Bar and guests and members of the judiciary. That was a very flattering introduction Mr. Smith gave me. He had very limited material with which to work. I suppose you all noticed that I am listed as a past president of a Bar Association. This is always a tipoff that I am undoubtedly here in place of someone else who couldn't come because there is nothing more past than a past president as some of you out there in the audience know. To be brought back to speak to a group like this is sorta like at-

tending your own resurrection. (Laughter) Actually, I think I should start out; it would be very presumptuous of course for any lawyer from the State of Washington, your neighboring state, to come over here and talk to you because certainly the profession here and in all of these parts of the Northwest is certainly the same and I would have no right to do so unless I listed a few of my qualification. And actually Jerry doesn't know this but I have had considerable experience with Idaho and in the practice of law in Idaho which may interest you. As a matter of fact, I was hopeful at one time that I might be introduced as a member of your Bar because I spent two years in Shoshone County trying a protracted case and I used to attend the regular meetings of that Bar. Finally I ceased being a guest and began paying dues to them. I thought that this would give me some entree with you but when I mentioned it last night I found out that there was some question whether Shoshone County is recognized as part of the State of Idaho or even of the United States. (Laughter) I might say that my experience extends all the way from Northern Idaho clear down here to Southern Idaho. In this case that we were handling in North Idaho, with Alden's father by the way, a large sum of money was awarded by way of back pay to a number of workmen in that area, and as soon as it was awarded in the federal courts there was a tremendous deluge of writs of attachment and garnishment and the money was divided up in the divorce courts and injunctions were issued and I was called upon to run from court to court in the northern part of your state and I tell you I have some experience with the administration of justice in the justice courts of North Idaho as it was then. (Laughter) I'll never forget that there was one court in particular operated by a justice of the peace who by profession was a part time barber and I discovered that a vast number of these writs of garnishment and attachment and whatnot were being filed in his court. And I also observed as you do that justice was speedy and quick in this court and always in favor of the plaintiff and I was defending, of course, and I was losing them one after another and finally I discovered being an outlander that this justice of the peace and his constable and his clerk and the plaintiffs all handled this case on a contingent basis including the judge. Now, you have had experience in dealing with an aggressive lawyer who on the plaintiff's side who has a case on a contingency basis but let me assure you that you will never receive any speedier justice in Idaho than when the judge himself is operating on a contingency basis. (Laughter)

Now, I don't know whether there is any sort of a thought here for your court reform. I view it with mixed emotions. Certainly it was speedy justice but I think probably the days of this judge have ended. Now, additionally, I see Abe McGregor Goff sitting here. I remember many years ago Mr. Goff was brought into court across the state line to testify that he was an expert on the laws of Idaho. I had the opportunity of challenging his qualifications as an expert to speak on the law of Idaho in our courts and I am happy to report that although Mr. Goff might not be an expert on the law of Idaho in Idaho, he sure is in Whitman County, Washington. (Laughter)

Now, my experience finally extends, and so there will be no similarity in name or locations or people involved, for lack of a better name, I will say that I one time experienced your practice here in what we will call

Benoit County, Idaho. (Laughter) One of my clients in Washington unfortunately became involved in an automobile accident down here and was not insured and it's here that I found out; you know, we brag about the pre-trial procedures that have been developed in the federal courts and these new tools of discovery that we have—this was many years ago and let me assure you that pre-trial discovery and pre-trial practice at the present time is in its infancy compared to the way it was handled in Benoit County, Idaho, just about fifteen years ago. I arrived to try this case with local counsel and the judge was going to try the case at nine-thirty and he arrived about nine-fifteen and his honor invited me and my opposing counsel into chambers before we started and he said, gentlemen, I have read the file, of course, but I think it would be real helpful if you both told me a little about the case, and he turned to the plaintiff's attorney and he said, what sort of evidence do you intend to produce and the plaintiff's attorney said, well, I have witnesses that will testify that the defendant was on the wrong side of the road, that there is no question about, and the maps and pictures will show it. And the judge said, well, what are your injuries and he said, well we have a broken leg that hasn't healed properly and we will have Doctor So and So here and he will testify that this man should have a certain amount of disability and he said, fine, and he turned to me and he said, Mr. Gavin, what sort of evidence will you produce? Well, I said, I'll have my driver and I'll have a state officer's investigation that will show that we were on our own side of the road, and we have had a medical examination and this doctor will testify that the plaintiff had no disability whatsoever. He said, fine, that gives me a good idea of the case, he said, now, we'll go out and try it and if the evidence comes in the way both of you say it will, I will hold for the plaintiff and award him forty-five hundred dollars. Now, we have two minutes before we go into court, would you like to have a settlement conference. So, we had a settlement conference; you would guess what we settled for and I walked out of that court before nine-thirty. (Laughter)

So as I tell you, the pre-trial as we know it today is still in its infancy compared to what it was then. Now finally, I am merely giving you my qualifications to speak to you. I am a member of the federal district of Idaho. I think I have some sort of a grandfather rights. Judge McNichols, I am sure, would let me practice in his court anyway as a fellow blister rust man of the old days. And I can say this to you that Idaho and you have always been fortunate in your federal judges, particularly so right now. You know there are some districts where federal judges are a little bit tyrannical and a little bit overbearing. I always remember one in particular who did not—he was not a judge here but near here—and he was trying a case in which one of my great friends, a predecessor as president of the Washington Bar, was involved. Both of these gentlemen have passed on to their respective rewards, so I am revealing nothing about the living. I am sure they went to different rewards as I think about it. (Laughter) But in any event, this case was tried before this judge and his inimitable manner gave this attorney friend of mine a real bad time. He was really on him throughout the trial. But when the trial ended it so happened that the judge and this attorney left the courtroom about the same time and got in the elevator together and they had to go down seven or eight floors over in Seattle, just the two of them. And the federal judge, apparently his

conscience bothered him a little bit as the two of them descended in the elevator and he turned to the lawyer and he said, counselor, I may have been a little bit rough on you on that trial but all I can say to you is that I long ago learned that in order to be a good trial judge you have to be a little bit of a bastard. My friend looked at him and he said, you're not just a good trial judge, you're a great trial judge. (Laughter)

Now, of course, I didn't come here just to tell stories or perhaps I did. Prior to this speech I was interviewed by the press and I gave this young lady what I thought was a very fine talk that I was going to deliver here today and I wish I could remember now what it was I told her. (Laughter) The—we live as you know in an age when there are considerable complaints about the ways of justice; questions of court reform. For example, I think that lawyers are falsely charged with delaying matters often. I'll give you an illustration of this. In our county, we have motion days on Friday afternoon and it is customary for all motions to be argued at that time and it's also customary for the attorneys who are waiting to be heard to, not being enough room at the counsel table, sit in the jury box and around in the courtroom. One day recently while a motion was being argued in a case as to whether or not a jury would be granted or not granted in the case, and sitting in the box were twelve lawyers as was customary who were listening to this argument scattered around the courtroom, and the judge finally ruled that the case would be tried with a jury whereupon the counsel who was asking for the jury said, your Honor, when can this case be tried, I am ready to try it right now; as a matter of fact I'll accept the twelve men sitting in this jury box so a jury can try the case and the other attorney immediately arose and agreed he would accept the twelve men who were sitting there and let them try the case. And the judge said, wait a minute, gentlemen; how long is this case going to take and they both gave him their view that it shouldn't take over an hour to try the whole case and he said, well you stipulate and agree that you can finish it in an hour—the twelve men in the jury box will you stand and be sworn, and they were. (Laughter) And true to their words, these two lawyers tried their case in one hour and the jury was instructed and retired but they didn't come out immediately, of course they went to dinner on the county. (Laughter)

And they didn't come back that night; in fact, they stayed all night and they stayed out on Saturday and didn't come back and then stayed out over Sunday and finally it got to be Monday morning and the judge was infuriated and he said to the bailiff, "bailiff, go in and knock on the door and see if that jury has arrived at a verdict," which the bailiff did and he came back to report and the judge says, have they reached a verdict? and the bailiff said, hell no, they haven't finished the nominating speeches of the foreman yet. (Laughter)

Now, lawyers are peculiar people I have heard it said, but rather wonderful people. And one of the great opportunities, perhaps the only one that you really get that is unusual by becoming elected as president of your state bar or to your board, is the opportunity to travel and meet other lawyers and attend other meetings. Presidents meetings on a nationwide basis, travel to other bar associations, I have enjoyed this tremendously and I have derived some ideas that I think from so doing and I

can tell you a true story which I think is interesting and it illustrates how lawyers think. I had the opportunity of attending an international meeting in Tokyo to which there were a number of different people and different professions including lawyers and on one day all of the lawyers who were there from all over the world were invited to a meeting at the offices of the Tokyo Bar Association, including myself. Now in Tokyo they have the Tokyo Bar Association, Tokyo Bar Association Number 1, Tokyo Bar Association No. 2, but this was just the Tokyo Bar Association, the oldest and presumably the best. They had beautiful quarters and we gathered there about sixty lawyers, I imagine, and there was a tremendous speech barrier because we had lawyers from France and England, many from the United States, Tasmania, Australia; many Japanese lawyers, Canada, from all over the world and some could speak two languages and some only one and there was quite a barrier and I know for example the group I was in the man I couldn't understand was the English. I understood pretty much what the other ones were saying but this one I didn't understand a word he was saying. But we were asked to break up into groups, small groups of twelve or ten and discuss law and law practice and lawyers and their problems, then designate one member of our group to go to meet and discuss what their group discussed and hopefully they would end up at the end of these discussions by pronouncing some great principle that was common to all lawyers all over the world. So we met and we had a wonderful discussion; with the language barriers of course there had to be interpreters and we elected our representative and he went with the other representatives and they discussed it and finally the president of the Tokyo Bar arose and you can imagine how expectant we all were. He was going to announce this principle that had been the combined talents of all our minds for an hour and he got up and said something like this, "Lawyers of the world have reached great principle; our fees are too low." (Laughter)

Now, this is literally true, ladies and gentlemen. Now, I tell you this in this sense and these stories; we are probably the only one of the great professions who have the ability to view ourselves objectively and maybe to laugh at ourselves. Doctors never get up and laugh at themselves. Did you ever hear of any of them doing that or dentists or any of the other professions? If there is one thing that you learn by going from one group of lawyers to another is you learn to admire them. And learn that one thing that perhaps we may have forgotten and that is that this is a great profession and we do great and important work. I think that the routine of our day to day work makes us forget this. You know you may have noticed, I'm sure you did in the papers recently that this past month was the 750th anniversary of the signing of the Magna Carta by King John on the plains of Runnymede near London and a monument was dedicated there to this great charter and this great charter does in fact contain the seeds of many of the rights we hold dear and found their way into the great documents of our country. This was a great event and 750 years have gone by and it still remains. But did you ever stop for a moment and think that although even today we give great credit to these barons, these nights in armor that forced wily old King John in signing that document, that that document would have been nothing but a scrap of paper that had blown away in the wind 750 years ago unless for nearly all these thousands of years that generation after generation of lawyers, day by day enforced

those rights in courts and offices and every place they practice almost routinely, yet without them all these generations this document would be a scrap of paper; the Bill of Rights would be a scrap of paper. Today while we are sitting here, I suppose that hundreds of courtrooms and literally thousands of offices all over this country people's rights are being protected and preserved by lawyers. This is generally without credit and without fanfare and with plaudits from any source. In fact, as the preceding speaker pointed out, the public perhaps doesn't think too much of us. And that is why I appear here today is to pay a tribute to the legal profession because I think we deserve it. We forget the things that we do; we forget the importance of the work we perform because we do it so customarily and so routinely. Now, this thought I have brought with me is expressed, and certainly far better than I have expressed it, by an English writer, G. Page Chesterton, in a very obscure work that he wrote which probably has vanished from existence but he wrote what is called The Twelve Men and he wrote about our profession of the law and it is true. And if I may for a moment read what he said in this book because I think it typifies something that we have forgotten about.

It says, "The judge, the attorneys, the sheriff all see the trial as a daily occurrence, a routine, and in which each plays his respective role almost by rote and the horrible thing about all the legal officials, even the best, about all judges, magistrates, barristers, detectives and policemen is not that we are wicked; most of them are good, not that they are stupid, most of them are quite intelligent; it is simply they have gotten used to it, strictly they do not see the prisoner in the dock, all they see is the usual man and the usual place." "They do not see the awful accord of judgment, they only see their own workshop, but to the eyes of the layman with the sweet smell of the law fresh in his nostrils and the enthusiasm of the novelty, the law is a new experience and the facts are judged with no taint of routine." "The layman unlike the judge does not eye the plaintiff as just another plaintiff." "The layman unlike the lawyer does not see just another case and unlike the sheriff the layman does not see just another prisoner in the dock." "The layman sees this plaintiff with the wrong to be redressed, or this defendant as wrongly and unjustly sued, or this prisoner with his story to tell." "To the layman, each party stands as an individual with certain rights and duties." "Have you ever asked yourself what is the one most important, if not the most important, occupation in our society; the police, the doctor, the dentist, engineer, architect?" "These professions no doubt are extremely important." "The police, minister or preacher performs an important service." "In a sense he is concerned with the physical welfare of man, his work is primarily spiritual." "His work gives meaning and worthwhileness towards our daily lives." "Again, the doctors and the scientists perform necessary and important work but they are concerned primarily with people on an individual rather than on a social basis." "The same is true of all other professions and occupations but what profession is it that gives order and peace to our society so that all men may pursue their daily lives in harmony and without fear?" "It is the law and the legal profession."

Now, gentlemen, that pays tribute from a lay person better than we pay it to ourselves. If there is one thing that I suppose you learn in traveling

about as a past president from one place to another, it's that this is a profession in which we should feel a deep pride. And if there is any message that I bring you today as your guest for which I thank you, it is that you are members and we are members of a great profession. We have performed well in the past and we will perform well in the future. Never sell ourselves short, we are a great profession. Thank you for inviting me here. (Applause)

MR. HULL: I understand two of our guests have joined us here. I wonder if Ray Christensen and Lewellyn Young would come up to the podium. This looks a lot more mysterious than it really is. I would like to present Ray Christensen, President of the State Bar of Utah—Ray. (Applause)

MR. CHISTENSEN: Thank you, Eldon. I didn't know that I was supposed to sing for my supper. All I can say is that I am very, very happy to be here and my wife and I are having a wonderful time. I feel quite inadequate; when Ed was down to our meeting last month, he got up and gave us a nice spiel and he presented us with a trophy but I just got here and I don't have a trophy for you or anything so all I can do is say thank you very much, you're all wonderful hosts and we're very grateful to be aboard. (Applause)

MR. HULL: And another friend, Lewellyn Young from Lovelock, Nevada. That name Lovelock intrigues me, I wish Lewellyn would tell us about it.

MR. YOUNG: I can tell you a few stories about it. There were two people I ran into over in Utah told me about it and I don't think this being a mixed audience I better say too much about that though. Sometime ago I was making a fairly long speech and towards the end of the talk, I just told them I knew this was a long talk. Somebody in the audience said, well mister, there is a difference between a long talk and encroaching on eternity. (Laughter) Thus so you won't think I am encroaching on eternity, I will just say that I am happy to be here and I will be seeing you all. (Applause)

MR. HULL: I hope all the members of the Idaho Bar will take this opportunity to welcome these gentlemen and Mrs. Christensen is with Ray; I am sorry that Mrs. Young could not be with us. In the past year the Bar Commission has been working rather closely with the president of the Idaho Magistrates Association, particularly in reference to our program for reform in the lower courts. I think those of you who were here a year ago will recall that Tom Miller at that time presented a preliminary study by the Bar Committee on the lower court reform. The legislature appropriated $35,000.00 to implement this study that grew out of this committee report. Last year the president of the Probate Judges Association personally appeared and endorsed the program of the Idaho State Bar in their efforts to reform the lower courts. This past year we have worked very closely with Glenn A. Phillips of Arco, who is President of the Magistrates' Association. I wish Glenn were here to convey the message he has given to us in the telegram which I am about to read. Before that I would like to say that the work of these two gentlemen as heads of these two organizations should allay all fears of those courts and those

representatives of those courts that the lawyers are out to get their jobs and this is an increasing feeling among the lay people and I hope these two groups are going to be able to establish that the lawyers are trying to corner the market in all judicial positions in the lower courts. Obviously that is false because we wouldn't have the lawyers to furnish them if they wished. However, I would like to read Glenn Phillips' telegram because we do have a friend of the court in that association. (Reading) Alden Hull, President of the Idaho State Bar, Convention Center, Sun Valley, Idaho, Best wishes to you and the members of the Idaho State Bar for a complete and successful convention. If possible the Idaho Magistrates Association would appreciate your favorable consideration for adoption of the Uniform Traffic Procedures and Traffic Citations. We are sure that this would help the officers in the lower courts in our traffic problems. I would like to express my sincere gratitude and appreciation for your fullest cooperation you and the Bar have shown in the past year to our organization. I am sure this type of cooperation and assistance in the lower court improvement program will prove successful. Again, best wishes for success, Glenn A. Phillips, President of the Idaho Magistrates Association. I see another past president has joined our ranks here; I would like to introduce him from the floor. Lou Racine, would you stand, please? (Applause)

(Drawing held and coffee break.)

MR. HULL: I'll call the meeting to order, if I may. We are very pleased and very honored to have with us this afternoon a distinguished Judge from the Southern Division of the State of California, United States District Judge, the Honorable Charles Carr; Judge Carr, would you mind standing. (Applause) During the afternoon I have been recognizing past presidents of the Idaho State Bar and I noticed one that I have not previously recognized now here, and that is Justice E. B. Smith, now of the Idaho Supreme Court; Justice Smith, would you stand? (Applause) We are very pleased that so many friends and members of the Bar and others as guests at Sun Valley are in attendance for this next speech. We wish to extend a welcome to the members of the public and anybody during all of our sessions. We think they are always interesting to non-legal members in attendance and will gain something from them. I particularly recommend tomorrow morning's session. Two of the outstanding trial lawyers of the United States will be here presenting a session on evidence which I think will be of a good deal of interest to all of us. I will remind the members of the Bar who will be here that that session will be under way promptly at nine o'clock. Now, if there are no other announcements, at the conclusion of this session or next speech we will be in recess. At this time I would like to introduce Douglas Kramer, Attorney at Law at Twin Falls, to introduce the next speaker.

MR. KRAMER: Thank you, Mr. President. Ladies and gentlemen, I have a rare honor today in introducing this next speaker and today Idaho is blessed with a lot of Texas. He is six feet four and two hundred twenty-five pounds and not a man to argue with, I'm sure. (Laughter) I didn't ask him if he had ever played football because I was afraid the the University of Idaho had played his team at one time and I didn't want to hear about it. (Laughter) We had many notables come before this convention in years past including such men as Judge Medina, Erle Stanley Gardner,

Robert Kennedy and many outstanding trial lawyers but this time we are fortunate in having a man who typifies what the American lawyer should be more than any man that I have met in a long time. Among his many accomplishments he has served the Bar in Texas and in the Southern part of the United States very ably. His most, maybe his greatest accomplishment, is that he is the father of six children and he is a good father. He has to leave us early tomorrow to return to Texas to watch his twelve-year-old boy play a baseball game on Saturday and this he simply cannot miss. He took his pre-law at the University of Texas and his L.L.B. in the Washington College of Law in 1941. He is a frequent lecturer at the University of Texas at the law school there and the Law Institute on medical legal problems. He served in World War II in the United States Navy in the Pacific theater. He is a past president of the Trial Lawyers Association of Plaintiffs Attorneys in Texas. He was a director of the State Bar in Texas. He is a former member of the Board of Governors of the American Trial Lawyers Assoc. for Texas, Louisiana, Alabama, Georgia, Mississippi and Florida. He is Chairman of the Board of the First National Bank of Jasper, Texas, and he was the chief Texas counsel in the defense of Jack Ruby. Before I give you this man, however, I want to quote some things that have been said of him by notables in the United States. In May of this year the Senate of the State of Texas passed a resolution after giving many accolades to the resolution of Mr. Tonahill by saying, "Resolved by the Senate of the State of Texas that Joe H. Tonahill be congratulated and commended for his conscientious and faithful service to the legal profession of the State of Texas." "And be it further resolved that Mr. Joe H. Tonahill be extended the privileges of the Senate floor today." And then just recently when the judge removed Mr. Tonahill from the sanity portion of the Jack Ruby trial and Mr. Tonahill sent a clipping to the judge and the judge wrote him a personal note back which I think gives you some of the flavor of the personality of this man. And he wrote: "Thanks for the clipping and expression of encouragement." "You are not only an excellent lawyer but a real sport; I appreciate you, your friend, Lewis." It gives me a great deal of pleasure to introduce to you Mr. Joe H. Tonahill who will speak on the Warren Commission investigation and report and of the tragic events of November of 1963 in Dallas, Texas. Mr. Tonahill. (Applause)

MR. TONAHILL: As I understand it we're all supposed to leave now, the President told you at the conclusion of the next speech. (Laughter) We can all depart from this auditorium. (Laughter) So I won't be offended a bit if you get up and go. I don't see how I can improve over Doug's eulogy; I never heard anything like it in my lifetime; it was tremendous. Frankly, I would walk all the way back to Texas if he would fly back down there and make it again in Texas. (Laughter) I am greatly honored and I say with all sincerity in being invited to come out here to Idaho to speak to you ladies and gentlemen. I think it's one of the nicest things that ever happened to me. But your reception and your hospitality and congenialty and friendliness is just tremendous and I want the people back in Texas to know about it and I am going to tell them about it when I get back there.

Some of you wonder what is Tonahill's present status with reference

to the status of the Ruby trial. My status is somewhat dubious. In a sense I am one of the . . . I guess I am involved in the only case in history where eighteen lawyers and one judge have been fired off the case. (Laughter) Recently Judge Brown in response to my motion to disqualify him refused to review the issues involved in the Ruby trial but he was finally disqualified before the hearing. But I went to work for Jack along with Mr. Belli back in December 6 of 1963. We had one definite basic understanding with Jack and that was that I put in writing that I would go all the way to the U.S. Supreme Court if necessary for him if I were convinced and he convinced me and did what I told him to do with reference to taking certain scientific tests that would dispel any idea or suspicion that there was any connection whatsoever between he and Lee Harvey Oswald or between he and any third party of any conspiracy. Jack not only insisted on taking the scientific tests such as truth serum or polygraph or anything that come up but he reminded me of that promised obligation every time I talked with him; he wanted to do it. And he finally got to take the polygraph test when Chief Justice Warren came down to Dallas in June and we spent a whole half day with Jack while they interrogated him. And Chief Justice Warren told him that he would get the polygraph test for him and he finally got it. But because of the obvious paranoia and state of insanity Jack was in, the commission concluded that the polygraph testing of Jack was of no consequence and therefore it didn't mean anything and that disturbed me very much.

Well, we went along and I reconfirmed my agreement in writing with Jack on March 24th of 1963. We went ahead and I reconfirmed my agreement that I would go all the way on his appeal and anything that was necessary. And everything was going along fine until I started having trouble with members of the family and other parties with reference to exploitation of Jack. I felt that it would be very damaging to Jack's appeal in any respect to commercialize upon him. This would hurt his appeal and greatly undermine the legal profession and I fought it and protested and they tried it before this grievance committee and lost and they went before the Criminal Appeals Court and lost and I was the attorney of record. I agreed to go with him all the way and he got the death sentence. I couldn't walk away from a man with a death sentence hanging upon him. If I did I thought I would have to quit the legal profession. His family, a number of them, wanted to get me out of the way so they could go on with this program of exploitation and I couldn't permit them to make a decision and wouldn't. They carried the matter before Judge Brown and he repudiated it and refused to remove me and even though he didn't have to, he appointed me to handle the insanity trial that was scheduled to come up and also he appointed me on the appeal even though the court of appeals had already recognized me as the attorney of record.

They got lawyers from New York, one from Detroit and one from Chicago and two from Texas and so they moved over into the federal court with the same program, removed Tonahill, and the federal judge refused to do it and we went to the Fifth Circuit and they refused to do it. Then it came back to the state court before the new judge that took Judge Brown's place and I filed a motion to disqualify him and we had

a hearing there and Judge Holland released me from my obligation on the insanity hearing but I am still on the appeal. He held that even though the evidence demonstrated as to Ruby's sanity, nevertheless, until he is found insane, he is presumed to be sane and therefore had the right of choice of counsel. A lot of people don't understand and I couldn't understand at the time why I felt I owed this man a duty to stay with him.

Well, a lawyer owes a duty to his client and the code of ethics of Texas and the American Bar require that a man not walk away from his client, particularly in the state of mind this man was in. Until I got a judicial release or relieved from the obligation, I had nothing to do but to stay but I was freed from the trial court standpoint but I was still in on the appeal and I believe it was already written anyhow. The insanity trial is coming up this month perhaps and if he is held to be insane it is up to the lawyer to determine whether or not to go forward with an appeal at that time or to wait until he is treated or found sane or what have you. Or if he is found to be sane then the appeal can go forward, then we'll have another hassle from the appeal in Texas.

I still feel it is my duty to protect him on appeal and I am the longest remaining attorney of record. I participated in everything that went on in the trial court and I have a vivid recollection of what I consider to be a very shot-ridden record of errors, which I will touch on presently, and I feel that with the background and knowledge of the trial record and my obligation, unless the court of criminal appeals releases me, I will go forward and present the brief and the arguments under their rules and instructions and orders.

Now, I felt that the preliminary remarks of my relationship with the Jack Ruby case might be of importance to you, that is why I delved upon them. Now, going back to the effect of Ruby shooting Oswald and how that came about and what it did to the public. Well, it was a day when a friend of mine came in to visit me and brought his son and we went out to my camp and took my boys and his boys squirrel hunting. It was on the Sabbath and I apologize to everyone about that but they wanted to go squirrel hunting, so we went out there and the boys were outside and my friend and I were looking at TV and we actually saw the shooting, the original shooting on TV of Oswald by Ruby and it just infuriated me just like it did everybody else, I guess, and I said, well the man has not confessed and we know nothing. He stood staunch and he hasn't admitted anything. They had made a tremendous circumstantial evidence case against him? But I would say without a doubt in my twenty-five years at the Bar that Lee Harvey Oswald is the only man in my knowledge that was ever held in jail overnight and did not confess to a major crime in Texas. (Laughter) Well, rather remarkable. And so, I felt that I wasn't convinced and I am not convinced yet that Lee Harvey Oswald was not mixed up in some sort of a plot and I felt like they ought to give him the truth serum in the interest of national security or something in the interest of national security to determine the background of his assassination of the President, if there was anything to find, and I was disappointed that they didn't and I do believe that it would have been accepted and had they done that, regardless whether it could have been used at the trial or not,

I feel that they should have those determinations, rather than just questioning him and questioning him and bringing him out to be interviewed by the hundreds of men on the TV and newspapermen and what have you. But when they brought him out on Friday night to be interviewed, these shouts and curses and insults and everything else came at him, and I suppose the men there would have voted for Kennedy and a lot of men there who interrogated Oswald felt like lots of us, a very strong hatred for this man.

And Jack Ruby was there. He was a well known man in the police circles. He had this night club and some of them worked for him when they were off duty. And Jack was there and got in without any trouble and had a little pad with him and pretended to be an interpreter for the Israeli press. And they brought Oswald right in front of him and he had his pistol. He told me two ways; he told us that he had his pistol and then he said he didn't have his pistol. He carried a pistol. It's common in Dallas for night club operators to carry their pistols because they take in a lot of cash and they carry money home with them and he had his pistol in his side pocket and Oswald walked out in front of him and we demonstrated from electroencephalograph studies that he had organic brain damage. He would go into these rage states over nothing at all of any consequence, trivial, and have a most violent outburst and fight with people who would come up and pinch these strippers that would work for him at the carousel joint, and just over anything at all they did. He had a lot of outburst, lot of violent outburst which was very indicative of a man highly emotional and unstable mentally and physically. He was not married and he had a dog called Sheba and some other dogs and Sheba was his wife and the other dogs were his children and if you ever called them dogs you had a fight on your hands.

We were able to document an awful lot of these incidents and episodes to demonstrate an unstable mind and the effect of the press upon him, and the TV. He was met by an officer after he had gone to this lineup and seen Oswald and this officer's girl friends and they got into the car and talked and this girl was from London and she said to the officer, "I would like to cut him into a million pieces," and she said, "If he would come over to London, England, where I came from we would hang him right up quick." Now, I feel that that may have been the point where the seed was planted in his mind against Oswald. The psychiatrist felt that, too. And during the interrogation of the Chief Justice Warren that subject came up and Jack and I had quite a bit of conflict over that point and he was taking the position that there was no premeditation and I would say Jack, I don't believe there was premeditation, I don't believe there was, it was a state of mind. And he says, no, you know I did it for Carolyn and Mrs. Kennedy. Well, there are so many things, as I said, that, were the motivating background and forces that may have produced the shooting of Oswald by Ruby, it's very difficult. But getting to the telegram now and the effect of the press and the effect of the news media and throwing out all of these stories and these insults to Oswald that everybody could see. Ruby had a great love for Kennedy and he would just go into tears the moment you would mention President Kennedy and Carolyn and Mrs. Kennedy to him. He felt a very deep love and affection

for them because there in Kennedy was everything that Ruby wasn't and couldn't be. The man that stood up for the Jewish people. Dallas, Texas, is a great beautiful strong Republican city and he had a great aspiration some day to attain a position in life where he might become a worthy candidate for sheriff and the feeling that he had, and he read in the papers, and the little message that a minister wrote to Carolyn in the Sunday morning's paper, and he says that is what broke me up and he broke down and cried. And so he said that he didn't want Mrs. Kennedy to have to come back and to have to testify. And, oh, there are so many reasons and motives and personality things that enter the emotional instability, or brain damage, and things of that nature that it would be impossible to say that Jack Ruby killed this man to attain fame; that he killed this man to make money; that he killed this man to do the cops a favor; that he killed this man to do Mrs. Kennedy a favor to keep her from having to come back to Texas. Now, there is no way in the world to pinpoint this thing. It's like a brick wall, each of those facets have their proper place.

But I feel that he was insane at the time of the shooting in one of those temporary furor states that the doctor described and went to pieces when he saw Oswald come out with a sneer on his face. I know he is insane now. I think at the moment of the shooting he was patriotically insane or temporarily insane and definitely was insane at the time.

But what about the telegram now? He had the stripper, Little Lynn of Fort Worth. Little Lynn was the one they arrested when they found a pistol in her purse when it didn't even have a hammer in it. But she had been threatened and she had to protect herself and she got this pistol that wouldn't even shoot, either. She was arrested during the bail hearing. She was the one that nearly had a miscarriage when they had a jail break during the trial. She was just about ready to go on the witness stand and she was just about ready to give birth to a baby and these five men under sentence broke out of jail and she went into hysterics and we nearly lost her as a witness. But she wired or phoned Jack and said, I am going to get kicked out of my apartment over in Fort Worth if I don't get $25.00 and I think the phone call came in at 10:26. I remind you that the news all night long and that morning, on the radio and TV, had been reporting that they were going to transfer Oswald at ten o'clock in the morning, Sunday morning, from the Dallas City Jail to the Dallas County Jail and Ruby was at home. Now, I am talking about premeditation and a wilful intent for murder. He got this call at 10:26. So he said, well, I'll send you this money. I'm going towntown to the club anyway. He was going down there to see about sending one of his pet dogs to California, I believe it was. So he goes to the Western Union office and at 11:17, and they had a time stamp there, and he sends her this telegram with this $25.00. Now, the Western Union office is on one corner and on the same block the Dallas City Police Jail is on the next corner. But you walk down the ramp to get to it and one of the captains of the vice squad or special services which involved homicide investigation had over three hundred experiment tests made by officers walking from that Western Union counter down to the spot where Ruby was at the time of the shooting of Oswald and it was never more than a six second variation during all

of those times. So Jack sent the telegram and he walked out of that door and in a casual manner according to the testimony and down the street and eased by the officer that was on guard there at that ramp as two policemen were driving out; they didn't see him. He walked down into the crowd and just as he got to the corner, Lee Harvey Oswald came out handcuffed and just as he got to the corner he had this sneer on his face and the TV people were shouting at him, what have you got to say in your defense, are you proud of yourself, and things like that and Ruby just snapped, and he grabbed his revolver and all he had to do was pull the trigger. As he went past he just put it into his short ribs and pulled the trigger. I could go to the cattlemen's restaurant before then and enjoy those short ribs and that just about ruined it for me. (Laughter)

But he shot him and we got film there and it showed the clock at 11:19 which is a little something like two minutes that he walked down there. Well now, it doesn't matter if Jack Ruby had thought of killing Lee Harvey Oswald if he got the chance. That dispelled any matters of premeditation or wilful shooting on his part. Now, they immediately jumped up on top of old Jack and started knocking him around and dragging him and somebody said, who is he, who is he? And he said, what are you all trying to crack Moscow, don't you know me, I'm Jack Ruby. Well, from then on the matters of intent and premeditation was developed. Five of the officers testified that Jack said, when he shot the pistol, "you killed the President, damn it, you SOB." He said, "why did you do it, Jack?" and he said, "Somebody had to do it, you fellows couldn't do it and I would have gotten off three more if you hadn't stopped me." Another one said, why did you do it; "Well," he said, "I wanted to prove to the world that Jews have guts. When I saw Oswald in the lineup on Friday night, I knew then if I ever got a chance to shoot him, I would. And I believe in due process of law but he is going to get the chair anyhow because the district attorney said so on TV and I'll save Mrs. Kennedy and Carolyn of having to come back here." Now, all that testimony was put in by the officers while he was under arrest before he ever appeared before a magistrate without any warning whatsoever. Now, without that, the state is negative of any proof of malice or intent or wilfulness or a cold-blooded killing, as we say in Texas.

Now, as I say, the shooting of Oswald was a very terrible thing. Nobody, I believe, regrets it any worse than Jack does right now, or me. I feel that there were things that would have come out. The psychiatrists tell me that Oswald was the type that if given a few days he would have been bragging about it, of killing the President, he would have been proud of it. He would have been seeking his place of glory and what have you. That was his vibrating background; that is why he shot him. He was disenchanted with America. He went to Russia and disclaimed any love for America and wanted to become a communist citizen or soviet citizen and married a Russian girl. And evidently they say he didn't fit in too well over there and wanted to come back and he came back. He was having trouble with his wife. The very night before he assassinated the President she treated him very coldly; made him sleep in another room. There were a lot of comments of how she expressed herself publicly to people about him not being a man to her and how she ridiculed his political

ideas and the fact that he read all the time and she just despised him. She was very cold and cruel and inhuman to him. It's been determined that that may have had something to do because he was the type that would take great pleasure in getting revenge, physical revenge. He whipped her many times when she disagreed with him. They felt that he was a man capable, after they made the investigation into his nature and background, he was capable of assassinating the President, but they didn't think so at the time. And there was no coordination with the local police or the secret service or the F.B.I. But when they found that he had come in from Russia and was sitting in Dallas and working on the sixth floor of this building, the book depository, where the presidential motorcade passed, nobody knew he was there except the F.B.I. and they didn't check it out.

There is an awful lot of material; this is really about a ten-hour speech. (Laughter) This is my second speech that is going on now but I'll try to give you as much of the facts and the high points as I can. But he did not fit anywhere. He didn't fit at home; he had no roots here, he hated his mother. He and his wife didn't get along. He hated America; he hated Russia and he was there in this John Birch Republican Center of Dallas and he hated Walker. He hated Nixon and he hated Eisenhower and he said that Nixon and Eisenhower both ought to die. That Eisenhower was a Fascist. His wife locked him in the bathroom one night to keep him from going to kill Nixon. He admitted to his wife that he tried to kill Walker and he would always do these things when he wanted to hurt her generally or else he was trying to gain fame for himself, so to speak. And so on the morning after he had such an unfortunate relationship with his wife he took his gun with him. And they have positively established beyond any doubt from the circumstantial evidence and one eyewitness from outside, who said he could identify him, as being the man who fired the rifle. But they have identified him as the man who killed the President and found that it could be done with ease with the position that he was in and although he wasn't an expert marksman he was a fair marksman. The car moving at the speed it was moving made it a very simple target and it was no problem. So he had been adjudicated so far as the world was concerned, although he didn't get a public trial, as the man who killed the President.

But what did the shooting of Oswald do to all Americans and do to all of us and to the world? It caused a deep penetrating doubt to arise that there was a connection between the two. It denied America of the trial of Oswald; of a complete exposure, a complete exposure to the background of why he assassinated the President, and they never did get him to admit that he did and there are so many things that never came out. And a trial, a public trial, is a great thing because it reveals the truth, the facts, the substance, the background, the motivations and it satisfies America, that, Number 1, has the proper man been apprehended and been tried; Number 2, has the proper punishment or the guilt or innocence been meted out and proper sentence, or no sentence, as the case may be, been decreed; number 3, does it if he is guilty, if he is convicted, if he is sentenced, does it set a proper example for others as a crime deterrent? But without the trial of Lee Harvey Oswald, America

lost and that robbed of a trial and nobody is happy about it. But the Warren Commission did do a good job in many, many ways in trying to prove or disprove conspiracy as to who the assailant was and what have you. I for one recognize that they did a tremendous job in going through all this work and I know what they have done and I understand it but as Chief Justice Warren said—he got a lot of criticism for this—that all of the background, all of the information and evidence may never come out during our lifetime. Well, he was criticized on the basis that there would be a suppression, we were going to secrete this and not let everybody know, but I do feel this, that there is still a lot of evidence that has not come out yet and there is a lot more going to come out.

I recently was in correspondence with a man in a radio station in Dallas, Texas, who says that he interviewed Oswald for a job October 3rd. Now, when you come from Mexico City to Laredo to go to Dallas you go in a straight line. But if you go from Dallas, Texas, to Mexico City to Laredo you cut that way, then when you go to Dallas you go that way. Well, the Warren Commission puts him going directly to Dallas. They don't say he went to Dallas to see about this job at this radio station. This man said that he was there, as an employee put him there and the way they remembered him there was a woman and a baby in an old model car outside and when he asked him to bring her and the baby in, and he said, no, she didn't speak English. Now, he didn't say that Oswald drove that car, but he said there was this old model car out there and this woman couldn't speak English and the baby was in it and the Warren Commission reported findings didn't put him in there on the return trip, they put him going through there going down in September on the bus but on October 3rd they get him back in Dallas on October 3rd. And the idea of him being out at this target range shooting. The man that is identified as Oswald that was down there learning to shoot drove up in an old model car; they said he couldn't have been there, he was in Mexico. So they kicked out his testimony and this man that owned this radio station, Mr. Stewart, in Dallas; I believe it's KOTY, I forget the name of it, but he went down and told the F.B.I. about it after he had seen him on TV. And so they told him, we'll check the motels between here and Laredo. So this fellow did his own checking of the motels and he called some of them and the FBI hadn't been to any of them according to what he wrote me and he wasn't questioned by the Warren Commission. They didn't invite him in as a witness. He gave his statement. He gave the impression that Oswald wanted to go to work in the radio station in order to get press credentials so he could get close to whoever it was he wanted to assassinate; whether it be Kennedy, Eisenhower, Nixon or Walker or what have you. But he thought that was his basis and he told him, well, I can't give you a job here; and he has a record, the time and the date, that this man was there and he connected it up with the football game that they were going to broadcast that night, but he wasn't called in to testify, and so it's a peculiarly strong link. It may have shed a tremendous light if they would have probed him more. I don't know, I hope they will continue to probe him and I am going to call it to their attention. I wrote him and told him I was going to speak to you all and he gave me permission to mention these things.

The thing that dissatisfies me, Oswald who hated America, who loved

Russia, who went to Russia and wanted to become a Russian citizen, and a Communist, who then came back here and hated America and wanted to go to Cuba, what he did, the act that he committed here was a communistic act against America, the killing of President Kennedy. It was the product of communism. Whether he was mixed up in a communist plot or not is immaterial to me, the fact is that he killed President Kennedy, that Khruschev said that we're going to bury America, that means a lot to me and I feel that it was a product of communism but the report doesn't say so.

Now, they had a lot of exhibits in the report. They had pictures and we got a big blownup picture of Oswald in the communist salute and then in handcuffs that they made and we tried to put it into evidence and couldn't. These are handcuffs and he has his hand up like this which is the hail for aid to help me, so I was told in the history of these people. We tried to put that blow-up in evidence and couldn't. Now the official document of the Warren Report does not have that picture. It's got a picture of Oswald standing in front of the detectives but they don't have that picture. But here is the picture and it's taken out of the Associated Press book that came down on the Warren Report. And this is taken from the Associated Press Warren Report and I feel that is indicative and consistent with my thinking that the killing of the President by Oswald was a product of communism and we ought to say so and it ought to have been said so. There are those who may disagree with me. I can't stand here before you and tell you there is any evidence that he was part of a Russian plot but what he did was a part of the Russian system and what they believed in and what their goals were and if you're going to conquer and destroy this country and undermine it, starting with the President of the United States is about as good a start as you can make whether you are in Dallas, Texas or Boise, Idaho, or Sun Valley or San Francisco, California, or New York City or wherever you are. I am a little disenchanted in that respect; as I say, I take my hat off to those great lawyers and investigators and the President had it pretty well split up between Republicans and Democrats, and they worked hard and I am sure they are smarter than I am, but I can't understand why they didn't come to the conclusion that I feel that they should. I am only expressing the opinion of Joe Tonahill and the only thing wrong with that is it's just an opinion. Otherwise, I feel they ought to have gone ahead. What time is that barbecue? (Laughter)

Now, about the trial. We went into the change of venue hearing after the bail hearing. At the bail hearing we tried to get Jack Ruby out on bail so as to get him into a hospital and do all these various testings that we wanted to do on him. We wanted to do a truth serum test on him; we wanted to do a polygraph test on him and we wanted to do an electroencephalogram study which you can't do with a man in jail. And we were going to get Professor Reed of Northwestern who, I understand, is a foremost authority on the truth serum studies and polygraph studies in America. Well, we finally got a limited amount done; we did get the electroencephalograph study done, but we couldn't get him out on bail.

But an interesting thing here; venue is the big point here. While we were getting ready to get him out, we were in conference in Judge Brown's

chambers—he is the author of the book, The Life of Ruby and the Law. It was while the case was still pending before him. But while we were in chambers talking about the mechanics of the bail hearing, the sheriff comes in and he says, Judge, I am going to have my men pick you up and bring you to jail; bring you to the building here to the back because I expect we'll have two or three or four hundred demonstrators down there and I don't want anything to happen to you at this bail hearing, and the judge said, that is fine. Then he says I am going to do that for you, too, Mr. Belli and Mr. Tonahill; I am going to pick you up at the hotel and escort you in. Old Belli thought that was great. When he got through I said, well, just a minute, sheriff, this is a bail hearing, you know, and I said, aren't you putting an awful lot of pressure on the judge? This in effect is denying this man bail. Well, that is the only time the sheriff and I had any bristling between us throughout that horrible experience that went on from days and days at the longest murder trial in Texas. Other than that our relations were great, but he bristled up on me but I said, no, we feel that you're burdening the judge in that respect, and after all, what would be a better basis to deny bail than we lawyers to admit that our lives were in danger and have to bring the judge to court to protect us all. Juck Ruby would be just as safe in the streets in Dallas as up in jail. He will be safe if I take him home for Christmas if you will let him out. And there was all this business about Ruby would be assassinated whenever he was released.

Well, we didn't ride down to the jail in the sheriff's car or the armored truck or with the men in front of us with bayonets and men behind us with bayonets; we walked down. And then there were no demonstrations and when we got to the court there were a multitude of officers on the outside and a multitude of officers ringed the hall but no demonstrators and no people and we went on in. And they had this bail hearing and everybody that entered the courtroom was searched. Everybody that went in to testify or whoever went into court for the bail hearing was searched. This searching went on during the trial and they searched the jurors until I stopped it. And this is the way that happened: I said Judge, are you going to continue with this searching of the jurors and he said, yes, and I said, why, and he said, well, we won't search them then, and I said, why not, and he said, well, make up your mind, so he stopped the sheriff from searching the jurors. (Laughter) But they searched my two little boys, they searched my wife, they searched everybody that entered that courtroom except the lawyers looking for pistols and they found, I think, one pistol. But there were two pistols that went into that courtroom every day that they didn't find; that one and that one. (Speaker fires two cap pistols) (Laughter) I started to pop them about midnight when I was making the closing argument but I didn't think that would even wake the jury up. (Laughter) I had already drawn two citations and one more would about wind me up, I guess, (laughter) so I didn't do it. So, we lost the bail hearing and we moved into the venue hearing and we had some tremendously great people there who said that Jack Ruby couldn't get a fair trial in Dallas. The Mayor who is now a congressman; the barefoot son—that's his given name and he was the U. S. Attorney in Dallas. Stanley Marquist, president of Mayne & Marquist and on and on and on. Judge Brown told us, now don't worry, we'll go ahead and have this hearing

and after we question the jurors about a week we'll go ahead and transfer it. He wouldn't be transferred with the case, that was the idea. There wasn't any provision in the law to permit that. And he was pretty allergic to all the TV and wires and what have you. So we kicked it around for about three weeks on the venue hearing and then the interrogation of the jury on voir dire was part of the venue hearing. It never was officially ruled until we seated the last of the twelve jurors, then he overruled the motion for a change of venue from Dallas. Four, only four, of the nine hundred jurors summoned to the jury to testify had not seen Jack Ruby shoot Lee Harvey Oswald on television. Amazing as it may seem, only ten of the jurors who had seen the shooting on television, had any doubt whatsoever but that Ruby shot Oswald. That is one of the major ingredients of a criminal defense is that this defendant shot that deceased so they didn't have to have any evidence on that; there was no problem there, their minds were made up. But they could set it aside and be fair and impartial and the image of Dallas, and the embarrassment, and the humiliation of the President being assassinated there, and this man Oswald assassinated in the police station where the law was always abided by before and been enforced, that wouldn't give them any problem. That wouldn't offend any of them and affect them despite the fact that the press of the world had attacked Dallas, and the judge ruled that they could be fair jurors.

So, we got ten of those who had stated that they had seen it either on live TV or the rerun and had such opinions on nearly every issue involved except the punishment that they would give and that was the hardest three weeks work that I had ever put up with. And I finally, after I could see that the prosecution was tiring, I would try to slip my main question in hoping that I could get by with it. The Supreme Court held in Irwin versus Dow that in interrogating jurors to test whether or not you want to exercise a pre-emptory challenge on him, you could ask him any question short of infamy and disgrace. Well, that is going pretty far. We couldn't do those things; we were pretty limited, so I thought I had better wait to ask this question, so when they got pretty tired, I asked "Would you want to be a member of the first jury in America to give a sick ex-GI the death penalty for killing a communist, would you consider that in Texas?" (Laughter) Well, they really came alive (Laughter) From then on every time I asked a question they were all up together shouting, Judge, do not permit that question to be asked, it's not a reasonable question. You can get a lot of feeling and reaction to a question like this from a prospective juror. But you could tell from the pat answers—I mean pat, one fellow was a carpenter; his answers to some of these complicated questions were so pat and perfect I said, "by the way, where did you go to law school, I thought you were a carpenter?" He said, "I am a carpenter, I only went to the eighth grade." I said, "where did you get such a wonderful answer to the question?" and I looked over there and I said, "I couldn't have answered that question as good as you could when I graduated from law school." And the fact that he gave me the legal answer was the problem that upset me. And then we nearly go into it and I said, well, would you be willing to take a polygraph test on the question of your being fair and impartial and not be influenced by the

fact that you saw him on TV, because we want to test your subconscious. Well, that was bad and I shouldn't have asked that.

Well, when we got to this first witness who saw it on TV—by the way, his name was Connelly; he may have been a distant relative of Governor Connelly. But I wanted to get him on that jury because Connelly had been shot in the back, too, by that Russian communist. We were desperate and our back was to the wall and we tried and tried. "Mr. Connelly, you saw that shooting on TV?" "I did." "Who did you feel shot Oswald?" He said "Jack Ruby." I said, "Mr. Clerk, would you produce a subpoena for this witness?" and I got the subpoena and started over to him and the judge shouted over to me, "Don't you hand that subpoena to that witness." "Well," I said, "I have subpoenaed him here as a witness." Well, our Code of Criminal Procedure provides that no witness to a criminal procedure shall proceed as a juror. I said Judge, he is a witness. He said, no, you will disqualify everybody in the county. (Laughter)

So we had that back and forth and we went to the Supreme Court of Texas in the interim while we were questioning the voir dire and to undertake to get a mandatory injunction to prohibit Judge Brown from seating jurors who had seen the shooting on TV. And the Supreme Court does handle civil jurisdiction and does handle mandatory injunctions and matters of this nature but they try to keep out of the criminal field of law and leave that up to the court of criminal appeal. But they had no jurisdiction for the court of criminal appeal so they refused and said that we could handle it on appeal anyhow so we didn't get these people disqualified, these people that saw it on TV. And we got ten of them that were witnesses and we rocked along and got the jury.

And then here comes a bunch of pictures and every time we would get one up we wanted him as a witness and we would ask Judge Brown, will you swear him as a witness who saw it on TV? Well, to prove our point, the prosecution came along and introduced into evidence as original evidence the shooting of Oswald on TV by Ruby and the jury saw it again, the same thing they already witnessed. And the judge said, do you have any objections and I said, of course not, judge; that is the point that we made when we seated these jurors. That is admissible as direct evidence of the shooting and you have ten of them already witnesses; we don't have any objections. If we had any they wouldn't be any good. And so that is the big point on appeal.

And the Billy Sol Estes case that came down fits the Jack Ruby case just like a glove. And if you read that Billy Sol Estes case and you'll swear the Supreme Court wrote it with the Ruby case in mind because it just fits the position we took on the witnesses on TV as jurors; witnesses as jurors and all the way through it, every objection we made, it fits it perfectly. And I know I'm not going to undertake to say what any judge or court will do or should do but I think that it will be a long time again before they turn their back on the Billy Sol Estes case when this point comes up before them particularly in view of the fact that the TV evidence is direct evidence of the shooting and the jurors saw it and the court of criminal procedures says that no witnesses can be jurors. That's the venue. And believe me this man Jack Ruby was tried in the building Lee Harvey Oswald was en route to when he was being transferred.

Across from the park in Deely Plaza people were still putting flowers in honor of President Kennedy and people were still stopping there and taking pictures of them and going up and kneeling and praying and the jurors walking past that and Jack Ruby was tried there in that atmosphere, and as I say I have the distinction of being in the only case that eighteen lawyers and a judge were fired off.

There is another distinction in this case that you state and federal judges will be shocked by and that is that Judge Brown employed a public relations firm, Sam Goodwin's firm, that was engaged to handle the visit of President Kennedy to Dallas on that occasion of his assassination, to handle the Jack Ruby trial. Now, have you ever heard of a judge having a public relations man handle his trial and his courtroom and issue passes with his signature on it for people that would be permitted to come to court? He handled the press; they had to go through him to get into the courtroom; they had to go through him to get a wire service or telephone; they had to have a picture made by him on a card and this man's signature before he could get into the courtroom. I made a motion at the beginning of the trial to exclude the press from the courtroom because a public trial was guaranteed by the constitution and this left only one-fourth of the courtroom for the public and three-fourths of it was given over to the world press; they had 350 of them in there then.

And we had these pickets during the trial and they came down from somewhere. And they had these signs, and the jurymen went by them, attacking our psychiatrist who said Jack Ruby was insane. And then we had an insanity defense that Jack Ruby could be triggered all of a sudden from some highly emotional stimuli into doing some anti-social acts. And he would do them in a fugue state which meant that he had no control over his consciousness; his consciousness was suspended and after the act was committed he would have no recollection of it. Well, they didn't mean a person suffering with epilepsy was a criminal or would do criminal acts, it simply meant that he was subject to doing anti-social acts with no consciousness of it which meant he was temporarily insane at the time of the shooting of Oswald. And all the screaming at Oswald and the flashing of these lights when he appeared and this sneer was sufficient to trigger Ruby off into that state of unconsciousness when he could do everything he did in that state. Well, they came down with literature and a brown envelope and they were passing them out to the jurors who were waiting to come into the courtroom to testify on voir dire and we had a real hassle over that. And they said they were invited down by the district attorney to render whatever assistance they could give and their literature was attacking Dr. Frederick Gift, the father of the electro-encephalograph, who invented it in 1933 and said that his concept was outmoded and not recognized and was no good and they were passing that stuff out there in the hall.

Then they had a jail break during the trial while Ruby was being tried. Five people broke out of jail and went on out with a handmade gun behind an ex-judge's wife who then was a deputy clerk and they had all that on TV and you could see the jail break on TV but they finally captured all of them, but we had that to contend with. Now this Warren Report is going to be of tremendous use to us on appeal. Mr. Henry

Wade, a very able advocate for the State, very strong prosecutor, and a well organized administrator for the State and prosecutor there in Dallas County for some years, appeared before the Warren Commission and gave evidence and gave it forthrightly and truthfully.

When Ruby was in jail thirty minutes after his arrest, the main bit of premeditation testimony came from Officer Pat Dean, Sergeant Dean, who was in charge of security in the basement to see that no one except proper personnel were in that basement when they brought Oswald through that door and put him into that corridor with Ruby. Now, he was the man that had the responsibility of keeping Ruby out. He said that when Secret Serviceman Forest Sorrels was talking to Ruby, thirty minutes later, Ruby told Sorrels that he shot Oswald to prove to the world that Jews had guts. "I made up my mind Friday night when I saw him in the lineup that if I got a chance I would kill him and I did it even though I believe in the due process of law. I didn't want Mrs. Kennedy to have to come back to testify. And I read that letter in the paper that morning about Carolyn and I just broke down and cried." In other words, he says Ruby told him, "I did it with malice aforethought and cold blood," which was a fact. Anyway it says to the Warren Commission; well, I got Dean and I got Sorrels together, and I says, Sorrels—and this is before Dean went on the witness stand. Sorrels, did Ruby say that to you and he said he did not. Now, Secret Service Officer Sorrels has no love for Ruby. He said he did not testify to that; state that in my presence or in Dean's presence. Well, he said, we can't use you as a witness, Mr. Sorrels, we'll use Dean on this highly important aspect of murder with malice and cold blooded killing, so Sorrels didn't testify and I got after Sorrels during the trial after I had talked to him and I called him and I wanted him to come see me and to discuss this with him. He wouldn't come, wouldn't answer my calls or wouldn't talk to me.

We were afraid to subpoena him because after what this man had said if we put him on the stand he would cure the error if he admits to to it. And if we didn't know until Wade had testified before the Warren Commission that this evidence of Sorrell's would repudiate Deans. It was suppressed and if that doesn't reverse the Jack Ruby trial then there isn't any trial that can be reversed because they suppressed this tremendous evidence and the U.S. Supreme Court held in the Al Carter case that the suppression of evidence of a material nature knowingly suppressed from the defense is reversible error and I don't think we'll have any trouble along that line, although I'm not going to say what the court is going to do here or now or any time but I do want to argue the case before them and I expect to say what I think they ought to do.

Now, what has the Ruby trial—and we have documented over twelve hundred errors during that trial. For instance, they would object to a question—just to illustrate: we object, your Honor, to one of their questions; sustained. Well, your Honor, upon what basis; sustained, get onto something else. that was his favorite, something else; let's get into something else. But, I said, he hasn't given you any relevant basis for your ruling. He said, counsel, let's get on something else. We have documented over twelve hundred errors during that trial and they were pretty well publicized in Texas and every one of the legislators knew

about it and had his opinion. Some of the legislators made speeches denouncing Judge Brown. But recently two weeks ago Governor Connelly signed into law the new Texas Criminal Justice Act. In effect, what it is is two hundred amendments to the penal code of Texas.

I feel that the Ruby case, thongh Jack Ruby did not receive due process of law from the beginning of his trial to the end, the fact that it was not a due process trial was probably the undercurrent, the subconscious motivating factor behind the legislator after all these years to come up and amend our Texas Code of Criminal Procedure in over two hundred instances, a number of which affected the conduct of the trial that dealt with the points we raised during the trial itself. And the strongest voice of all in begging his old roommate, John Connelly, Governor of Texas, to veto it was Henry Wade, District Attorney, but Governor Connelly didn't veto it, he signed it into law two weeks ago and I feel at least the death of President Kennedy has brought about due process of law, the thing he believed in more than anything else. The thing that the Supreme Court has been crying out for for thirty-five years since Power versus Alabama, Gideon versus Wainwright, Johnson versus Erp, and on and on and on. For thirty-five years the Supreme Court has been telling the states, if you don't introduce due process of law we'll direct it when it gets up here. Well, now the Texas Legislature has responded. Governor Connelly made a very strong statement from his hosptal bed and indicated that there should be individual freedom and due process of law. He didn't veto it and he received an awful lot of strong demanding and insistence from the prosecution and a lot of other people who are not so due process of law minded to veto it but he did not.

And I feel that President Kennedy's death meant something there. At least it served to shock the nation and the State of Texas and the trial of Jack Ruby shocked the legislature of Texas. There is a lot of things that I would like to tell you but time is running out. I believe that the big home run artists, the hundred and fifty thousand dollar verdict lawyers ought to upgrade the practice of criminal law and Judge McNichols and Judge Carr will now be assigning great lawyers under the new Criminal Justice Act to handle these criminal cases and it is high time that something like that has come about because it is the criminal case that gives the public its flavor of the administration of justice. And the many, many decisions that have been handed down striking convictions because of incompetent counsel have been so telling in its effect upon the appellate courts that now whether the big damage suit lawyer and the successful corporation lawyer like it or not he is going to get an opportunity to demonstrate his skill and ability in the defense of criminal cases and help in the administration of criminal law and I think it's wonderful that that act has been put into effect by congress and we are going to get pretty soon the money appropriated. Well, I feel very emotional about this subject.

My participation and relationship in this tragic event of November, 1963, and aftermath has changed my life and the life of my family and it certainly changed my income. But when I got removed by Judge Holland, things began to change. I started getting calls from people who said, Joe, can you handle my case now? I said, yes, I always could handle it. I got a call from a lady from El Paso the other day and she said, Mr. Tona-

hill, I have been waiting a year to call you. I have a case I want to give you, get you to handle for me. I said, why didn't you call me a year ago and she said, well, you haven't been free. So being liberated from the chain gang of nuts by Judge Holland has put me back in business. I already have written my brief for the Court of Criminal Appeals and I hope I am going to get to stay and they let me argue. They have already said that I am the attorney of record and I will get an opportunity to do the work I think I ought to do for my client down there and I can go back to work now for people who appreciate my efforts.

Being here with you is a great moment in my life. I like you and you are my kind of people and I hope our trails will cross again. If you come to Texas to see me, I hope, I feel you will be just as happy with we Texans as I am with you great Idahoans; thank you.

MR. HULL: Thank you very much, Joe. I am sure the applause indicates the interest of this group. There is no question that this is going to be a great event, both from the standpoint of the public interest and the interest of the Bar. And we certainly had an insight from a very active participant into a very controversial subject. With that and no further announcement, we will stand recessed until tomorrow morning at nine o'clock. Thank you very much.

July 9, 1965
9:15 o'clock a.m.

MR. HULL: I'll call the meeting to order. I have a few announcements. I have been asked to remind those who are concerned that the Right Reverend Treinen has granted dispensation to the Catholics for the ladies attending the lunch and for all persons attending the banquet tonight. My interpreter in these matters tells me it does not apply if you eat other than those two meals.

Well, at this time I would like to call on Mr. Frank Joseph, Chairman of the Canvassing Committee, if he will make his report. Is Frank here? Is anybody from the Canvassing Committee here? Ralph? Fine, we'll let Ralph do it. Mr. Ralph Hailey from the Northern Division.

MR. HAILEY: Thank you, Mr. Hull. The Canvassing Committee met last night. To give you a little information on it, there were, I believe, four ballots that were declared not completed, they were not signed in accordance with the instruction. I wasn't supposed to have made this report but I am doing this from memory. However, those four ballots I would hasten to add would not have changed the outcome one bit. We are happy to announce that the new Commissioner is Jerry Smith (Applause)

MR. HULL: Is Jerry Smith here? Jerry, would you come forward, please. It certainly is my distinct pleasure to present my successor, from the Northern Division, Mr. Jerry Smith of Lewiston, Idaho. Congratulations, Jerry (Applause)

MR. SMITH: Mr. President and members of this convention, it's with

mixed feelings and emotions and a great deal of humility that I received this news this morning. I recall in my friend Mr. John Gavin's tribute to the profession to the legal profession yesterday that he said that ours is a great profession and I wholly subscribe to this. I feel that this is true in Idaho; I feel that we have a great Bar in Idaho. And I think that traditionally we have had a great governing body in our Board of Commissioners and this has been true in the past and is presently true. And I feel that the retirement of Alden Hull leaves a great void in the Bar Commission, and it is going to be my responsibility to try to fill this void. I feel inadequate to the occasion in endeavoring to do this but I want to assure the members of my division that I will nevertheless undertake it with all of the strength and conviction that I have at my command to the end that I will merit the trust and confidence that the members of my division have placed in me in elecing me to this position. Thank you. (Applause)

MR. HULL: Thank you, Jerry, and thank you for your kind words. It's an undertaking that all of us who have gone through this three years, and there are many here in this group that have had this experience, will remember all their lives. At this time I would like to call upon Dean Philip Peterson to introduce our panel for this morning's program. Dean Peterson.

DEAN PETERSON: Last fall in Boise we were privileged to have an institute magnificently attended and the consequences of that institute are evident today. The people who participated in it were so impressed that the Bar Commission felt they should be re-invited to give everyone in the Bar of our State an opportunity to be exposed to the learning to be derived from them. Their pattern this morning, because they didn't want to be repetitive, will be somewhat different than we experienced at Boise. There they addressed themselves to the problems of cross examination. Here they will address themselves to the problems of direct examination. The format they followed there is an examination witness pattern and I understand that they are going to follow a discussion pattern today.

Dean Reed of the University of Colorado will moderate the panel. And John has been through the gambits of the teaching profession; he has gone through Oklahoma, to Michigan, to Yale as a professor and finally he winds up as Dean of the University of Colorado Law School and nonetheless he is a heck of a nice guy. (Laughter) I think all of you met him and appreciate that fact. The list of writings he has contributed to the legal profession, the feats he has accomplished would take too much time here. As a fill-in on the committee but most assuredly a major leader, for he has been on the circuit before, we have Mr. Leo Karlin, who comes from Chicago with an equally impressive background in trial practice. Mr. Karlin's most notable achievement is the fact that not long ago he was President of the National Association of Claimants Attorneys and I assume that means he represents the plaintiffs. (Laughter) In addition to this he has been a member and is a member of the Board of Governors of the Chicago Bar Association; he is Chairman of the Negligent Section of the Illinois Bar Association. He is a member of the American College of Trial Lawyers which is indeed a distinctive honor. He is a member of the International Academy of Trial Lawyers. He has

had obvious experience in the field and I am sure we are going to enjoy him very much and every bit as much as the man he succeeds.

I don't know how we can introduce the last member of this panel? I am positive from what I have seen that he has been introduced personally to every one of you. You know him either from Boise or from here. I suppose we keep looking around for distinction as I mentioned the attributes of these people and I don't know whether this is right or not but he is the only lawyer, at least that I know of, that is a member of the Committee of the Medical Association. I don't know how he achieved that enviable or unenviable mark? But Mr. Sheppard represents the other side of the fence and is primarily interested in defense work and does this, I understand, with some marked success. He has also represented an occasional plaintiff, so all of us have the benefit of his services. He is the past President of the Bar Association of St. Louis. He is a member of and chairman of the Medical Legal Section of the Committee on Negligence of the American Bar Association and he is a top man in the Advisory Committee in Legal Affairs at Boston University. As many of you are aware, Boston University has an extensive medical legal program. I think they are the first of the law schools that ventured in this area. I suppose both he and Dean Reed really needed no introduction today, after Boise. They are largely responsible, I am sure, for the great turnout we have had at this Bar meeting. Without further ado I will turn the meeting over to Dean Reed who will moderate it. I believe that about half way through we will have a coffee break and then return from that and I think they are going to open it up for questions at some time. Dean Reed. (Applause)

MR. REED: We have had a chance to say to most of you how pleased we are to be here, all three of us. I said to somebody that I had the feeling that Idaho is really a very small State because I have been in your State now only twice and I see the same people both times. (Laughter) I think it's been also something of an education to be here at Sun Valley. We went to a former church down town last evening. (Laughter) So called Impresso House. You should see John Sheppard dance down there. He sought to cut in on somebody and succeeded and the lady said, by the way, with whom are you dancing? (Laughter) It was that kind of an operation. I feel that I am somewhat out of time with that kind of thing going on here and the Boilerroom operation also because had I experienced this only a few years before I could have written the Inferno before Dante and think of how famous I would have been. (Laughter)

I think John and I will be less able to have fancy footwork up here than Leo because Leo had been relaxing but John and I have been playing tennis with a couple of your fellow citizens and we're both sorta crippled up at this point. But it was anu interesting kind of game because Dean Peterson was on one side and I was on the other side and these two lawyers we were playing with kept arguing that your dean is better than my dean. (Laughter)

So that you may know what to expect of us here and in what order we are going to proceed, our scheme is something like this. I am to speak for the first few moments here while the other people who had a

hard time getting up arrive. I want to address my questions to questions of order of proof; the tactical advantages of certain orders of proof and to make some comments from the point of view of one who is not engaged in trial practice because I do not even part time try cases and let this be clearly understood, I am the outsider looking in here. To speak a little bit about courtroom forensics and my colleagues and I will discuss this in panel fashion after I have made some introductory remarks. Then Mr. Karlin will speak mostly to the point of demonstrative evidence; the use of it and how to get it in and so on, and then there will be comments about this. At that point we will then take a coffee break and following the coffee break John Sheppard will speak largely on the point of the use of expert witnesses and problems of medical evidence, medical proof. Then towards the end we shall speak briefly about rebuttal evidence and redirect, use of redirect and rebuttal evidence and I trust we shall have enough time then for some questions from the audience; few of them. Conceivably if something comes up really pointed along the way we won't mind but I think it will work better if we hold the questions until later in the session. Obviously we are going to begin with generalities and move somewhat to more specifics as we proceed.

On the matter of order of proof; how shall witnesses be selected for their order and who shall be put first and the like. I am sure that each of us have pet theories and no two cases are alike and therefore generalities are perhaps less than fully useful. But what generalities may be stated? Again, because I am not experienced here I did some inquiring around to see what might have been said about the subject and it is interesting to observe two things. First of all, there is a great disagreement among those who are supposed to know what they are talking about and who write books about such matters, and secondly, although there is disagreement, there is one principle at least that shows through and I think that most of us know this intuitively but I still think it is worthwhile remarking on it. I think many of you know the book by Cutler, Successful Trial Tactics. He indicates that although he wants to start out with a good witness who makes a good initial impression, he wants to save his best witness for his last witness on the theory that the last thing that the jury hears from him is the thing the jury remembers best and this is the most impressive. Bush on the other hand in his book, Law and Tactics in Jury Trials, says unequivocally he uses his very best witness first. He doesn't want to trail off into nothingness and he points to the danger of starting at a high point and going downhill all the way, which is of course a real danger. But he is nevertheless impressed the importance and he tries to impress on his reader the importance of using his best witness first. The interesting thing, however, is that these two gentlemen both emphasize what the psychologists call the primacy recentcy effect. In any serial learning in the learning of things in series, the first thing heard and the last thing heard are always learned the best and the things in between tend to have diminished persuasiveness and diminished effect.

Therefore, one is not wrong if he used good witnesses initially and good witnesses last but it is obvious that some of the top tacticians disagree as to whether in general the best one is put first or he is put

last. But without a doubt the first and last are the important items and obviously if the trial goes more than one day one must give attention to the state of the trial at the end of the day because the last thing on one day is going to be remembered better than something even intermediate on the second day or on a following day. Bush suggests when he emphasizes that the best witness should be used first, he suggests this is important because he is the one who receives ordinarily the most searching cross examination and therefore you want a man who can stand up to the cross examination the best. This doesn't mean necessarily the best educated but in a sense he is the one who can communicate the best, most articulate and most thoughtful. If it is at all possible you put him on first there because he is going to be subjected to the most severe and searching cross examination. But this to me suggests a counter tactic, if I may put it this way, and that is unless you really believe you can make a lot of hay on cross examination of that first witness, you might well relax a little bit as to him and save some of your harder cross examination for subsequent witnesses because almost by definition the first witness on the other side is the best or a very strong witness and if you do not expect to be able to gain very much knowledge in cross examining him, it's a good idea to touch him lightly because you are simply going to strengthen your adversary's case.

So I think that there are two sides to this point but without a doubt the first witness is going to be a strong witness. Now, what about using witnesses, one, two, three, four, five; in what order? Does it make any difference whether you have order, one, two, three, four, five or one, three, two, five, four? I think that most of us would assume that it makes some difference but we have only intuitive judgment to know effect and we really don't know how to set these things up in the most effective order. We tend to rely on chronological sequence of things and so on and perhaps nothing better is possible in a world in which no two trials are exactly alike. But it is interesting that our suspicions about this have been confirmed by some tests and by some experiments that have been run.

Two gentlemen by the names of Weld and Rolfe performed this kind of an experiment and whether this is useful to you I don't know but I think you would be interested at least to hear about this particular experiment. There is a famous case called the Thomas Hogue case in which Thomas Hogue was charged in a criminal trial with bigamy. And there was an issue of identity; he claimed that he was not the individual who had married the prosecuting witness at an earlier time before marrying the present wife. On the other hand, although his name had been changed, he was the same man. Now the case was tried with a given result and the material was available. Now these gentlemen, Weld and Rolfe, took a group of college students who presumably are not typical jurors but an interesting group to work with, anyway. All of them incidently were headed for the study of law; pre-law students in a university. And in successive years the facts of the Thomas Hogue case were read to them. Now, this again is different from a real case because there were no witnesses to observe, just a good clear reading of the record in the case. There were some ten or eleven items of evidence to which the experimenters added a reading of the indictment as the first item and and at the end a

statement to the jurors if you would then, about 15 in each group, reading to them the verdict in the original case. And after each item of evidence; the testimony of witness A, the testimony of witness B, the reporting of demonstrative evidence; there was a scar and the scar or lack of it was shown to the jury; this was stated. These things were read and at the end of each of these segments of evidence those who were serving as jurors, if you may call them that, the subjects, were asked to indicate the degree of persuasion that each felt at that point for innocence or for guilt on a scale of one to nine and these figures were averaged and then in a second reading to another group at another time the order of these things was changed around so that perhaps Witness A was put after Witness B and the like. All of these things were tabulated. Now, you recognize this is not a courtroom; this is not a real case at this point and so on. There is no discussion among the jurors, each man plots his own position but there were some fifty so the statistical averages seemed to be worth something.

A number of interesting things emerged from the results of this test that I have just described. One of the frightening ones was that these were all pre-law students and in at least some groups the mere reading of the indictment set up a strong presumption of guilt so far as they were concerned. (Laughter) One other frightening thing that was irrelevant to our purpose here was that some of those who had doubts about the guilt of the person when they heard at the very end of the case that he had been acquitted by the original jury were then more convinced than ever of his guilt. Kind of a perverseness here on the part of these people. Maybe this throws out their results; this must have been a wacky group.

But the fact is these things emerge: Number one, as you would expect the degree of persuasion of a fact finder seems to be a function of the accumulation of the quantity of evidence for one side, thus as additional witnesses appeared testifying with different kinds of facts in favor of one party the median or mean degree of persuasion of the fifty people to whom this was being read kept increasing in the direction of that side. But also as you might suspect there tended to be a sort of diminishing return aspect that the first witness would give a good strong persuasion for that side, the second witness whose story is perhaps equally strong and who was put in a first position gave just as much persuasion, increased the quantity of persuasion to a lesser extent, and a third that was even less and so after four or five witnesses to the point there was virtually no increase in the degree of persuasion so it seemed to be a kind of diminishing return function here.

Another item that emerged is that it does make a difference of order because sometimes when item three followed item two, each time it would, following that item it would increase the degree of persuasion say only one point but where put ahead of item two or after item four somehow it was a little more dramatic and thus increased the degree of persuasion by two or three points on the nine point scale, the median degree of persuasion. Now, without going into detail because we don't have time here as to what these items of evidence were, it's not possible from these materials to generalize as to what order makes the biggest difference

but it is clear that items of evidence in one position may change the degree of persuasion more than in another position, so we suspect this and this tends to confirm it.

But most important to me of all is this, that where one side put in all of its evidence without interruption, then that side picked up the highest degree of persuasion of the jury. But at the end of the case when the other side had put in all its evidence its degree of persuasion was the lowest of all. Now, let me spell that out a little better. In most of the versions of this case the prosecution put on three or four items of evidence at which point the defense then put on its items of evidence after which the prosecution was given a chance at rebuttal and had one or two more. Now at no point in that zigzag process did the degree of persuasion for guilt ever get as high as it did when the prosecution's whole evidence, including that which had earlier been rebutted when it was all put on at one time, it never got as high but at the end of the case the verdict was still a stronger verdict for the prosecution on this zigzag basis than it was when it went up to a very high point. In other words, the conclusion can be drawn from some of these studies that it's almost better not to have over persuasion at some one point in the case; that it's better for one's degree of persuasion if as the case goes along the jury can be given insights into what the defense will be, into what the other side will be so that they don't become over persuaded on one side and then when they begin to see how it goes they lose all confidence in that side. Over persuasion seems to be a difficulty here and one is therefore advised it would appear to save some of his steam, if he is allowed to do so under procedural rules, as to order of proof. Now, again I say that you are not going out and use this tomorrow and use this in some case and say I am not going to try to persuade them too hard and save some for a little later, it doesn't go quite that way.

But I think it is interesting to know that such tests have been made that tend to confirm our judgments that order does make a difference and tend to suggest that it's a better way for one who has a burden to proceed so as to try to keep a kinda of strength running through his case rather than zooming the jury up to a point of high persuasion only to lose it more rapidly than otherwise would be the case with this counter evidence that comes from the other side, you have nothing left for the end which means holding something back if it's possible under one's rules of evidence.

Now, the other thing which I wanted to speak to you here was the point of forensics and form of questions. Every evidence book that I have ever seen that students use in law schools makes a big deal about leading questions and how to recognize a leading question and how to examine witnesses without leading and so on. And most students are concerned about objections to leading questions. I would like to emphasize the fact that the transaction that takes place when a witness is on the witness stand is more than a verbal transaction. This is a transaction in which he is communicating by all kinds of means non-verbal as well as verbal to the jury. He should be given the opportunity to communicate whatever he is, whatever he has to say, whatever feeling he can communicate to

the jury. And leading questions are far from damaging it seems to me to the adversary in most cases. Almost never would I object to my adversary leading a witness for the simple reason that the leading robs his own witness of his maximum effectiveness. On the whole my adversary's leading plays into my hands.

To illustrate by over-simplification and a serious illustration, suppose the witness takes the stand and I say, your name is John Smith, isn't it, and you live at so and so and he says, yes, and you were on the corner where the collision occurred, yes, I was. And the Buick ran the red light and ran into the Ford, isn't that your version? Yes, it is—your witness. This witness hasn't communicated anything to the jury at all and I would be an idiot to object to that line of questioning. This is the lawyer testifying and the jury doesn't trust the lawyer, he is a paid advocate and they know that anything that he is saying is biased and they want to hear what the witness has to say. How much better if he says in response to the question, tell me your name and something about yourself. Well, he says, I am John Jones, I am a carpenter and he says I have been working here with my hands all these years and he goes into some homely statements with some grammatical errors and all and suddenly here is a three dimensional person coming across to this jury. So that lawyer who has to lead his witness has a very poor witness and very poor preparation for his case. Most of us think of course that leading a witness comes in most instances from either a witness who simply can't hold himself together long enough or a witness who is poorly prepared. I remember how shocked I was the first time when I realized that an English barrister doesn't even interview his witnesses before they go on the stand and this typically regarded as unethical, whereas the American lawyer is guilty of malpractice virtually if he doesn't interview his witness thoroughly before he goes on the stand.

At what point, however, do we run into a question of ethics in preparing a witness to go on the stand? At what point is our help needed; at what point is our help legitimate in getting the witness to prepare his story? Well, first of all, let me say that—again, if you will let me get off into some of this psychological stuff, it is interesting to observe that the curve of forgetting is a curve and not a straight line. One forgets a great deal of anything in the first few minutes and hours and progressively forgets less, so that the difference between what is remembered after a day and three days is very little but the difference between what is remembered ten minutes later and five hours later is substantial. Once a person tends to forget something then conversation with him about the thing may be taken by him as his own recollection and he begins to remember those things which he had forgotten, only he remembers them in the terms in which they are put to him.

Let me read to you an item which again is not legal but which is interesting here as to what happens. An experiment in a class lecture in a college was to this effect: A teacher made an unequivocable statement about a series of propositions. A student reported for the student newspaper deliberately as part of the experiment wrote the lecture up in the student newspaper and misstated these unequivocable statements in

the opposite direction. At the end of the week the students were given their usual weekly examination in which among other things they were asked about this particular set of propositions. At the end of the examination each student was asked to indicate whether he had read the article in the newspaper; many had, some hadn't. And according to the results of this particular experiment the statement is made that most of those who had read the article recognized the article as accurate and on the examination paper remember what they had erroneously recognized. Those who had not read the article reported the lecture with their customary accuracy. The point being if somebody makes a statement it was this way then the indivdual who saw it who may not remember perfectly tends to recognize that which he now hears as what he earlier saw. And I think that we all recognize therefore the dangers inherent in the coaching in the preparation of a witness for examination. So we're walking this fine line. The witness needs to be refreshed; he needs to be helped to remember the incident; he needs to be assisted as he seeks to find a way to state those facts that he knows in the most persuasive fashion and yet at the same time there is very heavily infused into this situation a very grave danger that the story will be distorted in the direction of the questions asked by the lawyer in his office or the comments made by the lawyer in his office.

And I hope that my colleague will join with me in just about two more minutes as I come to a conclusion in discussing this aspect of the thing because I think it troubles us all and we would like to know how they respond to it.

Finally, I want to say just a word about my view as an outsider in the courtroom of courtroom forensics. I think all of us enjoy watching a John Sheppard or a Leo Karlin or a Phil Corboy or whoever at work and we learn a good deal from watching them but there is nothing more important in my judgment in courtroom style than sincerity or honesty of personality. There are I have no doubt a few lawyers who are good enough actors that they can be something in the courtroom that they are not themselves, but on the whole we come through you and I as what we are and an attempt to be somebody else is a tremendous mistake. Partly I think this is the consequence in our time of television in which the old idea of the heavy handed approach to oratory in the courtroom—this is a thing of the past; this is the age of the soft sell and it's a rare individual who can bring off the idea of the silver tongued oratory in the courtroom. I admire those who can do it; I simply am not one and most of are not in that category. In the book, A Generation on Trial, by Alice Cook, the English journalist, he reports the two Alger Hiss trials and you may remember in one of these trials Hiss was represented by the late Lloyd Paul Striker who is of the earlier generation of trial lawyers who still wore the spats with the pearl buttons and effective clothing in this manner. The attorney for the government in that trial was now Judge Murphy and if you have ever heard Mr. Murphy speak you know he is a very direct and unemotional straightforward speaker; quite a contrast to Mr. Striker. At one point in the trial when Mrs. Chambers had testified that she and Mr. Chambers and the Hiss's had gone out for a ride in the country down to Mount Vernon, Loyd Paul Striker was

cross examining her and he came in rather quietly and he said, now Mrs. Chambers, you said awhile ago that you went out with the Hiss's from the Cave Street house into the country to see the foliage, the magnolias and the foliage? Yes, she said, that is what we done. And this was in the fall, you say? Yes. And he said, you say the magnolias, lemon magnolias? Yes, she said. Well, said Striker and he lifted his hands and he said, the lemon magnolia blooms in the spring, does it not, Mrs. Chambers? Well, she was momentarily puzzled; she thought it maybe did and she wasn't quite sure. Then in effect—quoting what Alice Dare Cook said; he said, Mr. Murphy resumed the redirect examination. He said, after Mr. Striker's sudden forays on exposed positions, the erupting buss fuss artillery, the feints, Mr. Murphy's unspectacular examination had the honest sound of the tramp of the infantry. Now, this was a non-lawyer watching and he was obviously much impressed with the way in which this man being himself, not trying to outdo or not trying to reach the oratorical heights that a Loyd Paul Striker was but he was just himself and this just had the honest sound, as he said, of a tramp with the infantry. And so my own observations are that that lawyer that proceeds in a courtroom that way that is not comfortable to him is headed for trouble nine times out of ten. Now gentlemen, I have taken a little too much time here to speak of order of proof, leading questions, the problems of coaching a witness or preparing him and finally on forensics. The one direct question that I was prepared to ask you was your comments on how you prepare a witness to avoid this danger or that danger you will let cross examination take care of. Either of you?

MR. KARLIN: Which one is it you mean, John?

MR. REED: The matter of coaching the witness, preparing the witness; what about the ethics of this?

MR. KARLIN: There seems to be as far as I have learned in the years I have been practicing a gross misconception on the part of laymen that there is something wrong with the lawyer talking to witnesses before putting them on the witness stand. My only feeling is that nothing could be further from what his duty to his client requires and ethics of the profession permit it. It would be almost silly for a lawyer to permit a plaintiff or a defendant or any witness on the stand to testify without knowing what he was going to say. And so the very first thing we do in any case we handle while we're putting somebody on the stand is to explain to them the problem involved, the reason we're talking to them, the purpose of the conversation and make it clear to them that they are cross examined about any conversations and to tell the absolute truth. That we're called in; if it's a witness that was subpoenaed and asked to come to the office, we discuss with them what they know, they tell us what they knew. If there are corrections then they even talk about that if they are shown a statement because under our law if they are shown a statement to refresh their recollection it becomes available to the court and is available to the other attorney and they use it. From the standpoint of ethics the only thing that could be wrong is the lawyer who tries not to bring back or refresh the recollection of a witness after a number of years but who tries to get the witness to say something

that the witness never saw or witness never said or the witness never knew or thought; that is wrong.

MR. REED: But isn't that like black or white, Leo? Isn't it possible by way of questions the way they are phrased and so on he begins to take what was uncertainty for certainty. You say to him after he says I think so and you say, now think about it, wasn't it so and he realizes he has to come up—

MR. KARLIN: John, you are getting now into a question of personal ethics.

MR. REED: I am happy to do that. (Laughter)

MR. KARLIN: If you have a witness who has told you a version that seems favorable to your client and now two or six or seven years sometimes he comes in and he tells you a little different story, I think you have a right to suggest to him what he told you originally to see if that alters his concept, it alters his version. You do not have the right to say that you said this and it must have been true then. Your only right is to say what is the truth. What now in view of the new things you have read and things you now tell me do you remember.

MR. REED: John, any comments on any of these things?

MR. SHEPPARD: Yes, let me just comment about the preparation of witnesses from the defense standpoint. First of all, in preparing the defendant for trial you are faced with the bit of a different problem often times the insured defendant has unfortunately little interest in the trial of the lawsuit. Unlike the plaintiff who expects to recover enough money to buy a new house or at least to pay his lawyer—

MR. KARLIN: Not yet, object to that.

MR. REED: Overruled.

MR. SHEPPARD: Sustain it. (Laughter) The defendant's interest is not as strong as the plaintiff and since we know that juries tend to decide cases based at least in part on the personalities of the parties, it is important for the defense lawyer to spend some time with the defendant to encourage his interest in the lawsuit. To try to identify him personally with the trial. And so the first contact with the defendant when he finally knows he has to go to court; and you would be surprised how many insured defendants don't want to go to court and often times it's that element of society, the well educated and busy professional man who at sundown has great respect for all of the administration of justice but in his busy daytime activities doesn't even want to give an hour to come to court to testify. But the defense lawyer has to talk to that defendant telling him the reason we're going to court and often times the defendant may feel responsible for the accident, may wish the case had been settled may be surprised that it hasn't been settled and so it's incumbent upon the defense lawyer to bolster up his side of the case by first talking with the defendant. And it isn't one of these black and white areas where this is proper or whether this is improper.

I believe the defense lawyer's first obligation is to analyze his own defendant and see what approach will work with this guy to make him interested in the lawsuit and to inform him how important he is again in the administration of justice but more importantly to convince him that somebody is trying to take advantage of the situation that he caused. And I often times tell the insured defendant who starts complaining about requiring him to come in for depositions and then later requiring him to come to court to just remember that he is the guy that had the accident and that if it weren't for him none of us would be involved in this problem and that under this cooperation clause of the policy he better show up on time and he better not give me any more worries about what he is going to do and whether he is going to be there or not be there because if it's a case of liability I quickly tell him that could happen to my interest in the case is for him not to show up because we will withdraw from this case just as quickly as we get an excuse and let you be liable for the judgment. And this language in the policy is very helpful with these reluctant defendants and I believe it's the duty of the defense lawyer to get this matter out on the table and discuss it with the defendant and as to his obligation under the contract so that you can then pay attention to the trial of the lawsuit.

MR. REED: I would like to know how often—you started out there with a sorta soft approach there and appealed to his interest in the administration of justice and pretty soon you had that mailed fist, you know, and club, how often as a practical matter do you really have to push the man, how often can he be induced, how often do you have to shove him?

MR. SHEPPARD: I would say on the real last inch of forcing him by quoting the policy of the contract that happens fewer than one per cent of the cases. But almost invariably, John, it happens in the kind of case where you have all other kinds of problems anyway. (Laughter) He is probably some guy who is almost indefensible and it's probably a case of some injury that may be from the defense standpoint you think they are exaggerating it and you have to try the case and so as it so often happens it's that one per cent of the time that causes you a problem.

MR. REED: Leo had a question.

MR. KARLIN: John, I would like to ask you something; I mean it's bothered me for years. You talk about the group of defense lawyers that represent defendants; actually you know we had this out in the American Bar and you represented two of these; you represent the insurance company which is the primary financial interest; you represent the defendant under an agreement where if he is liable you are supposed to cover for him. When you talk about taking advantage, his refusal to go along with you, what about those situations where the plaintiff, I assume, sometimes you admit he is entitled to a trial?

MR. SHEPPARD: Sometimes, yes.

MR. REED: You have a situation where the plaintiff is entitled to recover and while all this rigamarole is going on about telling the defendant if you don't go along with us we're going to pull out, is anybody

trying to find out what ought to be done to this case? I don't mean to be facetious; there seems to be a tendency for me defending companies to feel it is none of their business to decide whether justice is being administered or if you call it right, or just the terms and purposes of the policy required. If somebody could figure out is this a case to try or is this a case to get rid of, what is our obligation under the policy? Is this to make broken people whole, to protect the defendant, to protect the plaintiff; I know that is why I take out insurance.

MR. SHEPPARD: Why do you take out insurance?

MR. KARLIN: I take out insurance for two reasons. First, to save myself selfishly the work of defense. Secondly, the feeling that if it's my fault that someone is hurt they ought to get what is coming to them.

MR. SHEPPARD: You see so many people, even lawyers, believe that the purpose of insurance is to pay the person who is injured in an automobile accident. Leo of course from his experience says, if I am at fault, but there are many, many people who feel that the reason they have insurance is to pay the person who is injured in an automobile accident, but that is not the purpose of insurance. The purpose of insurance is to protect the person who is paying the policy in the event he is held liable; it's indemnification. That is the idea of insurance. Now, is there someone—

MR. KARLIN: I don't think I'm getting through.

MR. SHEPPARD: Yes, you are. (Laughter) His question to me is, is there anyone who is paying any attention as to whether this case ought to be settled or disposed of? Yes, everybody who is connected with the defense side of the case is concerned with that problem and it begins from the time the case is reported. Most often the company sees to it that you go out and talk to the injured party immediately and if he is available and can still talk on his own cases are settled at that time. We have to remember that most cases are disposed of without trial. So that from the very first report of the accident the insurance company is interested in disposing of the case on its fair value. Now, when it finally gets to Leo's hands and my hands there has been a great deal of work that has gone on in the disposition of this case. We are digressing here from our assigned topic and I am going to try to wind this portion up as quickly as possible.

MR. KARLIN: Don't we always?

MR. SHEPPARD: We want to dispose of the case on its fair price. What Leo's idea of a fair price and what my idea of a fair price and what the man in the home office, his idea of the fair price and what the plaintiff himself feels about the fair price, these are all equations that have to be thrown into the final ballots. Actually, a personal injury case is worth from a legal standpoint the most he can get out of it and it's worth from my point of view the least amount that I have to pay. And in a settlement; most settlements when you walk out of court, if it's a good settlement nobody is happy and the insurance company is critical of their lawyer because they think he didn't really have the guts he is supposed to have and he should have gone on and tried the case. The

plaintiff is disappointed in the plaintiff's lawyer in that this plaintiff didn't get as much as some bartender friend of theirs who lives four blocks away and who had a less severe injury, so that everybody walks out of the courtroom after the case is settled dissatisfied. And that is why the two lawyers tend to get together and walk over and have a beer because finally nobody likes them. (Laughter)

MR. REED: John, what about the—do you have any problems out of your defendants on the stand?

MR. SHEPPARD: Well, let me relate a couple of experiences along this line. You do and even when you have prepared your client. Now, I have prepared my defendant not only how to say things—

MR. KARLIN: Careful, careful, John.

MR. SHEPPARD: Well, let me say this: As a preface to all the remarks I am going to make today I agree with what John Gavin said and Jerry Smith said here, we are members of a very important profession and we have a tremendous obligation in society today. This morning I am addressing myself to the techniques of handling cross examination and if I say anything that is not in keeping with your ideas of ethical standards, I certainly stand corrected and I am not in any way trying to dissipate my feeling of our high obligation. In this time that we have let me tell you about how I handle my preparation of witnesses and direct examination. I hope that what I say will be in line with all of our ideas about ethics. I talk to my defendant and tell him—normally if I am lucky this is the first time the guy has been in court; if I am unlucky it's his fifth accident and he knows as much about it as the lawyers. But if as most often happens this is a new experience for the defendant. I explain to him what the court is about. I tell him the function of a jury and how a jury decides a case based on the oral testimony and the exhibits that are in evidence. I explain to the defendant the investigation that we have done. I show him the police report. If we have statements of independent witnsses I review those with him so that he has as broad a picture of his lawsuit as I can give him. Then I start questioning him often times without the statement that was taken by the adjuster. I find from my experience that so often the adjuster goes out and talks to the defendant as the first party contact because he is available. He is easy to talk to as the insured defendant and you can make him come to the office so that often times the adjustor talks to the defendant first and there may be things in the defendant's statement which we know are not correct as we have investigated the case which even the defendant if he is given a chance will also know they are not correct. But so often if you just give the statement that the adjustor took to the defendant and he rereads that statement which he has signed he feels committed to it even to his own lawyer so that you have a problem to overcome if you give him the statement. So I frankly in preparing defendants for trial or depositions often times don't let them read that statement. I review the thing fresh with the benefit of our investigation.

Then I tell him above all that if he weakens his testimony by prefacing his answers by saying, well, it's been some time but the best I remember

is so and so and I think so and so. If he says that over and over the jury tends to only remember that this fellow was uncertain about it. Now we know in dealing with people that so often a person hates to make a direct statement and they love to say, my experience shows, or it's my feeling about this, but a witness on the stand who continues to qualify his answers weakens his testimony and I don't want my defendant's testimony weakened so that I tell him not to do that and if he does it in the office I again correct him at every opportunity. I tell my witnesses and my defendant for depositions not to talk very much; if you can answer the question yes or no on deposition, do so; save your full explanation for the time of trial. But when they get into court I want them so well prepared that they can come out with those spontaneous statements that may not be in response to my question but may at least show an inner feeling on the part of the defendant that this is what he wants to get across. I want the jury to have the feeling that this man is giving a spontaneous explanation in defense of this case that he is being sued on.

I talk to my clients about how they dress and how they are going to appear in court. For the average juror serving on a jury duty is an opportunity to participate in government that he doesn't always have. The average juror dresses a little better when he comes to court than he does normally. He expects the man who is being sued to treat it in the same fashion. So I tell my defendant to dress as he would if he were going to church because the court is the next thing to the church where men sit in judgment on one another's problems. I had this experience; I called L. V. Cotner was the fellow's name; I called L. V. and told him, well, L. V., we're going to court and I would like you to wear a suit, and there was a long pause on the phone and, well, I said, well L. V. it doesn't have to be a suit, I mean, just a coat, the trousers don't have to match. Again there was a long pause and I said, well, L. V., if you have got a jacket of some kind or maybe you can borrow something from your brother or from your Dad and again the long pause and he hadn't said anything and I said, L. V., are you there? Mr. Sheppard I have been thinking, he said, there is a place down the street I have passed it so many times and he says, I think this is the time, he said, I am going to rent me one of them tuxedos. (Laughter) So you get a real cooperative guy. I had this experience. You can prepare these witnesses and on a heavy case you often bring them a couple of times; I do and go over the pictures and go over things so they are familiar with it. Sometimes in a heavy case I take my client up to the court and show him where he is going to sit and where the jury is going to sit. You can always find an empty courtroom and go in there and seat him in the chair and ask him a few questions so that when you go in on the day of trial this is not some new place to him and he can concentrate on what he is supposed to do.

I had done all this with my friend John Ancona and he was as well a prepared defendant as I had ever put on the stand, I believe. I asked John—and I always stand when I am questioning witnesses. I think juries they watch it on TV and they expect a lawyer to be standing and you make a better appearance. I said, would you state your name for the record? You see everybody knows this is Ancona, we have been talking

about him for three days. Ancona looks at me, gulps a couple of times, nothing happens. I said, tell us your name? Me? I said, yes, your name? He says in a loud voice, I am a John Ancona, I am a in a good hands with the All State. (Laughter)

MR. REED: We'll come back to John Ancona pretty soon. I am going to call on Leo Karlin now to talk to us awhile about demonstrative evidence and we'll have some comments at the end of his time and thereafter we'll have a coffee break. (Applause)

MR. KARLIN: Ladies and gentlemen, while my two friends Reed and Sheppard have been playing tennis some of my new well-meaning friends have given me a whiskey voice. That is the reason I had difficulty in trying to convey the thoughts that I had before. In dividing this subject, as one gets into the question of direct proof or direct examination whether it be defendant's or plaintiff's case, the popular concept and the way in which a case or cases are tried is the presentation of witnesses who talk by word of mouth. Then you get to a phase of direct proof which involves what we lawyers know is the general doctrine of demonstrative evidence. There seems to be a general feeling that this is something so controversial, something so definitely diametrically adversary between plaintiff and defendant that the mere mention of it for years has brought about an almost instantaneous reaction of feeling when a plaintiff mentions it or the other way around. Nothing is further from the truth and perhaps it's best described by an anecdote that William F. Keegan of New York used when he was at the seminar of the American Medical Association. The subject they gave us was the use and abuse of demonstrative evidence. The plaintiff's lawyer was talking about use of it; the defendant's lawyer was talking about the abuse. Bill felt as I did that this is a field of evidence that applies to both sides equally but he wanted to explain it so he told a little story.

He told the story of the Order where the brothers took the vow of silence, when they took the oath and became members of the Order and for years nobody talked and everybody prayed in silence. Finally they decided it would be a wonderful thing if once a year they had a banquet and one of the brothers was given a chance to make a speech. So it began. The first year a brother was selected and he stood up when the time came to talk; and keep in mind they are breaking the vow of silence of many years, and he said, Brothers, it's a privilege to speak to you, I am going to tell you what I have in mind. I don't like the mashed potatoes, they are stringy, they are lumpy, and he sat down. The next year, another banquet, another election and another brother is selected. He got up and said, I disagree radically with the last speaker. I like the mashed potatoes, they are soft and tender and I think we ought to have more of them. Another year went by and a third election and third brother who was elected began to talk and he said, brothers, I can't stand this raging controversy, I have put into the Bishop for a transfer. (Laughter)

That was Bill's idea of what really goes on in the field of demonstrative evidence. Basically it is a set of techniques that is equally available to and usually equally used by both sides of the Bar. In a strictly legal

sense, demonstrative evidence is defined as that form of evidence which tends to illustrate, clarify or throw light upon the verbal testimony of the witnesses. The definitions academically speaking are simple. The book tells us what techniques we can use. The question that becomes involved is basically, do we have the imagination, the drive, the background to use them and psychologically when should we use them.

This field of evidence divides itself broadly into two general fields. The first is where the exhibit goes into evidence as the original exhibit. The second is where it is used as an adjunct or auxiliary evidence. Beginning with the first you go into the fields of maps and diagrams. In that field it becomes basic for one to throw open to a jury that is about to hear your case the entire background of the case you are about to try. It is basic and fundamental in every state that such a diagram drawn to scale may be used. The case in Idaho is Hayward vs. Yost, 72 Idaho 415, which has an interesting by-play. There your Supreme Court held that not only can you use a map or plat but that the police chief who later came up and saw skid marks and debris could give a foundation and by way of proof give the information to a draftsman to put it on the diagram so that the jury can see it as evidence when it goes out and has this old diagram with it.

In the field of photography you come to a broad, a great and a general problem. All states allow photographs of a person, a place or a thing upon the laying of a foundation of proof that it truly, correctly and accurately represents the person, the place or the thing that is involved. The leading case in Idaho; there are two of them—those cases are McGee vs. Chase, 73 Idaho 49 and Howard vs. Messerman 81 Idaho 82. In Illinois, the case we use is Terry vs. City, 320 Ill. 342. All of these cases point out you do not have to use the photographer; you do not have to have anyone but a witness to testify that the particular picture correctly and truly portrays or represents the person, the thing or the object as of the time of the occurrence or as of the time that the condition is depicted. Your real problem in photographs comes in the question of enlargement and color. From what I gather in talking to the members of the faculty of your university and to some of the lawyers who try these cases, although there are no basic decisions by your Supreme Court touching upon this, your state seems to follow the general rule.

The basic problem for use of enlargements is that the cases that decide the foundation that must be laid for a photograph in no way talk about size. Your McKee case, your Howard case merely say that the photograph must be a true and accurate reproduction. Well now, If the lawyer elects to use instead of an eight by eleven which is a small photograph, a photograph that is twenty by twenty-eight or two feet by three feet, there is nothing in law that prohibits it. The basic benefit is clear. Have you ever watched when you try a case and you pass around small photographs? Here is the scene of the accident; there is a witness on the stand and he has said that the east and west street is forty feet wide and the north and south street is sixty feet wide. You show him pictures where he says this correctly portrays the scene of the occurrence. Very often the lawyer does not immediately pass the pictures to

the jury nor immediately offer them in evidence and there sits the jury each of the twelve jurors as well as the judge trying in his own minds eye to create a picture concept of what the witness is talking about; wanting to know what is in that picture; wanting to so to speak to be at the scene of the occurrence and yet for want of the lawyers doing what is necessary not reaching that conclusion. On the other hand, suppose you have a photograph of the scene of the occurrence large enough for all twelve jurors and the judge to see it at once; it is shown to the witness, he identifies it as a true and accurate reproduction, it is placed on the easel in the courtroom and the jury immediately is transported to the scene of the occurrence to the view of the machinery involved or whatever the case may have as the basic issue or instrumentality involved and the jury now has a collective picture then in short order of what is going on and what you are trying to tell them.

The original case that established the premise for enlargements is a Georgia case that was decided many years ago, W. and R. Railroad Co. vs. Reed, 35 Georgia 396. In that case a man had been killed in a railroad accident. The defense was that he wasn't a healthy man before the occurrence, that he would have died anyway. They had a large colored photograph of the man hanging on the wall in his home and it was brought in and put into evidence and the trial court let it in and the appellant court later held that it was right. The most startling use of this kind of technique comes out of a murder case. All of you are familiar with the case of State of Ohio vs. Sheppard and that is found in 165 Ohio State Reports 293. In that case the prosecution took colored slides of Mrs. Sheppard's body lying on a couch in the living room where it was claimed her husband had bludgeoned her and in court they threw it on the screen as big as a regular motion picture screen showing every bit of blood, every mark, every wound on the body and the Supreme Court of Iowa held that that kind of evidence is competent.

It brings us also to the question of color. When color first started as a technique to be used by lawyers there was lots of controversy about whether color did not pointedly bring to the attention of juries the conditions of injuries or things of that kind so as to create a feeling on the part of the jury that that was not normally there from black and white photographs or from verbal testimony. The first case that clearly brought this about was the Reed case that I have talked about and then some years ago in Minnesota, Knox vs. Granite Falls came down, 245 Minnesota 11 which established clearly the right to use color in any size on any subject the same as any other photographs. One of the things that becomes involved when one uses photographs of the injured person occurs when the injuries are so serious that one could say that the jury will be influenced by this type of view or object that they see. My state has two old cases, both of which are followed in most of the states that established the doctrine, that even if a picture of the physical condition of a plaintiff is such as to establish a compassion reaction and feeling on the part of the jury, the pictures are competent for this reason if this is really what the defendant did. If this is actually the result that came about from this occurrence and from these injuries then this is the condition the jury must evaluate and if the jury must evaluate it, if this is so, then the jury is entitled to see these pictures.

The cases I cite are Fuller vs. Kelso, 163 Appellate 576 and People vs. Amplet 93 Ill. Appellate 194. One of the primary techniques involved in the general field of demonstrative evidence is that of demonstrating injury.

Your state has a decision which is a federal decision which establishes the right to demonstrate an injury. I understand from what the men have told me that there isn't much of a problem in showing the injury to the jury and helping them to evaluate damages in this state. Your case is Moore vs. Tremelling found in 100 Federal 2nd 39.

Now, if I can go off into the most interesting case, my voice permitting, I have ever found in going through the demonstration of injuries. It's one that the defendants used in the State of Iowa a few years ago. Shortly before appearing in a seminar in Iowa in an annual meeting I checked out some of their cases and in the digest found the case, it is Garrett vs. Burley. Garrett was a woman, Burley was the receiver of the Rock Island Railroad. It's found in 124 Iowa 691 and when I walked into our library to look at this book to find an Iowa case on the demonstration of an injury it fell open automatically. When I tell you the facts, you'll understand why. It seems that Miss Garrett was traveling on a train in Iowa sometime in the 30's. She claimed while she was in the lady's restroom a conductor or a brakeman walked in, as the complaint read, he put his hands around her waist and with force committed the act of rape. Of course, all lawyers know and most wives know that that isn't strictly within the scope of this brakeman's employment. (Laughter) But where it involves interstate commerce the public policy declares there must be liability and in most of the states that's involved. The defendant's answer was unusual and ran something like this: "About three or five years before this happened, the brakeman had been hurt in an accident injuring a certain part of his body which would have to be involved in the act of rape, so that as a result of these injuries he was incapable of doing what the plaintiff said he did." The case started in a country town in Iowa with an all-male jury.

Somewhere along in the defense came an offer to demonstrate the injury. This was not a plaintiff's lawyer, was a defendant's lawyer. The plaintiff said, "I object;" the judge said, "Well, we let you plaintiffs do it when you're hurt. This seems to be material to the issues so I think we'll let them do it. But the plaintiff, she can't watch; she has got to be out of the courtroom" and so they permitted it. No pictures were taken but there was a not guilty in twenty minutes.

There was an appeal to the Supreme Court of Iowa and that Supreme Court spent twenty-seven pages analyzing this tremendous problem. They finally held, first, that the plaintiff had a right to be there and in sending her out the judge deprived her of her constitutional guarantee. (Laughter) Second, that this particular demonstration was improper because it involved a field of science—we'll get to that later—that needed the aid of experts to properly inform the jury. It doesn't say what kind of experts. Third, they held it was just plain indecent. I mention this now because it shows that the use of these techniques demonstrating injuries, photographs and the other methods of demonstrating evidence are not only a product of a plaintiff lawyer's mind but they are used by every kind of a lawyer

of any kind in a case where he knows his subject matter and knows what to do to try to win his case.

For instance there is another field that has nothing to do with personal injury. It starts in my state in 1875 and some of you may be familiar with these proceedings. Every so often in every state in every country in the world, some young lady who is unmarried accuses a man of being a father of a child. The child is illegitimate so all of the states have statutes which we call bastardly statutes setting up a procedure for proving that a particular man is the father of the child and impressing upon him the responsibility or liability for its maintenance. Well, in 1875 a case reached the Appellate Court of Illinois called People vs. Robinette, 16 Appellate 2nd 299. It began six or seven years before. A lady named Robinette became pregnant with child. No, Robinette was the defendant. At any rate the lady claimed that Robinette was the father of the child and she went to the state's attorney and under our statute he instituted this proceeding. The question was, was he the father of the child. The defense was the usual triple defense; first, I didn't do it, second, if I did, she was equally available to other men, so this was an indivisible partnership transaction, and third, which is the usual thing, she must have had the child by someone else. Now, during the trial, the state's attorney got an idea. Keeping in mind 1870, he walked over and took the baby from her arms and had it marked as an exhibit and offered it into evidence for a comparison of the features of the child; the eyes, the nose, the lips, the hands, the legs, the skin and the body completely for comparison to the defendant to see if the child resembled him sufficiently to persuade the jury that he was the father of the child. The trial judge let it in. Now, the record as you read the case does not show how they attached the exhibit to the record or how they nurtured it or what happened but at any rate in 1870 our courts held that you couldn't use this kind of evidence. You couldn't use it because medical knowledge and science hadn't yet reached the point where this was dependable evidence. But do you know that by 1875 twenty-one states had decided this problem one way or the other; some said you could and some said you couldn't but the farther west you went the more they allowed the child to go into evidence. Well, I guess there is something about pioneering that is different. (Laughter) I mention this again to show that this whole doctrine is not limited to the things that have been discussed from the standpoint of demonstrative evidence in negligent cases.

Now, there is one more feature in the demonstrative evidence where the object is placed in evidence and that involves models. All states allow a model of the particular object or thing involved of an occurrence where an injury was sustained so long as the reproduction is to scale of the thing that caused injury. In Illinois we have an important case. It's Illinois Central vs. Barens, 208 Ill. 20. You have an unusual case here which does not involve a model but it gives the permission to enter an original object into evidence. It's the case of Irwin vs. City of Pocatello, 69 Ida. 500. That is a lawsuit for defective sewer pipe so he dug up the sewer pipe and the court let it into evidence so the jury could tell with the aid of an expert whether it was really defective and your Supreme Court said it was.

Well, models may be expensive but there are situations where a model can be of tremendous help. Sometimes they bounce back and sometimes they do not work as they are supposed to. One of our lawyers in Chicago became involved in a case where he used a model that won a case for him. I don't know how many of you are familiar with the Illinois Central Station in Chicago. On top of it there is a high sign twelve stories high and about ten stories up there is a catwalk and a man was working on that catwalk maintaining the sign when he fell off and got hurt.

At the time he was hurt there was no railing. The lawyer who proceeded with this case found out that in order to build such a sign one had to file a map with the proper authorities of the city of Chicago. He dug this map or plan up and found to his surprise that the drawing that had been filed contained the same catwalk but with a railing. What he did is this: he had a man build a model of this whole thing, the catwalk but the railing would be removable and he subpoenaed the architect who had built the sign and put him on the stand and identified the original drawing; yes, this is supposed to be done. Identified the model with the fence with the railing; this is it. Then he showed them a picture of it the way it looked when the man was hurt and then asked him what was the difference. Well, he said, that has the railing. Well now, will you make the model look like the picture, and the defendant's architect walks over to the model and takes off the railing and says this is the way it was when the man got hurt. It can work that way and in a case of substance it ought to be done.

Briefly, in a few minutes, voice or not, I want to cover the other brief phase of demonstrative evidence where you use auxiliary or adjunct evidence for the purpose of explaining. It is an established law that whenever a witness testifies as to any scientific or technical subject where he needs or can use objects for the purpose of explanation which are not exact reproductions that they may be used. That involves skeletons, drawings, drawings on blackboards by the witness and things of that kind. The leading cases on it are Chicago City Railroad Co. vs. Walker, 217 Ill. 605, Smith vs. Ohio, 10 Ill. Appellate 16th Session 69. On blackboards, People vs. Fisher, 340 Ill. 216 at 241. Caley vs. Mackey, 24 Ill. 2d 390. And on medical drawings, Arizona, Sloan vs. Clouder, Ariz. 80 Ariz. 122. The only thing I want to say is that all of these techniques are available; they are in the books. The cases I gave gives you the right to use them. What is most important for the trial lawyer to have the capacity to know when to use them and to know how to use them and to create a picture concept to persuade the jury to the ultimate result that you desire to attain. (Applause)

MR. REED: Thank you Mel Torme. (Laughter) I am sorry about your voice Leo; we do want to talk about these things that Mr. Karlin has just discussed with us. I think that both John Sheppard and I have some comments we would like to make and one or two other things we would like to explore. I know, however, that some coffee has been made available to you and because it's here and hot, I'll declare a fifteen-minute recess and please try to make it a fifteen-minute recess and not longer.

(Recessed at 10:45 a.m., reconvened at 11:00 a.m.)

MR. REED: On this matter of demonstrative evidence, Leo mentioned awhile ago that it was not a matter between plaintiffs and defendants and I think this is an accurate statement but I think it also bears remembering that in fact it was largely the plaintiff bar that saw the opportunity first to exploit it most imaginatively and although there have been successes which nearly all of us have regretted at times, the fact is again that the creative work in the area of demonstrative evidence seems originally to have come from the plaintiff's side of the bar. And there is therefore really a question of philosophy here and putting it in the philosophical and what I think are analytical terms, the question really is to what extent are appeals to emotion valid and legitimate part of lawsuits. Now, I have heard it said that the mark of a good lawyer is to be able to discriminate between the relevant and the irrelevent. That might be so, but life is not all reason and life is not all rational. I remember a good case for an example where an individual had lost the sight of his eye. In fact, the eyeball had been removed and had been replaced with a plastic or glass artificial eyeball. Now, in this case one of the issues involved was how much had he been damaged; what is this kind of damage worth. And while he was on the witness stand, the plaintiff from time to time removed this artificial eye and gazed with the empty socket at the jury. Now, this is surely relevant evidence that he has lost the sight of an eye and that he has an artificial eye and also a revolting thing and it tends to communicate something more yet. The issue philosophically is, is this as a matter of law irrelevant and to what extent is emotion a legitimate part of the decision making process. And there has therefore been a philosophical division here because those on the plaintiffs' side in personal injury cases which at least emphasize the fact that there are these emotional aspects of injuries. We have begun to re-define as a matter of fact some of our concepts of damage liability and what damages are recoverable and to retrace these somewhat as to terms of injury to personalities and injuries to emotional health and the like, so that these may not be entirely irrelevant as we have normally used them. John, you heard from Leo as one representing plaintiffs when Leo told us what they thought about these things but does your side of the Bar feel and how would you like to comment on these matters?

MR. SHEPPARD: Let me say so far as the emotion part I think it is a truism that an advocate recognizes the fact that juries did use emotions in deciding cases and it seems to me to be the proper function of the defense lawyer to not only be aware of these emotional decisions but to use them properly. Now, if you elevate the emotions of the jury, and that by and large is what the defense side of the table was trying to do to convince these twelve people, this jury; and I speak of it as singular because when they reach the verdict, they're going to act as one unit; to get those twelve people to pull themselves up out of the sympathy approach of the injury and to decide the case on the basis of the burden of proof, the accuracy of following a detailed technical instruction of the court, you're working on their emotions just as much as the plaintiff's lawyer when you try to elevate them to decide the case on the basis not of their own personal feelings of the matter but on the basis that they are citizens and they are performing an important function. Now, does

the law recognize this? Yes, I think so. We dress the judges in robes; we stand when the judge comes in and those are emotional appeals to the jury to make them respect the law. So that the defense lawyer in following along in this attitude continues to appeal to the higher level of the emotions of the jury, while we might say the plaintiff's lawyer by bringing in pictures of the blood and the gore is appealing to their lower emotions. And it's quite a task to capture the emotions of these twelve people and for a successful defense lawyer to elevate the thinking of a jury beyond the pain and suffering and to follow the technicalities of the law and to place the burden of proof for this where it belongs and to turn some crippled child out with nothing, that is the test of emotional appeal to a jury.

Now, as far as the photographs are concerned, and all of this, let me say the whole trial of the case is a recognition of the emotional thinking of the jury. So when you are in court that attitude and feeling has an important bearing on juries. Now, there is a lot of time wasted and juries don't understand why and they have to sit around and wait and they are called away from their business and some of them are busy people and they come down there and sit around and it appears to them nothing is going on. So that the defense lawyer, I think, is well advised to act like he is all business and if there is any time being wasted or any delays it's not his fault. So that I have my pictures marked at a recess and my x-rays marked during some convenient time when the jury is not there so that I don't take up a lot of their time. And so often I'm sure you have seen this happen, the Court declares a fifteen minute recess and everybody goes out in the hall and you have a drink and congratulate yourself on what a job you did on the last witness and you talk to somebody about what you're going to do with the next witness then you go back in court and the jury has been waiting for fifteen minutes, then you come up with fifteen photographs that have to be marked and you hand them to the reporter and they are marked and the jury is still sitting there and I think many times they wonder why in the world didn't the lawyer do this during this recess. So I suggest to you if you have pictures to be marked, if possible, do this when there is nothing going on in front of the jury so that every time you're in front of the jury you're all business and things are proceeding in a rapid pace and you're keeping their attention and you're not wasting their time.

Now, how do we handle a picture? Of course this is fundamental but often times it's these little fundamentals that the jury forms their opinions. But in that connection let me tell you this, a lawyer who goes to court has to be prepared; he has to have all his equipment. Often times there is a carpenter on that jury or any working man. One of the pet peeves an old experienced carpenter does have is for a young carpenter who comes on the job without his tools and also borrows tools from the older man and he goes week on end this way and he is almost on the point of hate and so if the lawyer walks into court and doesn't have a pencil and walks up to the court and asks, can I borrow a pencil? this makes it hard to redeem yourself if you have identified yourself as being unprepared, so come to court with your pencil sharpened and your tablets and all that so while you're in front of the jury you look like an

efficient top-notch guy. So have your picture marked as an exhibit and you hand it to the witness. Now, it's not in evidence and it's improper for the jury to see something that is not in evidence. They may not know this but you want to impress upon that jury how fair you are in that you are not violting any of the rules, so you hold the picture, and say the jury is sitting where you are, you carefully hold the picture with the back to the jury and you do it slowly so that you are following the rules of proper conduct. And you hand it to the witness and if you think you have a slow jury that may not recognize how fair you are being, you tell this witness; you say, now hold the picture away from the jury because it's not in evidence at this time and it would be improper for the jury to see it at this time. And this gets the jury kinda moving up at the edge of their seats, they are anxious now to see that picture and they are also aware of the fact that you are following the rules. So you hand the picture to the witness and you say if you are representing an individual; you say, I want to hand you what has been marked as Mr. Smith's Exhibit No. 1 rather than the defendant's. I want to keep it that way; rather than saying, I hand you Defendant's Exhibit No. 1, I want to keep it personally identified in this case at every opportunity. So you hand it to the witness and he looks at it and you say: Now, do you recognize that? Yes. Will you tell us what that is a picture of? Well, that is a picture of the intersection of 5th Street and Monroe. You say, does this fairly and accurately show the conditions at the time of the accident? So often you see a lawyer say, does that fairly and accurately show that intersection? Objection. See, you get an objection because the foundation hasn't been properly laid. The inexperienced lawyer may say: Well, what do you mean, no foundation has been laid? (Laughter)

MR. REED: You think he is joking.

MR. SHEPPARD: No, this happens, you see; and the fellow says, what do you mean, no foundation—it's a picture. And you say, well, you haven't laid the proper foundation for the introduction of that particular picture. So finally he may, if he is very inexperienced may go into the process of how the picture was taken and the size of the camera and all that business when the real nut of the problem is, does it accurately show the condition at the time of the accident, not at the time that the picture was taken but at the time of the accident. And then finally it often happens that some helpful judge will say, well counsel, what he means, you have got to show that it accurately portrays the scene at the time of the accident. But lots of times that byplay increases the importance of the picture but the foundation has to be laid for the introduction of that picture into evidence. Now, if you are identifying pictures as sometimes happens on my side, the defendant can't offer that into evidence at that time because he identifies it during the plaintiff's case and if it is a good picture, why, you keep it again face down but kinda always in the visibility of the jury—you know, you move it around here and there. They are waiting to see that picture. Of course, you have to be careful not to build up this feeling to see the picture unless it really shows something. So, if it's just a routine picture, why, you put it down and you may say to the judge, always communicating to the jury: judge,

I would offer this picture into evidence at this time but since the law doesn't permit me to show my pictures to the jury until my time of the case comes, may I give it to the clerk or may the clerk hold it or make up any kind of reason while you are talking to the judge when actually you are talking to the jury. But they want to know why you are not showing them the picture right away and you have to tell them and that is the way. I have the feeling you have got to always bridge or communicate what you are doing to the jury so that they know what you are doing and why you are doing it. As far as the—shall I go ahead, John, on using demonstrative evidence?

MR. REED: Yes, please.

MR. SHEPPARD: I agree with Leo completely that this idea of demonstrative evidence is just as helpful to the defense as it is to the plaintiff. Now, our field of demonstrative evidence is somewhat different because he most often is demonstrating the injury and with color photographs or the exhibits of the plaintiff himself while on the defense side my tendency is to exhibit those things which will deal with liability so that a model of the place where the accident happened often comes into play. I find it helpful and I believe in this state having traveled through the state some and seeing the Forest Rangers and the State Patrol and the respect that I believe the people here have of these men that those might be very good experts. And in Missouri, I find that the Highway Patrol is recognized and respected so that I often have them make measurements for me and of course on their own free time and at my request and I pay them for this.

MR. REED: In uniform?

MR. SHEPPARD: Absolutely in uniform. (Laughter) And you say, well now, officer, at the request of me and Mr. Smith, did we ask you if you would go out and make some additional measurements and some additional study on this in your off time? Yes, you did. At our request, did you do that? Yes. And did you take certain photographs and make measurements? Yes. And then qualify him as an expert as the fundamental thing. But it also has this added persuasion that it looks like the State Patrol is on your side in this lawsuit. I find that very helpful. So, these are experts that are available to you. Often times measurements made by the photograph and models made by the photograph are an important part of your lawsuit. I am going to get into that in a moment about experts; who can be considered experts and who can't be. I often find in a complicated machinery case or complicated case that jurors don't have experience like that. Now, most people drive in a car or at least ride in them so they really don't need an expert to tell them how an automobile functions, but in a case I had one time where a seaman was removing a transducer from the head of a bar while a barge was under tow and injured his back, the question was whether or not the company had provided sufficient people to raise this transducer under a heavy current of the Mississippi River. An average lawyer, including me, when the case came in, wouldn't understand all the complexities of this thing, so we took movies showing what a transducer is, where it sits on the heads of bars and how it is removed and we got that into evidence and after

showing these movies the jury was very well informed on the function of a transducer and how it could easily be moved and so forth. Of course, you have to be careful when you are staging a movie of this kind not to have some big robust guy doing the job because the plaintiff may be a little guy. So always these things have to be taken into consideration.

MR. REED: Incidently, John, do you ever run movies of that sort or run tests and invite opposing adversary counsel or do you do it on your own and hope you can get it in? Do you ever invite plaintiff's lawyer to help take movies and—

MR. KARLIN: Silly boy. (Laughter)

MR. REED: I am serious. This may sound like the academic type of question but the point is the other side can say, yes, but how many times did you have to let him try to lift it and throw that film away before you found one that he could lift. The point is that all these questions are eliminated if you have somebody there from the other side who knows about the tests and have confidence that that is the way they came out. I just wondered if you have ever done this.

MR. SHEPPARD: I didn't in that instance. I don't suspect you would do that in a typical seaman case because most of that business is handled by a small group of lawyers, as Leo knows, around the country and they are pretty much experts in it and, well, I just don't do it with those fellows.

But we had an explosive case; very bad explosion in town that killed a lot of people and it was a very bad case. The best testing facilities on explosives and the quality of this material was the United States Government and we wanted to employ them as a testing agency although they had no direct interest in the outcome of the case. And that was done by agreement with the other lawyer and we all went up to the government laboratory and agreed upon the quantity of material and it was done through a pre-trial conference and there are multiple cases usually with the consent or I might even say the encouragement of the judge that tests of this kind can be made but the average routine case I don't believe it's done by agreement.

MR. REED: Let me give you an illustration for a moment. There was this fellow that was mounting a new tire and he inflated it and when inflating it it blew out and as it blew it flipped the wheel up in the air and gashed his face and disfigured him badly and he sued the maker of the tire claiming that it was a defective tire. The defense of the tire manufacturer, the Ohio Rubber Company, was to the effect that he mounted the tire improperly and that if you mount it improperly you will break the beading in the process and the thing will blow up. So to establish their case the tire manufacturer, defendants, ran a series of tests with the aid of a civil engineer in which good tires were defectively or impoperly mounted, then with a telephoto lens and the air hose wired to it back from a safe distance and they inflated the tire until it blew. And they did the same thing for tires made defective by improperly mounting them and exploding them in the same way and those that exploded that were defective tires acted in one way that could not cause his injury and those that were defectively or improperly mounted exploded

in another way and it flipped the wheel up to where it could have caused the injuries. And I saw these movies and they were very impressive movies but I am sure that there would be certain questions on cross examination and direct examination that would straighten that out. I also wondered how many tires they had to explode to get those statistics and the patterns and I wonder if these tests could have been run together particularly if you have run it on your own before. It's like the fellow who was asked if he could eat a watermelon but at the moment he said he didn't want one but in a few minutes he came back and he said he would then have this watermelon. The fellow asked what did you do in the meantime and the guy said, I went out and ate one the same size to be sure that I could.

Now, I want to ask this question: Leo, is there any rule of thumb that you see as a plantiff's lawyer that you can tell us about where you need to be careful of overtrying a case with demonstrative evidence. I saw a trial one time for example where a guy had a skeleton in the courtroom where he had colored twine or ribbons and cards on it like in store windows, you know, indicating the various parts and everyone in the courtroom and lawyers walked by this and wondered in amazement and seeing obviously it was terribly overtried and the jury was much annoyed by all this nonsense and he really lost out badly because he used too much demonstrative evidence.

MR. KARLIN: There is no question about that John as a basic rule and I just touched on it previously because my voice was going out, but that a lawyer trying a case has got to figure out the proper psychological approach and use of demonstrative techniques and they must be commensurate to the kind of case you are trying. In other words, if I have an ordinary case, minor case of broken bones or injuries not serious, I don't want to give the jury the impression that I have spent a lot of money to sell them something that I really haven't got coming. However, where it is warranted, say ten or fifteen or twenty thousand dollars, it should be done. It's just like the way we live, we must not overdress, we must not overeat and all of these things should be on the basis of a sorta common denominator. There was one case in Illinois where a lawyer trying a case in a country town started out with all these techniques and he used the skeleton and he used the drawings and he did about everything that could be done for this case that involved a broken hand. The jury did what you said they would do, the jury got disgusted and just threw the whole thing out. The fellow no doubt had money coming. There isn't any question that you have to have a logical approach and psychological approach to the amount of demonstrative evidence that you use and you must consider each kind of case you're trying.

MR. REED: I think as I intimated before that the people who have called to our attention common demonstrative techniques have done us a service because they have reminded us of the importance of communication and a full communication and each of us knows that. It doesn't take a philosopher to tell us that one picture is worth a thousand or several thousands of words. I remember one illustration and you may remember an intersection case involving an emergency vehicle, a fire

engine, and one of the injured firemen was suing. The siren was being sounded but the testimony of the defendant was that he didn't hear the sound coming to him and the question is how do you establish negligence in that he doesn't hear the sound. His theory was that there was a zone of silence, an accoustical sound of bouncing off building in such a way there were dead spots. He said simply that he couldn't hear. The way you counter this, of course, is that other people heard it, why didn't he? And it would occur to me to simply call witnesses near by and call them to the stand and ask them if they heard the sound. At this particular time aerial photographs were taken and blown up and it was good enough that an individual could identify his own house and the investigators found that quite a number of people, ten or fifteen who had lived around the intersection, remembered having heard the sound of the siren on that particular occasion and as each person testified that he had heard the sound, he was asked to identify his house on the map and take a little pin with a colored head or flag on it the way salesmen or sales manufacturers keep track of their salesmen and where they are, and they put these around on the map and when they were all through they had been chosen in such a way that there were in effect concentric circles or rings where all the people around had heard this sound—the determination was that this man went through a zone of sound. Now, there is nothing here that is abnormal or miraculous at all; this is simply a case of trying to as graphically as possible perform what is the legitimate function of demonstrative evidence. And only when we begin to use it in the way where it's intended to appeal improperly is when I guess we come back to John's notion of the appeal to lower emotions. But I don't know, then we begin to have problems here. Before I call on John to go into his area, Leo, I wonder if you want to talk about the lower emotion here?

MR. KARLIN: I asked for a chance to have a little rebuttal here. Basically no matter how hard fellows like John Sheppard here and I try to be impartial in our approach it is kinda difficult for us in our thinking and our feelings and in the things we say. Some years ago I had a good deal of defense work for defendants and when Dean Reed asked John Sheppard about the appeal to emotions and John began to talk about the higher emotions, and I know that basically defense lawyers always feel that because the plaintiff always has two things to prove to win, that is liability and damages, the plaintiff's lawyer has that chance in his proof of damages to appeal to their emotions that will override the jury's judgment on the liability while the defendant can only win if he really wins a liability feature because keeping damages down is no great choice.

The question comes, however, when you pick a jury. Can you separate them and say, I am taking that part of you that is of the lower emotions and I am not going to take that part of your so-called high emotion. We pick a total human being and in doing so both sides have a right to appear. In other words, we can't get a jury where you can just push a button and say you will just think about liability and let the rest of it go. So that when we are starting we approach the whole thing and it's even reached the point where some of our courts are cognizant of this. For instance, in questions of demonstrating an injury, if one reads all of the cases, including your case, and I think the case on demonstration of

injuries was the Federal Circuit Court case of Moore vs. Trimbling, the rule is laid out this way. The plaintiff has a right to demonstrate the injury in the presence of the jury if it is material to the issues. And then they also add it's within the sound discretion of the court; what does that mean? In Illinois we found a long time ago what it means. Now, this give the trial judge an arbitrary right to do whatever he feels like doing. What he will do, if a lawyer walks in with a good case and he knows the plaintiff is going to win and the judge is convinced without a doubt plaintiff has money coming, he will let them demonstrate an injury. Suppose it's a case where we have an intersection collision. The plaintiff is in a car on the right and all the evidence shows that the defendant was far away enough so that the plaintiff ought to win and there is a good chance for the plaintiff winning, so the judge says, well now, this is a close case, I'll use my discretion. How does he use it? If he won't let the plaintiff demonstrate the injury, that is improper. In ruling on it, the only thing he has to decide is, is this injury from the occurrence, whether it is relevant or is it material. If it is from the occurrence then irrespective of liability, the jury passes on both liability and injuries and they are entitled to see the injury. The remedy the judge should use is to let it in. If on the liability the plaintiff wins when he shouldn't then on a close trial, whether you call a new trial or whatever you call it in your state, then the court takes it away not because the plaintiff didn't have the injury but because he shouldn't have won the case on a liability. We have a case in Illinois called Sigel vs. Carlson, 60 Ill. Appellate 388, where the appellate courts finally said this is so, we can't let the judges do it this way. They can be induced from now on to let the plaintiff demonstrate his injuries unless in the record there appears something in the evidence on which he bases his discretion or so he can say he exercised it properly. The real remedy is in ruling on the liability feature when the time comes for it.

MR. REED: John, I think we might turn this back to you for your comments in this area that we had asked you to take, that is experts and medical?

MR. SHEPPARD: Thank you. As I mentioned, I feel much more at home standing than I do sitting, so I'll use this podium. I can't help but begin these remarks by saying that using an expert in the average case is a question of using a doctor and this poses a tremendous problem to the defense in most states, because statutes or the rules are that the courts permit one examination of the plaintiff in a personal injury case. Oftentimes there are multiple complaints and therefore the defendant lawyer is faced with the problem of hiring either an orthopedic surgeon or a neurosurgeon or a neurologist or a psychiatrist to get his examination. And in this connection I might say that I also practice in Illinois and in Illinois the extent of the insurance coverage is available by interrogatories. In Idaho I understand that problem is under consideration here. It has been my experience in Illinois if it's a low limit policy the case is usually settled; if it's a high limit policy you get two more doctors and which adds to the problem of the defense in using the experts.

It so often is said by lawyers on a program of this kind and in seminars

that it is dangerous for a lawyer to get into the field of medicine. And I want to say just to clarify that, when you're defending a personal injury lawsuit it is your obligation to become as familiar with the medical problem presented as you can possibly become. Oftentimes your knowledge of the subject matter will come not alone from the examining doctor that you hire but first of all from your previous experience in that type of an injury. Secondly, from the books that you have in your own library or the books that you obtained so that you can become familiar with it. And thirdly, by conferences with other doctors. While the statute says you are limited to one examination; and of course on motion I am sure your courts would rule as they do in most places in the country on proper motion within the sound discretion of the court, additional examination may be ordered. But let me speak for a moment about your one examination. How do you hire; what kind of an expert do you want? Since you are limited to one expert, do you want a general practitioner or do you want a specialist in one particular field of medicine? Let's take for example an injury to the spine, the one that we come in contact with so often, and we have to become acquainted with it. Of course, concerning the orthopedic problem in the lower area of the spine, in most areas of the country surgery in the lumbar area is performed by orthopedic surgeons. A disc injury in the cervical area, in most areas of the country, certainly in large metropolitan areas where they have large medical staffs and medical centers, operations in the cervical area are performed by neurosurgeons. The distinction being of course that the closer you get to the brain and in the vital portions of the body the more reluctance there is for a doctor who specializes in bone study to get into that area of the body so he turns that over to somebody else. So if you have a whiplash injury complaint, the odds are that you will have to; want to have a neurosurgeon make your examination because if you don't, on cross examination your orthopedic surgeon may be faced with the question, as a matter of fact, Doctor, you don't perform any surgery in the area of the body that we're talking about but you limit your study and surgery to the lower part or area of the body and this is a very telling blow to your doctor if he is forced to admit in a whiplash injury case, if it is a case requiring surgery, he would have to call in some other doctor. Now again, in many areas of the country where there aren't so many doctors, orthopedic surgeons do perform cervical injury cases and may be well equipped to handle himself in complicated neurosurgical problems, so that in using your expert you are using not only the personality of the doctor involved and the medical problem involved and the area in which the problem is located but the concepts that the jury will have.

As to whether this expert is actually qualified to speak on the subject to which he is expressing himself. We live in a scientific area. John referred to these tests of the tires and the evidence by the films and interpretation. The jury is fully acquainted with all types of tests of this kind. They see it in television; they know about our tremendous steps in space. They are acquainted at least culturally so with the advances in medicines and they know that experiments are being performed in all parts of the country in our whole panorama of scientific studies so that when you are

putting on scientific evidence, don't make the mistake of believing that you have to put this on the level of an eighth grade child—the jury resents that. The jury feels that they can understand the scientific import of the testimony. That they can understand the doctor, the use of medical terms. We used to always say, well now, when you are talking to a doctor, put this down on the level that the jury can understand; don't talk above the heads of the jury. Today's jury is a sophisticated jury. I don't care what part of the country you practice in, most jurors have television sets and they subscribe to certain magazines and they read the newspapers unlike twenty-five years ago. Todays jurors are pretty well informed individuals and the thing they resent most is some lawyer who comes into court and says, well now, doctor, of course you and I understand what we are talking about but for the benefit of the jury, would you tell us what you mean by a knee cap? (Laughter) What do you mean by the spine and what do you mean when you say you are an orthopedic surgeon? This is the area I believe where leading questions are entirely proper and so you can begin as I mentioned earlier bridge what is going on between yourself and the witness with the jury and you may punctuate your questions by saying, doctor, it is necessary under our rules that certain of these words be defined so the reporter can have it in the record and so the jury can understand it, so when you say you specialize in the field of orthopedic surgery, what do you mean by that, doctor? And now the juror individually may feel that he understands it but each juror feels that maybe the juror next to him may not understand and that you are actually helping this particular juror and they feel an air of superiority over their fellow members of the jury. You need as an expert a doctor who can communicate. Now the plaintiff's side of the case is a fortunate side in that the doctor who the jury is going to pay the most attention to from my experience is the treating doctor. I don't care how many experts they bring in to say what a terrible result it's going to be and what a terrible life this man is going to have, the jury is going to pay the most attention to the man who has actually treated the plaintiff and who still is treating the plantiff and who is interested in the plaintiff's welfare and is interested in his medical being, and the jury pays a lot of attention to that and the defendant has no way of getting a doctor who can be on the same plane as the plaintiff's treating doctor. It's very helpful when the lawyer for the plaintiff decides that since he has had such good results with Doctor Joe Blow that he takes the plaintiff out of the hands of the treating doctor and sends him to Joe Doe, the old family expert, because that tends to equalize the situation between plaintiff and defendant and then it's a war of experts. But if you're faced with the problem as you often get in in the average automobile case where there are going to be two doctors to testify for the plaintiff, the treating doctor and maybe the radiologist who has made special studies and who is going to talk about, say the cervical area in a whiplash case and is going to talk about the bone and arthritic changes and which we have heard so much about, and which most experts say doesn't mean a thing.

The man who is going to say this atrophic changes as evidenced by the x-rays and that this condition can be aggravated and it was the aggra-

vation of this pre-existing arthritic condition which was symptomatic before this bumper scrape case and now causes pain that is almost incapacitating. So that you are faced with these two doctors and in the average case and in that instance I feel you are better off to get a doctor who has had experience in treating people with neck injuries, not the guy who spent the bulk of his time testifying for insurance companies. So that I use my experts on the basis of what I hope will be the turning point in the lawsuit, the persuasion of which doctor is more apt to know what he is talking so that when I get up in the final arguments of the case and urge the jury to either turn the fellow out with nothing because he wasn't injured; and that is oftentimes the role of the defense lawyer has where you rear ended some car and there is minor damage to the car and you are asking the jury to turn the fellow out with nothing because there is no injury. You have to be able to tell the jury that when you bring in your verdict for the defendant in this case, it will be based on the best available medical testimony that this community could produce. That you are following exactly what Dr. Brown who has treated a thousand people with injuries of this kind, has told you. And when you return your verdict for the defendant, you can be confident that you have followed the best medical information available. And that is the argument, so that you are using your experts so that the jury can feel that they have done the right thing and they have followed the best individual available rather than following the doctor of course sympathetic to the plaintiff who has visited with the lawyer a number of times and who hasn't yet been paid or who has already been paid; all this stuff comes out on cross examination. It really makes little or no difference, does it, whether the guy has been paid for all of his treatments. Well, you have already been paid, haven't you, doctor; yes, I have. Or you can say, well now, doctor, as a matter of fact you haven't even been paid yet, and so that either way you have got the treating doctor at kinda of a disadvantage.

The old testifying doctor for the insurance companies is subject to some cross examination techniques, also. Well doctor, weren't you here last week testifying in this case for Mr. Sheppard and as a matter of fact the week before and you are probably going to be testifying for him next week and you two sorta have a team around here, don't you? Little did you know earlier that three weeks in a row that these cases would come up for trial and with the same lawyer would be around the court and seeing you with this same dactor. So you swim and you fight and how do you overcome that? Well, you have got to have a terrific doctor. You have got to say, well—and when I bring the stable of defense doctors and let's be frank about it. I have my stable of doctors, and the plaintiffs' lawyers have their stable of doctors and I cross examine on the basis that they are in court all the time and they cross examine mine on the basis we're in court all the time. I have talked to innumerable jurors over this question and they expect lawyers to be in court all the time and they expect good, well qualified doctors to be called in as experts. So in preparing your doctor for cross examination you have got to tell him: now, say, doctor, when he asks you if you have testified for me before, you don't squirm around in your chair, give him a forthright answer that you have been called upon to make examinations by me and

that you have made the examinations and that you have come to court to give the jury the benefit of your evaluation. And does it happen often; not very often, it has happened this year several times. I don't always come to court. Get it across to the jury that many times when the man finds some injury the case is settled. Communicate that without saying it to the jury—yes, I make a number of examinations for Mr. Sheppard; sometimes I go to court. So this is one where in my judgment the man is just not injured. Well doctor, how much are you being paid for your opinion; oh counsellor, my opinion is not for sale, Mr. Sheppard is paying for my time. Rather I should say his client, Mr. Smith, is paying for my time. So that you prepare your expert. After you have chosen him carefully now taking into consideration the whole picture of your lawsuit and who you are going to be trying it before and what the medical problem is, then you prepare him for cross examination. Every doctor that I know and I say that without any hesitancy, every doctor I know, even those who have spent more time in court than in the hospital, are afraid of cross examination. They think that the law ought to be changed and that lawyers ought not to be able to ask all these questions and that they look for protection from the court and so regardless of the experience of your doctor, when you tell him he is to come to court, he'll give you some kind of excuse. Well, when? Tuesday, my God, could you make it Wednesday, I am tied up Tuesday and they start giving you all kinds of excuses when back in their minds what they are really worried about is the questions the other lawyer is going to ask them on cross examination. So, you have got to, I believe to spend some time with your medical expert to get him ready for cross examination, even the experienced doctor. Now, of course, with the volume of business and everything we sometimes make that in a telephone call. You talk to the doctor on the phone and tell him what this lawyer has been saying about him and how he is going to chew him up and talking all about how he is looking forward to cross examining him and that you always lose your temper and he is going to make you lose your temper and when you get him like a fighter you have got your doctor ready.

Sometimes you prepare your doctors with the same care that you prepare your lay witnesses. Haven't you all as a plaintiff or defendant had the doctor say, well, it's possible. The worst question from a defense standpoint. You have spent two days showing that the guy is not hurt and on cross examination your doctor says, well, it's possible that he could be hurt and it just blows your case right out the window. The scientific mind of medicine is reluctant to say that things are impossible. If you ask an astronaut about going to the moon his answer would be, so far it hasn't happened. Is it possible? It may be possible. So you don't want that kind of weak testimony from your doctor. I occasionally get my doctors together if it's been a case where we have developed maybe where you have a brain injury claim and you have got a loss of hearing claim and you have got a neurosis overlay I get those three doctors together and go over with them what the plaintiff has been doing and what he told them he couldn't do so that they know this guy didn't give them the full truth. I go over the depositions with them so that they know the kind of animal they are dealing with. If you have surveillance movies,

I use any movies about as often with my doctors as I do with juries. I take my movies out to the hospital at some convenient time. For the doctors, you have always got to work this in with their schedules and I have often said if I ever write a best seller I am going to entitle it, "I Certainly Would Appreciate It, Doctor," because it seems that is the bulk of my conversation. But anyway, you make some convenient time for the doctors to assemble and take your surveillance movies out to the hospital or to one of their offices and get them together and show them the movies. And you say, now doctor, these won't be in evidence when you are on the stand so don't tip your hand, see, but I wanted you to know the truth about the matter but regardless of what questions are asked on cross examination, don't say anything about the movies because we're going to bring those in later. Now, you have made your witness kinda like a detective. See, he is not just a doctor but he is playing a vital part in the whole trial and he is playing like a lawyer and he likes that just as a lawyer likes to play doctor. So, while he is on the stand, he is being cagey with the other lawyer and when that question comes—well, doctor, it is possible that this man is suffering from blindness; that is possible, isn't it? Answer, this man, no, it's not possible. And you love to see this question and the lawyer is not used to this. A doctor is always supposed to say that anything is possible in medicine but you have bolstered up the doctor up to that point by showing him these movies and giving him a whole picture of the case. Now, he is a real expert and he is fired up and then when the movies come in that substantiates what your doctor has said and you can relate the movies back to the doctor's testimony as though the two were unrelated and then you can relate that in your final arguments and it becomes very important. So that in choosing your expert, you are choosing a man who plays a vital part in your whole theory of your lawsuit and I suggest to you must have a central core of meaning.

You are either trying the case on no liability or minimizing the injury or you sometimes get a mixed case where you are not quite willing to admit liability though you believe that the jury is going to find liability. In that instance, what about the order of proof? Plaintiff closes with the strong evidence on medical. You have got a good doctor that you want to put on; when do you put your defense doctor on? Immediately after the close of the medical evidence, or do you put your defendant on who has been in court three days and the jury has been watching him and waiting for him to testify. I suggest if it's a case you are going to defend on liability to get your medical evidence in as soon as possible and get it over with and minimize the injury so that if you can in the jury's mind convince them that this is not as serious an injury as they were first told. They will pay better attention to your testimony on liability. Just as Leo said, the judge sometimes makes up his mind whether it's a close liability question or not and upon the basis of that judgment decides whether the injury ought to be demonstrated. So that a jury, if you can show them immediately at the outset of the defense case that the real injury that we are talking about is not as serious as is claimed by the plaintiff, then when you start putting on your liability defense, they will pay better attention to it.

So too with contributory negligence, if that is your defense. Get your

defendant out of the way. Sure he was negligent but the main heart of your case is the contributory negligence of the plaintiff, so that in that instance you get your medical on. Show them that the injury is not serious as they were first told. Then get your defendant on who was supposedly driving at an excessive rate of speed or whatever he was, get him out the way, then put on your closing evidence. As you are building up the crescendo of proof, your closing people are the ones who testify to the main issue, the contributory negligence of the plaintiff and they will remember this, as Dean Reed said, because that is the thing you close your case with, the power of it and they will know that you are not floundering around with no theory. You have got a theory and that is the contributory negligence of the plaintiff so that you close with your strong evidence. Well, what other kind of experts should you think about? Well, I mentioned earlier the photographer. Your photographer can be a very vital part of your lawsuit. These color photographs sometimes are objected to by the plaintiff where you have got for example your defense is that there was foliage that partially blocked the highway. Where you have got a photograph showing the green trees and all the shrubs and all that it looks a lot better in color. Sometimes you get an angle of a view taken by a photographer that the lawyer may say is a little misleading, so you offer into evidence first your color photograph and the lawyer, if you have a fellow that is not too much on his toes objects to it on the grounds that it is in color and you get him completed in the record that he is objecting to it because it's color; very well, withdraw the color and put in the black and white, so you are prepared with both kinds of pictures. And the more he puts emphasis of his objections on the color the better you like it because then he is denuded from perhaps the proper objection as to the black and white.

Your photographer can make measurements for you. Professional photographers are respected. Most people will take their kids to photographers and their profession is looked upon with some respect as to his skill in taking pictures. You can use him to take photographs of the vehicles involved. The photographs that were taken by your own defendant or are oftentimes blown up by a professional photographer so that you put the defendant on—did you take the picture; no, I didn't take the picture. I'm sorry; this isn't the picture that you turned over to me as the picture of your car? Yes sir, but my wife took that. I'm sorry, I understood that you took it. But it was taken by your wife? Yes sir, with my boy's camera. All right, do you know what kind of camera he has got? Now, you have the whole family into the lawsuit with one little old picture. The next thing you want to explain is where you had this picture enlarged. Now, at my request did you take the picture down to Mr. Rinehardt? He is the man I often use; a big German, fine looking photographs. Did you take it down to Mr. Rinehardt's at my request to have him enlarge the picture; yes sir. Did he do it; yes, it cost me a dollar and a half. Well, I didn't ask you about that; but did you do it? So, you have into evidence the fact that you did this and got it enlarged and then you put Rinehardt on to show the enlargement process that he went through to enlarge the picture. But by now the jury is anxious to see what in the world is this picture and it turns out that it shows a little dent over here and you hold

it up to the lights and there is a little dent here on the left fender, if I have got it right here. And you say, well, is that the picture; yes sir, that is all there was, just no damage to my car at all. So that you are using the picture but you are doing, I think, the opposite of offering it, you are doing demonstrative evidence. You are going to great lengths to show the jury that this serious charge that they have made against this man is sufficient that he had had to go to the expense of enlarging this picture and all that because they claim that out of this little old accident they got a permanent neck injury and you are using your photograph and your defendant as a vital expert in this case. What about the accident reconstruction experts, oftentimes used by the plaintiff, sometimes very successfully used by the defendant. In the type of accident that is shown by the photographs, the expert has reconstructed the accident from the skid marks and he is able to show that with the violence to the vehicles the automobile must have been going at X miles per hour. Now, I understand that many of your state troopers make these examinations on skid marks without any encouragement by the lawyers and that they feel this is a vital part of their investigation of an accident and consequently their testimony on the length of these skid marks and their training you can make an expert out of these fellows, you know, by your questions.

And medical experts; you can make a highway trooper sound like he is the next thing to Louie Pasteur. You say, well now officer, I know that you are wearing on your arm a Red Cross emblem, am I correct that that is part of your uniform? Yes, sir. Well, would it be correct then that you have had some special training from the American Red Cross—objection, leading. Well, I am sorry; I'll withdraw the question. Tell the lawyer here what training you have had. Under the auspices of the American Red Cross then they go through their first aid equipment and the use of oxygen and blood transfusions until finally you have a fellow that the other side has to admit that they do have this first aid training. And I said, now officer, based upon that training and what experience that you have had with the department and knowing that, when you arrived at the scene of the accident, was it your first obligation and first thing that you had in mind was to care for the injured; yes, sir. And did you go up and did you interrogate and question and make your own examination to see if anybody was injured in this accident; I did. What did you learn; nobody got hurt. (Laughter)

So often we hear lawyers overlook the development of an expert who is present right there in the case. I have purposely not gone into the development of physicist as an expert in complicated explosion cases. When you get a case like that and when you get a complicated explosion case where you need a physicist, you will know about it about as quickly as I can tell you. When you have got that kind of a complicated case it behooves you to get the best man you can get; the better qualifications he has got, the better off you are. Jurors respect people who are permitted to testify as to opinions and they expect these people to be well qualified. Bring out all of his qualifications, even when your opponent says we're willing to admit that the doctor graduated from medical school and that

he is a member of certain societies. Say, wait, of course you are willing to admit it because you know it, but I want the record to show and so this jury knows the advanced training that the doctor has had. And you go into it and don't let your opponent suck you into some situation where he is admitting away all of the qualifications of your expert. And ask your doctor; say, well now, doctor, in this time of scientific study, after you become qualified for the American Board of Orthopedic Surgeons, did you continue to study? What have you done; what articles have you written? Bring out all of his qualifications. Of course, you want to go through this with him in advance and you might say if you have a typical jury, say, now doctor, I know you are reluctant to sit up there and talk about all of your achievements and I'm not asking you evaluate all of this but I am asking you to put your own humility aside and tell this jury and so we have got it here in the record of all the honors that you have had in the schools you have attended, and build the guy up, you know, a little bit and that he is actually a humble guy and you are the one making him tell about how he graduated from medical school and joined these societies and so forth and bring all of these qualifications out. Sometimes the judge will say, let's proceed, I think you have covered the doctor's qualifications well enough and you say, very well, your honor, I didn't mean to take too much time with the court and I agree but may I, Judge, with your permission at the next recess show that in the record and go ahead with it—you know, make it sound—yes, that is agreeable. All right now doctor, at my request and at the request of Mr. Smith, did you perform an examination of this man?

This is the area where the plaintiff at times might; the plaintiff lawyer sometimes helps the defense when at times he is afraid to get in there and fight with the experts. How much money do you make, doctor, coming in here and testifying? Well, I have made no record of it. Surely you have some idea, haven't you doctor, that you can tell us. Is this fifty per cent of your income that comes from making examinations for Mr. Sheppard and other defense lawyers? Well, I wouldn't say fifty. Well, tell us just what is your estimate? Well, twenty-five per cent. See, they always cut it down, so the lawyer who vigorously goes at your doctor can destroy your expert but most often this doesn't happen if you have prepared your experts the way you have prepared your other witnesses. This will fit into your whole concept of your lawsuit and you can use the direct evidence of your doctor, the direct evidence of your lay witnesses in your whole trial to give you a foundation for what you have been planning to argue to that jury since the day you got the case. And that is the wonderful thing about direct evidence. I have heard some lawyers say that they never worry about what the other side's witnesses are going to say but they have developed ulcers and lose their hair of what their own people were going to say. And I think that is so true of an experienced trial lawyer; he is worried about his side of the case. Will it come in the way he wants it to come in order of proof? Will it come as he has got it on the sheet? And you can almost isolate the cases and count them on two hands the times when the evidence really came in the order that you wanted it to.

And in dealing with these experts that are not available at the time

you are ready to proceed with them. You can proceed to put somebody on out of turn but if you have any organization you have developed your experts so that you have your doctors testifying before your surveillance movies and you are building this thing up into a dramatic impact and your expert is a vital part of the whole lawsuit. And in the time that I will be around here I hope that I can visit with you about this whole area of competency and handling experts. We live in an area when the jury expects lawyers to be able to question doctors and they love to have a lawyer who shows that he knows as much about this particular medical problem as the doctor. And it's an interesting thing to see a lawyer stand on the floor of a courtroom and cross examine a doctor; not just on his personality and how often he comes to court but on what the significance is of a narrowing of the interior space between L-4 and L-5. To have the doctor quoting medicine back to the doctor, the jury loves this play because for once in the trial of the case the thing is even. When the lawyer cross examines the driver of the car or the lay witness the odds are uneven and the lawyer is out to look better than the witness, but when he is cross examining the doctor, now if anything, it is weighed heavy in favor of the doctor and when the lawyer can through his reading and his experience show that he can really fight it out then the jury is really impressed now.

Now, I told you that there has to be a central core in your planning of a lawsuit. If you are defending a lawsuit where you know the vital issue is going to be on the nature of and extent of the injury, you can't come to court looking like some country bumpkin, you can't be just one of the boys with the jury, you can't go along like you can't pronounce anything and then on the third day start cross examining the doctor with medical books because the jury then may think he has been tricking us; he is not like we are, he tried to act like he was just one of us but when he cross examined the doctor, it was obvious that he wasn't. So that John said that some lawyers are good actors, and I have the feeling that most successful experienced advocates know the kind of role they have to play in any particular lawsuit and if it's going to be a contest of medical experts and if you are going to be the one who cross examines the doctor and bring out the fact that he has mis-diagnosed this patient's condition, then you have got to act and look the part of an expert. You can't look like some disgruntled farmer you have to look like you are qualified to interrogate and if necessary to embarrass a well trained medical doctor. And the same is true in other areas of experts; it fits into the whole area and theory of your persuasion to his jury. Closing with the proper experts, handling your own self in cross examining experts on the other side and bringing it out through the direct evidence so that you can stand up on the floor of the courtroom in the final arguments and convince that jury to decide for you. And when they decide for your side of the case, they are doing the right thing and they can walk out of the courtroom proud of the fact that they have relied on the expert in medicine and physician and the expert in law. (Applause)

MR. REED: Now, we're going to take just another five minutes or so. We have encroached on your noon hour and Mr. Hull said we might do

that. John, I want to ask a question of you sir. In the state where I now live there are many cases tried in which medical witnesses are necessary but in which it's not economically feasible to bring in the orthopedic specialist, the neurosurgeon and the like; do you have much experience in trying cases where general practitioners prevail where you would have preferred to have a specialist but you get along with this other kind of man. Any techniques; we can't all be practicing under the shadow of a great university when there are these high-powered experts.

MR. SHEPPARD: I tried to indicate in my judgment juries are most impressed by this. But sometimes the plaintiff's lawyer runs into this problem as you all know just as there are plaintiff's lawyers and defendant lawyers and as Leo says, well, we express our experience, so is it true with doctors. There are liberal doctors and there are conservative doctors. If you happen to have a plaintiff who is being treated by a good family doctor but who is of the school of medicine that says a whiplash is a legal term and that no neck injuries come from rear end injuries, you have to have another doctor. You can't saddle your client with a fellow who is of that particular school of medicine. Ethically can you say to your client, now, I think you ought to go to doctor so and so who has had a great deal of experience in this and can you tell the doctor that Bill Jones is out of work and he has no money and we would like for you to examine him and if necessary treat him and bill us at the conclusion of the case. Can you go a step further and say, I'll guarantee that you will get paid whether we win or lose. So you get into these ethical problems but I believe it's the duty of the plaintiff's lawyer if he is confronted with a doctor who is very conservative who says that such an injury can't develop from trauma then it's the duty of the lawyer to suggest the fellow go to some other doctor.

MR. REED: Suppose you are going to have a doctor who is testifying who does not have any of these specialties and you can not bring one in here for some reason or otherwise, is there anything you can say to him in direct examination that will to some extent protect him against the kind of cross that comes when it can be shown that he has no specialty.

MR. SHEPPARD: Yes, that is what you have to do; you have to lay the foundation at the time of the empaneling of the jury and at the time of the opening statements, then begin with your doctor so that you tell the jury that the doctor you brought in is the man that has treated the condition all along. Lots of times you can prepare your doctor because these are educated people and they know what they are doing and you can prepare him to protect himself on cross examination. And it's so much better if his guard is up and he is ready. And upon cross examination when the lawyer is belittling his experience he can pop that answer out and show that he does have experience. And for example, this is an actual experience of an orthopedic being questioned about the fact that he does not do cervical spine injuries and he is not a neurologist but the doctor said, I was a physician in Normandy and I handled paratroopers in Normandy and I treated a number of paratroopers who were injured and not one of them looked up and said, doctor, did you take a special course in Neurology. And he said, I feel I was competent then just as the Army felt I was and I am competent now.

MR. REED: Leo, I wanted to ask before we quit here. You may want to get on something John said. Specifically, I would like to know if you could give us any do's or don'ts on redirect or rebuttal dangers of getting back into the case after your man has been cross-examined. Would you care to say anything on this subject?

MR. KARLAN: Of course, the basic principle that becomes involved in redirect is the determination in the mind of lawyers as to whether the particular witness to any extent the witness may have been damaged. We have certain situations where you almost have to go and support the plaintiff or the witness where he has been cross-examined with reference to prior contradictory statement and you have casually and very quietly asked that the statements be shown to you because you have never seen it. Of course in our state we can now obtain in advance statements of a person taken by the opposing party, so you know what is coming. But with witnesses you have to look through it and see if there is anything in there and straighten it out and you have to determine in your own mind is there some evidence that you can question this witness about the method of taking of the statement at the time of taking the statement and the person who took it. For instance, we have a case where it is held in that case if the statement is taken by an insurance adjustor. He can't lie about who he works for. So indirectly this is the same kind of ethics we have talked about before under the question of insurance and the question of judgment and how far you go and what you do. Most of the times unless it's a major destruction or major damage my own feeling is that the thing ought to be left dry and picked up in the general picture, all your witnesses together because many times the defendant's case will be aided by this when he is just getting by.

MR. REED: John, can you add anything to that?

MR. SHEPPARD: I of course agree; you have to approach this when you put your client back on the stand for rebuttal because oftentimes plaintiff's lawyer has thought of a half a dozen questions that he wished he had asked the guy while he was on the stand. And we have all had this experience and if you put him back up there, out comes his preparation that the lawyer had done last night or over the noon recess, so that has to be very important before you put your client back on the stand. What about other witnesses. Well, if you have got a real clincher that is really rebuttal evidence that you can close with—say the highway trooper wasn't available at the time you were putting your case on, if you have got some good excuse to the jury why you didn't put this vital witness on at the time, then put him on. Oftentimes you will have a payroll record or things of that kind that you might get in as the last piece of evidence to show that what they have been told on plaintiff's rebuttal evidence is not accurate. This takes some advance preparation and a lot of time and if you don't get to use it you will have people that are waiting in the adjoining courtroom and if the plaintiff gets back on to buttress his case on loss of wages you have got some guy over there who is going to testify that the reason he lost his job was that he was drinking on the job or somebody like that, so you have got him hid out waiting if the plaintiff gets back on. If he does, then you are going to be playing a cat and mouse game. When

you get to the last stages of the trial you have traveled your case to the point where you think you have put in all the vital evidence you have and you don't want to ruin it with some last-minute development.

So, I tend to use very little rebuttal evidence. I tend to convince the jury that when I say Mr. Smith rests I say it with such confidence all over that no matter what they say we have put on a terrific defense and there can't be any question about it. If I am still floundering around now and say, well, I have one more witness then the jury may tend to think that well, he wasn't very confident on closing his case. If you have put on the main strength of your case and you have made that a central core of your presentation and you have dovetailed all your evidence into this funnel . . . stop. And it's just as true that lawyers hurt themselves by asking one more question as it is to say they hurt themselves by putting on one more witness. And I am sure every one of you have had experiences of your opponent putting on one witness that he wished he hadn't just as you have experienced putting on one witness that you didn't really need and you wished to God you had left the guy back in your office. So this business of putting on more and more evidence, accumulative evidence is to be approached with care.

MR. KARLIN: John, I have the best rebuttal evidence; may I tell it?

MR. SHEPPARD: Yes.

MR. KARLIN: Some years ago, shortly after the war a Negro was going from 36th and State Street in Chicago to 91st where he had some kind of a victory garden and he was driving a little red wagon with a horse and he got to where all the railroad tracks come over from the south and the tracks scared the horse and the horse broke loose from the wagon—incidentally it was loaded with manure for the garden—and the horse high-tailed it down Main street and got lost. The man then went looking for help and while he was looking for help a rather involved man who had just bought a Kaiser-Frazier—so you know how long ago this was—he comes down the street and he hits the empty wagon and he looks around and no horse and no driver. Then he goes on to the police station and reports that he hit an object. Back comes the plaintiff with a helper who is a blacksmith and while they are standing on the sidewalk along comes a Pepsi-Cola truck and hits the wagon and the man gets hurt. Now, it sounds like a simple case but what happens is this: In the first trial and the defendants called on a witness, and she let herself be persuaded by the knowledge that the wagon wasn't a Pepsi-Cola wagon, some other company's wagon and that the horse was lying there bleeding in the street. At any rate the case was tried and the jury hung. In the first round we didn't know who the helper was on the Pepsi-Cola truck. To prove his absence they put in a letter that had been sent to him from the company that he worked for and it had been returned not found.

Between the two trials using the addresses we located them so when the second trial broke we had the helper subpoenaed and sitting in our office and he also was a member of the same race and so I was faced with the problem if I put him on in my case it would look like something had been arranged. He sat in our office for ten days because we didn't know how to use him but they got into the defense of the case this time

they started to prove the unavailability of the helper and the truck driver testified he was dead. Well, how do you know he is dead? Well, I remember some years ago; two years, year and a half ago, five of the men who worked with him took off to go to his funeral. So I moved cautiously. Are you positive he is dead. Yes sir. So that the defense quit at about four in the afternoon. At four ten the judge said, well, do you have much left, Mr. Karlin? Let's go home.

Well, I needed five minutes to bring him over. I brought the fellow over and he was dressed in a typical zoot suit and whole outfit and I put him on the stand and said, what is your name? Give us your name and where do you live and he told us. Where were you employed at this time five years before? I worked for this company. What did you do there? I was this man's helper. Then the jury knew what was coming and one more question was asked: Are you dead? The judge said, I'll take judicial notice to the fact that he is alive and the case stopped right there. Cross examination must have lasted forty-five minutes, but the case was actually decided then and there. This rarely happens. It's a break we call it but it proves what John was talking about.

MR. REED: Thank you, Leo. I think the time has come when we need to bring this pretty much to a close. I would like to say one other thing and that is that as we went along this morning around the table it was interesting to me to observe how many times we found ourselves merging into questions of ethical questions. It's not as glamorous sometimes to talk about these things partly because we can't put success or failure in a particular case so directly on questions of ethics. We can't attach dollar signs or so much money. The standards are difficult standards to establish because as Leo once mentioned we get into personal ethics as well as the more generally noticed canons of ethics for the profession. I would hope that these have not gone unnoticed these problems that have been raised because each of us has to live with these and to the extent that each of us will be a happier person to the extent that we feel that the game we play moves to the edges of the unethical realm and then at that point we live somewhat uncomfortably and we're bound to be unhappy. I hope all of you recognize these interesting techniques and strategies but also a sense of concern that you will still operate always within our own standards and that we are always aware that these standards are important not only to the winning of a particular case but to the effectiveness of the profession of which we are a part. Thank you very much for inviting us to be here in Idaho. It was a delightful experience for each of us and we appreciate the opportunity to be here.

MR. SHEPPARD: As you may have gathered from my introduction of my being in Boise before, I get around the country a little bit on these programs and I want to say as a matter of record that I have never been so warmly treated anyplace as I have in Idaho. And I want the record to further show that Bob Huntley and Freida Huntley who have been our assigned host and hostess, and they loaned us an automobile to tour this beautiful state of yours, have been just marvelous and I say on behalf of my wife and son Michael that I appreciate everything that you have done for us and I can't express the warm feeling that we have and appreci-

ation that we have for the nice things you have done for us. (Applause)

MR. HULL: Thank you, gentlemen, and words fail me to express the appreciation of the Idaho State Bar for returning to Idaho and I know I express the feeling of the Bar when I say there is a perpetual invitation to come back again.

Saturday,
10 July 1965

MR. HULL: Gentlemen, I think we'll call the meeting to order. One way to assure a small crowd is to set it for nine o'clock Saturday morning. Fortunately we have a record so those who are not here, which is a preponderance can read it in the record. We have been setting some sort of a new record by way of registration so any of you late comers we would be pleased to have you register at the desk in the lobby of the lodge because we want to get as many as possible so it will make that much more difficult to break at the next time. So, if you haven't registered we would appreciate your donating your ten dollars to the Idaho State Bar. Incidentally our two other records were just given to me. We have a 100% registration from two counties: the counnty of Blaine with three lawyers has a 100% registration and the county of Teton with one. So you can see there are only 42 more counties to go and we will be in good shape. Jerry, why don't you come up and sit at the table here?

MR. HULL: Our first report this morning is from the Judicial Conference and I believe the reporter will be Justice E. B. Smith . . . Judge Smith.

JUSTICE E. B. SMITH: President Hull—The Idaho Judicial Conference met at Trail Creek Cabin Wednesday, July 7 and the morning of Thursday, July 8. In attendance were the five justices of the Supreme Court, fourteen district judges, Phil Peterson, Dean of the University of Idaho College of Law, and the Supreme Court Clerk, Louie Bideganeta. Judge Boyd Thomas presented an informative report of his four weeks attendance at the 1964 session of the National Trial Judges' College at Colorado Springs, covering aspects of continuing judicial education. That Seminar covered various subjects, including community relations; the impact of television, newspaper reporting and public relations in general; court congestion; criminal procedure; judicial discretion; evidence, judicial processes; pre-trial procedures; domestic relations; sentencing and probation, and the various legal tests of insanity. Judge Lloyd Webb, who attended the 1964 National Trial Judges Conference in New York, told of the subject matters studied at that conference which included: One, Trial Judges and Problems of Proof of damages for injuries negligently inflicted without Impact. Two, Trial Judges and Problems of Furnishing Counsel to Indigents accused in Criminal Cases. Three; Trial Judges and Problems of Proof of Liability for Medical Malpractice. Four; Trial Judges and the Problems of Bail in Criminal Cases. Reports submitted set forth legislation as it affected the Judiciary, enacted by the 1965 Legislature; also covered areas wherein future legislation is desired. Judge Spear covered the troublesome area

of the rights of indigents, accused of criminal offenses, to counsel, particularly after the investigatory stage and at the accusatory stage. He also presented a review of the recent United States Supreme Court cases in this area. Judge Durtschi presented a discussion relating to the rights of indigents in Habeas Corpus proceedings, noting that the Federal Indigent Act does not include Habeas Corpus proceedings; also, that the U. S. Supreme Court has not as yet ruled that the indigent in a Habeas Corpus proceeding is entitled to counsel as a right, and that appointment of counsel in such a case, rests in the discretion of the Federal Courts. The Conference reviewed the project of formulation of Uniform Pattern Jury Instructions and the desirability of Pattern Instruction in certain areas. Dean Phil Peterson indicated that research of Idaho's law is not only desirable but necessary, as a prerequisite to proper formulation of instructions designed to follow the patterns suggested in several of the states, notably California, Illinois and Wisconsin. Dean Peterson offered the research facilities of the College of Law in aid of this project.

The proposed Uniform Post-Conviction Procedure Act was discussed by Judge Towles. He doubted if the proposed Act is an improvement over the Federal Act; also doubted that adoption of the proposed Act would substitute for Habeas Corpus. He suggested, under Idaho's Habeas Corpus procedure in criminal matters, that to change the venue to the court where the conviction occurred, would be a most desirable remedy. The Conference generally discussed proposals for amendment and improvement of existing Uniform District Court Rules, and the Idaho Rules of Civil Procedure. The highlight of the Conference was a presentation by Robert E. Allard, director of special projects of the American Judicature Society. "Bob," as he prefers to be called, reviewed the experience of many states of the Union in the adoption of constitutional provisions and enactment of appropriate legislation in the areas of selection of judges, trial and appellate levels; retirement and removal of judges upon attainment of a designated age, or upon becoming physically or mentally incompetent or because of infamous conduct. He reviewed the experience of ten other states relating to the formation, operation and financing of Citizens' committees as means of disseminating information and formulation of policy, relating to forward movements looking to improvement of the science of Jurisprudence and the administration of justice. He laid the greatest stress upon what he termed, the lawyer's duty to the courts. He reviewed the excellent experience of many states which have been accorded the privilege of employing a court administrator to accomplish administrative duties. He pointed to the importance of those duties, which are so often left unattended by the appellate court because of the burden of deciding appeals and writing decisions, where such an administrator is not authorized. Also that a court administrator can program functions which the members of the courts simply do not have time to perform. The Conference was both delighted and impressed by Mr. Allard's excellent presentation. The members of the Judiciary are pleased with the Conference and feel that constructive suggestions and ideas have evolved therefrom. They have requested me to express their thanks and gratitude to the Bar and the Commissioners for their hospitality and assistance which so materially aided in the success of the Conference. Thank you Mr. President. (Applause)

MR. HULL: Thank you for your very fine report, Mr. Justice Smith. The tenor of this report forces me to say a few words, if I might. The last three years that I am aware of course the court and the commission have met frequently and I want to state to the attorneys of this State that we are in a tremendous stage of transition. And Justice Smith has referred to it and Mr. Allard pointed this out to us the other day in his talk which was very similar to the one he gave to the court. And I think it behooves the attorneys of this State and demands of the attorneys of this State that we watch that transition to see that we do not surrender our basic rights to legislative expediency. And Justice Smith and I have discussed this before and we are both very concerned and I know the commissioners who are going to succeed me and the other commissioners in the future years must watch this on behalf of the Bar. It's not something that we can have come across our desks and not watch it because we are going through a tremendous era of development. Not only on the State level but even on the national level and this has got to be watched closely. Again, thank you Justice Smith.

MR. HULL: At this time I will call on Jim Lynch for the Secretary's Report.

SECRETARY'S REPORT

The following report is made to the members of the Idaho State Bar for the purpose of reporting statistics pertaining to the financial condition of the Idaho State Bar, membership, Bar examination results, disciplinary matters, and other aspects of the work of the Board of Commissioners of the Idaho State Bar and their employees and committees. The following report covers the period from June 1, 1964, to June 1, 1965.

FINANCIAL REPORT

BAR COMMISSION FUND: The account books maintained in the Secretary's office, which are regularly audited by the State Auditor, reflect the following receipts, expenditures and balance in the Bar Commission Fund, a dedicated fund subject to State appropriation and control:

EXPENDITURES June 1, 1964 to June 1, 1965:

Personal service	$ 14,063.42
Travel Expenses	9,244.55
Other Miscellaneous Expenses	7,434.31
Capital Outlay	1,670.00
Refund (Licenses)	30.00
Transfers to Social Security	388.12
Transfers to General Fund	605.51
Insufficient Fund check (License)	50.00
TOTAL	$ 33,485.91

RECEIPTS, BALANCE

Balance on hand June 1, 1964		$ 27,312.13
Receipts, June 1, 1964 to June 1, 1965		31,244.84
TOTAL		58,556.97
Less Expenses		33,485.91
BALANCE, June 1, 1965		$ 25,071.06

Personal Services covers salaries of a part-time Secretary, a part-time Director of Continuing Legal Education, a full-time stenographer and a part-time stenographer, bar examination monitor and occasional clerical help. This item also includes fees paid to individual attorneys acting as General Counsel by appointment of the Commissioners.

Travel expense includes all costs of transportation, meals and lodging for out-of-town travel of the Commissioners, the Secretary, and other persons engaged in Bar activities, including Bar Committees and the General Counsel and other attorneys required to travel in connection with discipline investigation and prosecutions. It also covers a portion of the travel expense of the Idaho State Bar Delegate attending meetings of the House of Delegates of the American Bar Association.

Other Miscellaneous Expense includes the cost of printing the Proceedings of the Annual Meeting, that portion of the cost of printing and distributing the **Advocate,** which is attributable to disseminating official Bar information, the cost of preparing and mailing notices and other materials to Idaho lawyers, office expenses such as rent, telephone, postage, stationery and other supplies, and other miscellaneous Bar expense.

The Social Security Transfers represent the State Bar's payment as the employer of the above-mentioned personnel.

The General Fund Transfers refer to charges against the Bar Commission Fund by the State Auditor's office for bookkeeping and auditing services rendered to the Bar.

TRUST FUND: This is a special fund not controlled by the State for the reason that the receipts are collected from sources unrelated to official funds.

The status of that fund is as follows:

Cash on deposit, The Idaho First National Bank, Boise, as of July 1, 1965	$ 1,374.80
Adjustments for sums presently due	494.16
ADJUSTED TOTAL	1,868.96

The July 1, 1965, balance of $1,868.96 compares with a reported June 1, 1964 balance of $2,179.31. At the time of making the report, it was possible to report the Trust Fund balance as of July 1, but the General Fund records pertaining to June of 1965, were not yet available.

MEMBERSHIP

BY DIVISIONS: The membership of the Idaho State Bar at this time as compared with a year ago is:

Division	1964	1965	Change
Northern Division	126	125	.794% decrease
Western Division	328	335	2.134% increase
Eastern Division	150	156	4.0 % increase
Out of State	15	19	25.66 % increase
Military	1	0	100 % decrease
TOTAL	620	635	

Attorneys admitted and currently licensed in Idaho and who are not under disbarment or suspension, and all Idaho Supreme Court Justices and District Court Judges and U. S. District Judges for the District of Idaho, are members of the Idaho State Bar, I.C., 3,405. The Judges are included in these figures.

BY LOCAL BAR ASSOCIATIONS:

Division	1964	1965	Change
Shoshone County	17	15	11.76 % decrease
Clearwater	65	67	3.07 % increase
Third	190	193	1.37 % increase
Fourth and Eleventh	82	87	6.09 % increase
Fifth	59	63	6.78 % increase
Sixth	18	20	11.11 % increase
Seventh	56	55	1.78 % decrease
Eighth	44	43	2.27 % decrease
Ninth	47	46	2.12 % decrease
Twelfth	16	17	6.25 % increase
Thirteenth	10	10	none
Out of State	15	19	26.66 % increase
Military	1	0	100 %
TOTAL	620	635	

Rule 185(e) provides that at the Annual Meeting each local bar association shall be entitled to the number of votes represented by its total membership, and the members of any local bar association present at such annual meeting shall cast the entire vote of the members of such local bar association.

DEATHS OF ATTORNEYS

Since the last Secretary's Report we have learned of the following attorneys' deaths:

Name	Place of Birth	Date of Death	Admitted to Bar
*Frank E. Meek (Not previously reported)	Boise, Idaho	Feb. 5, 1964	June 27, 1913
Davison, William H.	Jefferson, Ia.	July 27, 1964	Nov. 25, 1901
Brady, John Franklin	Nampa, Ida.	Sept. 10, 1964	Oct. 20, 1959
Lampert, Judge J. M.	Oshkosh, Wis.	Sept. 21, 1964	Feb. 1, 1918
Martin, Frank, Jr.	Boise, Idaho	Sept. 26, 1964	Dec. 14, 1921
Aschenbrener, Judge Edward J.	Idaho Falls, Idaho	Nov. 30, 1964	Oct. 3, 1951
Elder, Robert N.	Coeur d'Alene, Ida.	Jan. 23, 1965	Jan. 30, 1939
Hansen, Larry D.	Twin Falls, Idaho	Feb. 20, 1965	Oct. 2, 1964
Tucker, Judge Henry W.	Bath, England	Feb. 2, 1965	Oct. 2, 1915
Cordon, Alfred C.	Willard City, Utah	Mar. 29, 1965	Nov. 10, 1913
Taylor, Vern L.	Omaha, Nebraska	April 3, 1965	Mar. 18, 1914
Koelsch, Judge Chas. F.	Mayfield, Wis.	April 22, 1965	Nov. 16, 1897

BAR EXAMINATIONS

Two Bar examinations were given since the last Annual Meeting, one in

September, 1964, and the other in April, 1965, both in Boise. Twenty-eight applicants wrote for the September, 1964 Bar examination and of these 18 passed and 10 failed. Of the 10 who failed, six filed Petitions for Review in the Supreme Court. Three of the six applicants who appealed were subsequently admitted by Order of the Supreme Court.

Ten applicants wrote the April, 1965 Bar Examination, and of these six passed and four failed. Two applicants who failed, filed Petitions for Review in the Supreme Court and both petitions have been denied.

DISCIPLINE MATTERS

On May 22, 1964, there were 19 disciplinary matters listed on the agenda for the Commissioners' meeting held in Boise, on that date. Twelve of those cases were dismissed or disposed of at that meeting. Two of the then pending seven cases involved formal complaints, C-278, and C-279, which had been pending since prior to June of 1963. Subsequently, both formal complaints were dismissed by the Board of Commissioners on the grounds that the facts and circumstances did not warrant proceeding to a formal hearing. The other five matters were investigated and subsequently dismissed on the grounds that the facts did not warrant a formal proceeding.

Between May 22nd, 1964, and June 11th, 1965, the date of the last Commissioners' meeting prior to this Annual Meeting, 54 new complaints were received and investigated.

Forty-eight of the 54 complaints filed between May 22nd, 1964, and June 11th, 1965, were dismissed by the Board of Commissioners for the reason that the investigation established that the accused attorneys were not guilty of a violation of the Canons of Ethics or of unprofessional conduct. Two cases were dismissed by the Commissioners on the grounds that the facts and circumstances did not warrant a formal proceeding, but the attorneys involved were given an informal reprimand by the Board of Commissioners. In two of the cases filed, formal complaints, numbers C-281 and C-282, were filed against the accused attorneys. One of these cases, No. C-281, was subsequently dismissed by the Board of Commissioners after a further investigation revealed that further formal proceedings were not warranted or necessary. A formal hearing was held in the case involving a complaint against Orvil Atkinson, No. C-282, and the recommendations have been forwarded on Discipline and the Board of Commissioners have been forwarded to the Supreme Court for its review and final determination.

After the June 11th, 1965, meeting, only case C-282 and two other complaints were still pending. These other two complaints are in the process of being investigated to determine what disposition should be made of them.

During the past year John Child of Meridian, and Larry Duff of Rupert, have served as part-time General Counsel in the Western Division Area and have investigated the serious complaints arising in that Division. Thomas C. Whyte of Idaho Falls has, as part-time General Counsel in the Eastern Division, investigated serious complaints in that Division. Individual attorneys have been appointed to investigate specific cases in

the Northern Division area, as retained General Counsel for the Bar, when serious complaints were filed in this area. These attorneys are also assigned to investigate Unauthorized Practice of Law violation, when a case warranting investigation is brought to the attention of the Commissioners.

Gilbert St. Clair of Idaho Falls, Glenn Coughlan of Boise, Marc Ware of Lewiston, Milton Zener of Pocatello, Tim Robertson of Twin Falls, and Robert Brown of Kellogg have served as the Committee on Discipline, but three of these gentlemen have only been required to sit on one case which went to a formal hearing during the preceding year.

The Commissioners are appointing a Local Bar Liaison Committee, consisting of attorneys in every local bar association, to speed up the reporting of cases of unethical conduct or the unauthorized practice of law, so that they can be investigated more rapidly by the part-time General Counsel.

MR. HULL: Thank you very much, Jim; that was a very thorough report and I think reflects the tremendous amount of work that our Secretary is doing. At this time I want to go on record thanking him and his staff for his excellent cooperation. Is Mr. Hailey here of the Prosecuting Attorney Division? Does anyone have a report of the prosecutors? Was one submitted, Jim?

MR. LYNCH: No.

MR. HULL: The Chairman of the Continuing Legal Education had to go to a meeting of some legislative committee this morning. I believe we have a report, do we?

MR. LYNCH: Yes. Report of the Committee on Continuing Legal Education, Robert C. Huntley Jr., Chairman. The Committee on Continuing Legal Education for the past year has consisted of Charles R. Donaldson, of Boise; Robert Alexanderson of Caldwell; Professor Birman of the University of Idaho Law School, and Bob Huntley. An Institute was conducted in Boise on November 13th and 14th under the joint sponsorship of the Idaho State Bar Association and the University of Michigan Institute of Continuing Legal Education. The Institute consisted of a road show and a cross examination under the program format whereby the principals and expert witnesses involved in the automobile accident case were submitted to direct examination by Dean Reed of the University of Colorado Law School after which they were cross examined in sequence by attorneys, James E. Marco of Detroit, John C. Sheppard of St. Louis and Philip H. Corby of Chicago. The Institute was one of the most heavily attended in the history of the Idaho Continuing Legal Education program with a registration of 256 attorneys and 35 law students. The C.L.E. program took a great step forward this year by the appointment of Mr. Robert Bakes of Boise as a part time director of the entire Continuing Legal Education program. He has already formulated that program for the coming year and made tentative arrangements for the program for the fall of 1966. The Institute this fall will be on the topic of wills and estate planning featuring a book procured from a California C.L.E. program and adapted to Idaho law. The Institute will be held in Moscow October 1st and 2nd

and in Boise on October 15th and 16th. Tentative plans call for the conducting of the 1966 Institute at Pocatello on October 7th and 8th and in Moscow October 21st and 22nd. Topics under consideration for the 1966 Institute are: Farm and range law or an institute on evidence. The 1967 Institute will probably feature the Uniform Commercial Code if it is passed by the 1967 legislature. The Committee is most pleased with the appointment of Robert Bakes as Director and wishes to commend him on the work he has done towards preparing for future institutes; Robert C. Huntley, Chairman.

MR. HULL: I see that Robert Bakes is here. Didn't I see Bob?—yes. Would you like to talk about that? The Commission has taken a big step in the area of Continuing Legal Education and employed Robert Bakes, who as you know is the Assistant U.S. District Attorney and was able with permission from Washington to accept this additional employment and just by reading Robert Huntley's report you can see that these plans are developing and I would like to have him give us a few words—Bob.

MR. BAKES: Thank you, Alden. In reviewing the past, one of the problems which appeared to be the main problem was the lack of planning these programs ahead of time. I know some of you like myself have been asked to prepare a paper for a program, were asked maybe in August or September to prepare something for October and this is one of the main problems that we had in our program. Now, I think we have got the program; we're projecting on a long range basis and planning three or four years ahead on our programs so we can develop them and so we can give you both a program which will have a good interesting oral presentation as well as materials which you can take back to your office and which will be a benefit to you in your practice. And we have such a program for this fall as they have indicated on the 1st and 2nd of October in Moscow for the W.S.C. football game and again on October 15th and 16th in Boise on the weekend of the Oregon State and Idaho football game coincidently. We're having an Institute on Estate Planning and Wills Practice. We have two very well known and very outstanding lecturers coming in from California who have given this program all over the State of California and it will be a workshop type of program and how you actually go about the practical aspects of planning an estate. And then they will start right from the beginning with a discussion and lecture on the problems in planning a small estate and then a larger estate and then we will proceed to the Institute itself to plan two sample estates. And the facts will be given to the audience by the use of a film which has been prepared in which the two clients involved are interviewed by lawyers and this places the audience—the audience obtains the facts and from this interview then you proceed to actually plan the estates with the various problems. One is a young man approximately thirty years whose main asset in the estate is his life insurance, $20,000.00 in life insurance, $10,000.00 a year job, a small equity in a house and several children are his only assets. And another estate will be a man substantially older and his children are grown up and he has a $200,000.00 estate. And I am sure that you will find this will be a very interesting program and it's a practical down to earth type of program. And it's not to give you citations or authorities but to tell you of the practical problems

involved. And I think these lecturers are coming up, Mr. Friedman from San Francisco and Mr. John R. Cohan from the Beverly Hills Bar, come highly recommended from California, where they have given this same program innumerable times. I think out of twenty-six thousand lawyers in California, this same program when given down there attracted something like fourteen thousand lawyers, better than fifty per cent of the Bar strung out all over the State of California. It has been very well received so I think it will be a very fine program.

And for the coming years we have planned programs again for 1966 and 1967. Some of you may be asked to participate in various capacities and I appreciate those of you who have volunteered and who are doing some work with the program this fall. Thank you.

MR. HULL: Thank you, Robert. It's rather interesting, last year's Institute we had one of those classic games and it is always coincidental that we schedule Institutes along with football games. It's all part of the effort to entertain attorneys as well as educate them. I see Gene Thomas here and I would like to call upon him for the report of the Fee Schedule Committee.

MR. THOMAS: Mr. President, and Commission and honored guests, ladies and gentlemen: This is the report of the Committee on the Economics of the Law Practice. Included among our assignments is the matter of the Idaho Fee Schedule. The advisory fee schedule continues to be well received and generally successful. We now have under consideration a revision of the schedule which has a wider range of basic hourly rates. Additional language which will emphasize the profit concept and professional fee setting will also be considered and acted upon shortly. The revision which will re-emphasize the compensibility of assuming and discharging responsibilities will likewise be proposed in the near future. The above broad considerations come to mind because the fee schedule presently is built and speaks in terms of cost factors. It frequently oversimplifies and may mislead the attorney who is closing out a substantial file which has been handled with efficiency and success. The value of service rendered and the realization of profits requires added emphasis in the schedule. Proposed revisions to accomplish this purpose will be presented. Furthermore, revision and study are indicated by the fact that both the cost of doing business and the standard of living are on the upswing in Idaho. Secretarial salaries and office equipment and rent are more costly today than five years ago and they are now taking up a large percentage of the fee dollar. Our employees wish and demand to live better. Our clients require more attractive offices and finer modern office equipment. Along this same line the community continues to make a heavy demand upon the lawyer for his contributions profit free rendition of legal services to the public. With these thoughts in mind, studies will be made and presented to the Board of Commissioners. We believe that the timing of this is best handled by coordinating a revision with the issuance of an Idaho Lawyers Desk Book where special materials such as local and appellate rules may be kept for ready reference. Your Committee has not requested the adoption of any resolution or other con-

vention action at this time. Respectfully submitted, Eugene C. Thomas. Thank you.

MR. HULL: At this time I would like to call on Clark Gasser, Chairman of the Insurance Committee: is Clark here? I believe he has a report, is that right?

MR. LYNCH: Yes. (Reading Report) Board of Commissioners of the Idaho State Bar and the Annual Report of the Group Insurance Committee. Your Chairman respectfully submits to this Committee the following report on the activities for the year from November, 1964, to June 30, 1965. The Committee was formed on November 9, 1964, and consists of of the Chairman. Needless to say, every committee meeting has resulted in the unanimous support of its recommendations. There have been two items of business before the Committee regarding members of the Bar and the insurance policy. The first occurred February, 1965, and concerned generally a question as to interpretation of payments in the event the policy was terminated. The next question arose wherein a member of the Bar was disgruntled in the reduction of disability benefit payments paid to him under the disability clause. After meeting with Mr. John Squires, General Agent of Mutual of Omaha, the matter was resolved to the satisfaction of the attorney who raised the question.

From the information supplied by the Mutual of Omaha office, they can report on the status of our insurance program as follows: Major medical—it's divided in columns as to year, benefit amount, benefit count, benefit ratio and applications. 1961: zero, zero, zero, 179 applications. 1962: $6,613.00, 18, benefit ratio 48.1, applications 88. 1963: $5,651.00, 19, 41.6 and 20 applications. 1964: Benefit amount, $13,475.00; major benefit count, 27; benefit ratio, 88.6; applications, 39. Year to date: 4-30-65: Benefit amount $1,190.00; benefit count, 2; benefit ratio, 23; applications 10. This makes a grand total of $26,729.00 in benefit amounts, and the benefit count total of 66, and the benefit ratio is not applicable and the application total of 336. Loss of time. Again divided into the same five columns here: Benefit amount, benefit count, benefit ratio and applications. 1961, not applicable; 1962: $21.00, 1, .3, and 93 applications. 1963: $1,560.00, 6, 15.4 and 42 applications. 1964: $1,614.00, 4, 14.5 and 18 applications. Year to date 4-30-65: $738.00, 2, 22.0, and applications five. This makes a total under this policy of benefits $3,933.00, benefit count of 13, benefit ratio not applicable and the applications of 158.

Life insurance to date 4-30-65; face amount, $1,165,000.00; applicants, 117; death claims, 1 for $10,000.00. The chart shows four separate columns. The column designated benefit amount shows for the year indicated the amount of benefits paid to the members of the Bar by the insurance company. The second column, benefit count shows the number of individuals to whom it was paid and the benefit ratio indicates the per cent ratio of payment of benefits to earned premium. The applications column shows the number of members of the Bar who have applied for the particular benefit for the year in question. The total at the end of each section shows the gross amount of the benefits, number of recipients and the total numbers of insureds under the particular policy provision. The benefit

ratio is not computed on a total because of the difficulty in determining it at this time. The figures of the major medical and loss of time provisions include only those where the disability under medical payment has ceased after the claim has been made and paid. There are current losses being paid under the major medical and loss of time provisions of the policy that are of a continuing nature. I have been advised by the company concerning these extended or continuing payments that are being made under the medical, major medical and loss of time, the ratio as against earned premiums and payments would be nearly one hundred per cent. Conclusions derived by the committee from the report and statements furnished by Mutual of Omaha indicated to the committee that the members of the Bar received full value under the program. The committee has recommended through Mutual of Omaha through its agent in Pocatello that in order to clarify any misunderstandings with regard to the disability benefit of loss of time that the term impaired individual be interpreted. Respectfully submitted; Clark Gasser, Chairman.

MR. HULL: Thank you, Jim. We are very pleased to have with us this morning, Mr. Ray Kuhn, representative of the Mutual of Omaha. Ray, would you like to come forward and direct a few words that you might have?

MR. KUHN: Thank you very much, President Hull. It's a pleasure to represent Mutual of Omaha on behalf of your insurance program and to also express to you our real gratitude for the fine support that the greater part of you attorneys have given in the programs. We want to pledge to you our continued service and pledge this to the very full extent. We have now sixty-eight licensed representatives geographically situated throughout your state and each and every one of them are dedicated to service your areas whenever it is needed. Digressing just a moment from the program; I don't want to tip my horn but I lost a little sign which was supposed to do with the refeshment table, so in case you don't know it, Mutual of Omaha is your host when the time is called for the coffee hour out here. I don't know what happened to the sign but it turned up missing this morning. I at this time have the pleasure to present to you, Alden, a little token of our esteem for you personally and for a job well done, a gavel, and I want to congratulate you on the very fine and successful year. (Applause)

MR. HULL: Thank you very kindly and give my best regards to your firm. I am almost tempted to use it on the other commissioners. They have always called me a ramrod and I might just drive them into the ground. I do appreciate this, of course, and this is one of the rewards which I will always carry in my memory. At this time we are going to accept Mutual of Omaha's hospitality and have our coffee break and take about a fifteen minute refreshment break and then we have a few more reports and then the session will be over. (Coffee break.)

MR. ANDERSON: As Idaho State Bar representative to the Western Regional Bar Association-Internal Revenue Service Liaison Committee, I have attended the ninth and tenth meetings of this Committee. The ninth meeting was held in the Regional Commissioner's office in San Francisco

on January 15, 1965, and the tenth meeting was held in Portland, Oregon, at the Portland-Hilton Hotel on June 11, 1965. The purpose of this letter is to report the happenings of these last two meetings.

James Tredup of Portland, Oregon, was Chairman of both meetings; and Aaron Resnik of the Regional Counsel's office was Secretary. James Tredup invited the Committee to Portland, Oregon, for its next meeting on Friday, June 11, 1965.

Prior to each meeting of the Committee the Chairman requests and receives suggestions to be placed on the agenda for discussion at the meeting, and each representative receives a copy of the agenda several weeks before each meeting.

Each subject discussed will be stated briefly below:

JANUARY 15, 1965, MEETING:

1. **Joint Committee Cases:**

Section 6405 (26 U.S.C.A.) provides "(a) no refund or credit of any income, war profits, excess profits, estate, or gift tax in excess of $100,000.00 shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary or his delegate, is submitted to the Joint Committee on Internal Revenue taxation."

It appears that the chief objection to the procedures pertaining to this section of the law is that the Internal Revenue Service takes too long a time in submitting its report, and makes a more extensive investigation than they would otherwise. It was suggested by Mr. Frost that perhaps the Committee could review a sampling of cases. Mr. Hart Spiegel thought the present limit is too low and that an increase to $250,000.00 might prove helpful. Mr. Frost also stated that an industry-wide approach might be used in that in the case of losses due to floods, etc., it should not be necessary to make a lengthy investigation and report. Mr. Forrester stated that the ABA sub-committee report on this subject had been prepared, and representatives of the ABA have met with administrative personnel of the joint committee. He further stated that this problem is apparently under study by the joint committee itself. Mr. Forrester was urged to convey the suggestions discussed at this meeting to the ABA sub-committee.

2. **Representation of pro se taxpayers in the Tax Court:**

The Tax Court for some time has been concerned with taxpayers who attempt to represent themselves before the Tax Court. Mr. Sears (I.R.S.) said that this matter posed quite a problem, and proposed the question as to whether it might be possible for the Tax Court to provide some system of appointing lawyers from a group who might desire to be considered, and request that they undertake to represent taxpayers, particularly in small but meaningful cases where by virtue of the issue an unrepresented taxpayer might not be able to make a satisfactory record.

Mr. Frost stated tbat the lawyer referral service operates in California,

and is well established. The lawyer referral service must be distinguished from legal aid in that in the lawyer referral service the client pays a fee. He said in most Tax Court cases he thought the situation would be one of a taxpayer who is indigent, and accordingly would not have available to him the legal aid facilities. Under the lawyer referral service the client is generally directed there by some public agency, or by the Court. If he avails himself of the service he must make his own arrangements, including those relating to fees.

Mr. Holdsworth questioned whether such a program would work where the client was unwilling and uncooperative. Mr. Thomas pointed out that the program does offer a vehicle to cut down the incidents of pro se Tax Court cases. Mr. Frost further stated that only in a few states has a lawyer referral service been developed to such a point as to really be a meaningful program. Mr. Spiegel suggested that some pilot operation might be undertaken to assess the worth of the program.

In a number of these pro se cases I have noticed that the tax involved is very small and the cost of hiring an attorney would be as much as the tax, perhaps more, and for that reason the taxpayer has attempted to represent himself.

Representative Charles E. Bennett (Fla.) has introduced H.R. 10280 which would authorize the Tax Court to award attorney fees in any case that results in a final decision reducing or eliminating the deficiency. Perhaps support of this type of legislation might solve the problem.

3. **Impact of Collection Activities on Third Parties.**

Mr. Thomas and Mr. Tredup cited specific incidents where bona fide third parties have found their interests and business operations jeopardized by what they characterize as over-zealous collection activities by revenue officers. Mr. Moran (IRS), supported by Mr. Greaves (IRS), pointed out that by virtue of the statute there will be situations where third parties will feel the impact of the Government's collection activities. It is not uncommon for this to arise in lease situations. Mr. Lohn stated he has found the problems arising in attachment situations serious and time consuming.

Mr. Greaves pointed out that the Government will follow the interest of the vendee to the full extent that the state law permits. He stated that most collection problems by their very nature can be resolved only on an individual basis, and he pointed out that in each District Director's office there is a chief, special procedures, through whom inquiries in any specific matter can be directed if the attorney has reason to believe that there has been "overreaching" in any specific case by the Government.

4. **Organization and Activities of the Office of International Operation.**

Mr. Hawkins (IRS) opened the discussion by stating that at the time this item was included on the agenda it was thought that January first was a good target date, and that plans and procedures would have been formalized; but, as yet, they have not jelled. Accordingly, there was little that the Service personnel could do in shedding any light on this item.

Mr. Sears stated that procedural aspects have not as yet been determined, but it is anticipated that on or about March 1, 1965, some positive steps will be taken. He said that the main shift will be in the audit activities where there are domestic corporations with overseas subsidiaries, and that it is not anticipated that it will be necessary for district officers to refer specific cases to the OIO in the course of the audit, and he thought the agents of the OIO now located in the field would be shifted to the different divisions in the Director's office. It is anticipated that the OIO will continue to have charge of overseas posts and function by way of giving national guidance in the field of operation.

Mr. Tredup commented that more and more OIO cases are reaching the tax practitioners, and there is need for clarification and an implementation of procedures and guidance that will help the attorney meet the wealth of difficult questions that are being placed before him.

Mr. Frost observed that under present procedures with the OIO writing a separate report, the practical question that arises in the mind of a representative is whether he should go to conference or pass it and go directly to Appellate.

Mr. Willmarth stated that the Appellate Division has trained specialists on its staff who have attended Service Training School, and have received specific instruction with respect to OIO cases. The Office of Regional Counsel has also participated in this training program.

5. **Exempt Organizations, particularly in the Field of Commercial Activities and Family Foundations.**

Mr. Herbert Muegge (IRS), a regional analyst specializing in exempt organizations and assigned to the staff of the Assistant Regional Commissioner, Audit, commented in the steps that are being taken in the National office. He stated that Revenue procedures are expected to be released shortly, setting forth the position of the Service regarding I.R.C. 501 (c) (4) (civic leagues and other organizations whose net earnings are devoted exclusively to charitable, educational or recreational purposes), and 501 (c) (7) (clubs organized and operated exclusively for pleasure and recreation). The Revenue proceedings on I.R.C. 501 (8) (fraternal, beneficial societies operating under the lodge system) was not available at this time. He said that the Service program for conversion of its exempt organization records to magnetic tape is substantially completed, and he added that it is important that those who have received exempt organizational questionnaires should return them, because the failure to return them could lead to a revocation of their exemption.

There is presently available without cost at the office of the Dirstrict Directors a practical, 20-page guide entitled "How to apply for exemption for your organization," Document #5551. This is written particularly for laymen in untechnical language, and may prove helpful in outlining in general terms some of the pitfalls to be avoided in forming and operating so-called exempt organizations.

Mr. Thomas commented that there has been a delay in securing approval

of exempt status, and he understood that all exempt organization problems wen to the National office.

Mr. Muegge stated that there has been a change within the last six months, and that the National Office now requires justification for every application submitted to it, and that the District Director should act on cases within his jurisdiction.

Mr. Spiegel stated this item is of such nature and magnitude that it should be discussed as often as possible, and should appear on the June agenda with the hope that National Office personnel would be available to discuss its various facets.

6. **Early Settlement of Tax Controversies, Revenue Procedures 60-18.**

The procedural mimeograph 60-18 is entitled "Procedure to Expedite the Disposition of Tax Court Cases." In cases filed with the Tax Court of the United States, after the petition is filed, and at the time the answer is mailed to counsel for petitioner, the Tax Court reminds counsel as to the Tax Court Ruling 31(b) which provides that the Court expects the parties to stipulate evidence to the fullest extent at which complete or qualified agreement can be reached, including all material facts that are not in or fairly should not be in dispute.

Revenue Procedure 60-18 is the rule of the Internal Revenue Service pertaining to the procedure and disposition of cases at this point. The purpose of the procedure is to provide for prompt action and insure expeditious disposition of cases before the Tax Court which may be settled. The important points of this procedure are as follows:

(a) Either the Appellate Division or Regional Counsel will arrange for a conference with taxpayer's representative soon after receiving trial status request from the Tax Court.

(b) A member of the Regional Counsel's staff will usually be present and actively participate in the conference. (I have found it more satisfactory to talk with the Regional Counsel than a member of the Appellate Division.)

(c) If settlement is agreed upon as a result of such conference, the necessary computation, stipulation of settlement, etc., will be prepared as quickly as possible so that the stipulations or settlement may be filed with the Tax Court without delay.

(d) If settlement is not effected the file is then returned to the Regional Counsel for preparation for trial, and the taxpayer is usually advised of this fact.

(e) In the event of disagreement between the Appellate Division and the Regional Counsel's office as to a settlement, the question will be referred promptly to the Chief Counsel for his decision.

(f) Ordinarily, by the time of receipt of the trial calendar negotiations will have been completed; however, any requests for further conferences after the trial calendar will be referred to the Regional Counsel.

Mr. Sears said that when the procedure was first adopted it worked well, leading to settlements prior to cases calendared for trial, but that recently the trend has been reversed and we are now back to the pre 60-18 level. This concerns the office of the Chief Counsel as well as the office of the Regional Counsel. Mr. Sears invited suggestions as to ways and means of renewing the significance of operations under Revenue Procedure 60-18.

Mr. Willmarth emphasized that this is the last period for engaging in settlement activity, and that he thought the attorneys should take advantage of his procedure before the expiration of the period.

Mr. Sears said that at this hearing the Service representatives should state their position clearly as to the basis upon which the case can be settled. He stated that the trial status period is assumed to encompass approximately 90 days. In actual practice, by virtue of the need of the Regional Counsel to report to the Court approximately three weeks before the end of that period, there really exists at most 60 to 75 days for the conduct of settlement activity. He added that it was incumbent upon representatives to give a high priority to cases on the trial status order, and be prepared to make meaningful settlement proposals at the earliest possible time.

Mr. Willmarth added that the Appellate Division is also keenly interested in the settlement of non-docketed cases. He pointed out that this region has more over-age non-docketed cases than in any other region. He posed the questions that he wished the Bar representatives to consider. First, has there been a noticeable increase in impetus by Appellate Advisors to move cases more rapidly; and second, what problems have representatives faced in the Appellate Division that delay settlement?

Mr. Spiegel said that he has sensed that the Appellate Division may be pressing too hard for the "last dollar," and that this could well serve as a delaying factor, both in docketed and non-docketed cases.

I complained that the Appellate Technical Advisors do not have authority to settle even the most simple cases. I have had as high as eight conferences on one small case, resulting in more time being charged against the case than I could possibly collect as a fee, and for that reason in many of the cases I have, I request the statutory notice rather than to file a protest and have hearings before the Appellate Division. It seems to me that the Appellate Division, by delay, has oftentimes caused the taxpayer to give up in despair. Also, I have found that the hearings before the Appellate Division often result in another examination rather than a hearing on the issues raised by the examining officer.

7. Strengthening of District Liaison Committee. Ways and Means of Interest and Participation of General Practitioners.

Mr. Mechem posed three questions:

1. What topics have the Committee covered in its prior meetings?

2. How did the topics arise?

3. What have been the results in the dissemination of the discussions and the activities of this Committee, particularly to the general practitioner?

Mr. Mechem said it must be recognized that one of the broad purposes of the Committee is to conduct activities that would be useful to the members of the Bars of the various states represented. In his analysis he found that 71 items have appeared encompassing 41 general areas. He pointed out that many of the items we have discussed have little appeal to the general practitioner. In his survey he found that most interest generally was that relating to more timely examination of estate tax returns, and problems incident to delay. He asked the question as to where our aims should be directed. Should we still direct our focus and primary interest to the general lawyer; should we tap the general practitioner more fully to find out what his problems are? He felt that two avenues should be explored to tap the general practitioner and feed back to him information of value.

The first should follow the Oregon example of the District Directors Liaison Committee, and the second should be through the continuing legal education groups in the various states.

Mr. Tredup stated that he found there in Oregon in the smaller communities removed from the Portland area that certified public accountants were handling legal matters that were more properly matters that the general lawyer should be handling. This was done because the general lawyers shy away from the tax problem. An effort should be made to cause the general practitioner to recognize both the profitability and the responsibility in the tax field.

Mr. Forrester and Mr. Spiegel thought that in California, with its outstanding continuing educational program, the organization might be used as a means of disseminating information to the general practitioner.

Mr. Forrester also expressed the view that an approach similar to that followed at our Sun Valley meeting, where Service personnel spoke on procedural matters, would be of real value, and would receive wide acceptance among general practitioners throughout the State. Mr. Hawkins commented that the Service is always interested in community participation, and that it would give careful consideration to requests for assistance. They said they would not solicit such invitations.

8. **Revenue Procedure 64-19 of the Scrivener's Nightmare.**

Mr. Holdsworth opened the discussion, pointing out that the marital deduction problems are particularly acute in Utah where the community property system does not prevail. He said that actually Brigham Young did not want any Spanish influence in this state or the community property system. To this, Mr. Campbell jokingly replied that Brigham Young would have had a devil of a time with community property. The Chairman expressly instructed the Secretary to include Mr. Campbell's remarks in the minutes.

As Mr. Holdsworth viewed the matter, he stated that Congress desired to give common law residents estate tax benefits similar to those in community property states, and the commission ruling under discussion seeks seriously to undercut the general Congressional intent. Mr. Spiegel commented that the Service has used a big gun on a small problem and thereby has perhaps created more problems for taxpayers' lawyers and for itself. Mr. Hopkins stated there had been a series of incidents giving evidence that the Service is trying to knock out the marital deduction wherever possible.

It was generally agreed among the Bar representatives that those in the Service who may have drafted the ruling did not appreciate its full significance, and the practical problems involved in drafting and in Probate practice.

Mr. Holdsworth stated that in one will he has under consideration it took nine pages to spell out the maker's intention and still seek to preserve the marital deduction within the confines of the procedure.

The Assistant Regional Commissioner, Audit, advised that he would submit the substance of this discussion to the National office. Three avenues were agreed to be followed in portraying the problem: (1) ABA representative will follow up through the ABA; (2) there will be a technical submission through ARC-Audit; (3) The Regional Counsel stated that he has noted the concern of the Bar representatives with this procedure, and will discuss it with the Chief Counsel.

MEETING HELD JUNE 11, 1965

James Tredup was Chairman, and Aaron Resnik was Secretary. Dick Yen Wong was elected Chairman for the ensuing year. Under the policy of rotating the meetings, he invited the Committee to meet in Hawaii on January 7, 1966.

Representatives were present from all the Bar Associations with the exception of Montana, Alaska and Nevada. The Regional Commissioner and the Regional Counsel, with members of their staff, were present.

There were seven items placed on the agenda for this meeting; however, due to the fact that Art White, Assistant Chief Counsel from Washington, D.C., was present and prepared to explain recent developments in the exempt organization field, only three other subject matters were able to be discussed within the time allotted. They were: (1) Strengthening of the District Director's Liaison Committee; (2) Experience under the new conference procedure; (3) Chief Counsel's automatic research program, with demonstration.

(1) Strengthening of the District Director's Liaison Committee.

John Hopkins stated that since our last meeting he had discussed this matter with the committee of continuing education bar program for the State of California. He stated that revenue procedure pertaining to general practitioners has been under discussion by that committee for a considerable time, and that a course was well under way to inform the general

practitioner of the procedure from the Audit to the Tax Court. He said that this would probably be in book form, but that it would be a year before it would be completed. It will be strictly Federal procedure. He stated that if any of us are interested in this book he would not assure us that we would be able to get it, but that any arrangements would have to be made considerably in advance of the publication with John Walker, Chairman of the California Bar Committee on Continuing Education, Berkeley, California. I intend to write to him at an early date and see if it will be possible to get a copy of that report.

(2) Experience Under the New Conference Procedure.

Ray Harless began with the reorganization of the Internal Revenue, 1951 and 1952, and explained the changes in conference procedure from that time to date. The procedure has made several changes, and none of the procedures seem to get the desired results. This is probably due to the fact that the Service is attempting to get more than the last dollar out of each case.

Mr. Charles Thomas complained of the new powers-of-attorney, and stated that the procedure thereunder advises that an attorney can sign a protest in behalf of the taxpayer. He called attention to the fact that this is in conflict with the Treasury Department's Circular #230 which regulates practices before the Internal Revenue Service. No one from the Internal Revenue Service could answer this, but it was agreed that the Chief Counsel's office would go into the matter and report back at the next meeting.

Mr. Mechem complained that the examining officers were reluctant to accept the statements and reports of expert witnesses with regard to valuation. In his case he stated that in his opinion the agent was not qualified to value the property, but nevertheless rejected the reports of three expert witnesses. He thought the agent was being arbitrary, and that he should have secured expert advice before rejecting the reports of the three expert witnesses. He complained that the agent would not disclose the source of information or names of the witnesses that were used in rejecting this expert valuation submitted by the taxpayer.

The Regional Commissioner, Audit, stated that this was not a secret matter, and that the agent should disclose the source of his information in rejecting the taxpayer's valuation. He seemed to think that it was not a policy among the agents, but just a particular agent.

Mr. Forrester complained of the procedure of the assessable penalties. He said there had been no change in 27 years in Form 17, and that he believed the wording harsh and that it should be changed.

(3) Chief Counsel's Program on Automatic Research.

Melvin Sears, Regional Counsel, gave a very good report and demonstration of the automatic legal research program. He explained that each section of the Internal Revenue Code will be indexed and listed by two

methods: (1) as to numerical order; and (2) as to key words in context. Some of the sections will be divided into several subsections.

All cases pertaining to each section, subsection or subject will be placed on magnetic tape under their respective headings. When the Chief Counsel's office receives a case that is docketed with the Tax Court, it is assigned to an attorney who prepares a card showing name, date, number, group and case classification number. He then determines what numerical index number or key word classification applies, and this leads him to the microfilm that has the information taped thereon. He turns the film to the number and then, through photo process, he receives all the case history and specific information pertaining to the issue.

In the past it would take hours of research to find this information.

The attorney then completes the card. If there is more than one issue, the attorney uses the same process to find this information. The information on the microfilm is kept current.

It appears that this research method will be quite advantageous for the attorneys for the Government if the suppliers of the information do a good job. This automatic data program is already in effect, and, according to Mr. Sears, is working quite well.

(4) **Recent Developments in Exempt Organization Field.**

Arthur White, Assistant Chief Counsel, Washington, D.C., honored us with his presence and explained that the Internal Revenue Service is reviewing its position of exempt organizations, and that we could expect some changes in the law and a stepped-up enforcement proceeding. He commented on the following matters:

(a) The Treasury Department is making a report to Congress on private foundations. He said there were many abuses in this area, and that we would probably see some legislation on this subject in the early future.

(b) There will be stepped-up activity in examination of social clubs and other like organizations that are not dealing exclusively with their members. If the examination determines that the exempt organization had violated tax exemption, the exemption would be revoked and the organization taxed as a domestic corporation.

(c) There will be considerable activity in the so-called bootstrap cases. These are cases where a business transfers its property to a charitable organization and then leases the property back. In many instances the Government will take the position that there was not a bona fide sale, and attempt to tax the income on the seller.

(d) Emphasis will be placed on exempt organizations that are engaged in unrelated business activities. He particularly referred to advertising income in exempt organization publications. It is the position of the Treasury Department that this income is taxable. As an example, school and church organizations publishing papers, programs, etc., which rely on the advertising income to pay for their projects, may find themselves being subject to income tax.

(e) Patrons of fund raising events for charity have been taking income tax deductions when in fact they are receiving services and benefits. He was referring to tickets for ballgames, dances, etc. These items are not deductible for income tax purposes.

He also stated that contributions to Greek letter fraternities are not deductible as educational funds as some would believe.

(f) Exempt title holding corporations will be investigated. He claimed there are a number of loopholes that will be closed.

(g) Exempt organizations accumulating funds in excess of their needs are going to be examined to determine whether or not they should be taxed. He mentioned that a number of exempt organizations now are renouncing their exemption because of their outside unrelated business activities, and are now filing income tax returns and paying taxes.

Mr. White said there was one question unanswered at this time with regard to filing returns for exempt organizations. If the organization was later determined not to be exempt there is a question as to whether or not the statute of limitations had run because of the filing of an information return. He said there would be advice on this matter in the near future.

It appears that the Treasury Department is going to examine most of the exempt organizations, and whenever there is a slight violation an attempt will be made to tax the income of that organization.

Richard Forrester, ABA representative, stated that his term with the ABA will end this fall, and that this would be his last official meeting; however, he probably will attend the next meeting to introduce the new member.

This is about the only time I have an opportunity to furnish the Bar information gathered by me through this Committee. I have the assurance from the Regional Commissioner that they will be glad to send a representative in to talk to any of the Bar Association with regard to specific tax matters. If any of the local Bars have any tax matter they wish discussed, and will contact me, I will attempt to make arrangements to have some Government representative explain the subject.

Thank you.

MR. HULL: This is the committee I think the Bar could take more heed to because Myron has consistently asked me and the Commission for suggestions trying to work out these problems between the Bar and the Internal Revenue Service. The next report is the Committee on reforming lower courts and Tom Miller is the reporter of that Committee.

MR. MILLER: Mr. President Alden and other members of the Bar Commission and Secretary and ladies and gentlemen. In furtherance of Resolution #12, adopted at the 1964 annual meeting, this Committee was reappointed and directed to prepare and submit to the thirty-eighth session of the Idaho Legislature, a bill authorizing a study of the court system of Idaho. Members of the Legislative Committee chairmaned by Ran Wallis, and other members of the Bar, worked to obtain the necessary

legislation which was enacted, and which appropriated $35,000.00 to the Legislative Council for this purpose. The Council has undertaken a detailed and comprehensive study of our court system. The first phase is to gather complete statistical information on the number of cases filed in each court, the type of case, the judicial time spent in its disposition, together with the time lapse between filing and final judgment. This study will include in the civil field the amount of damages claimed and the total damages actually awarded, and in the criminal field, the crime charged, the crime for which convicted and the sentence imposed, and any suspensions among other things. Cases pending and filed during the calendar year 1964 are currently being studied by a team of trained men who are examining the court records and putting the information in a form that can be utilized fully by an I.B.M. data processing machine. The work is nearly finished in North Idaho and is being pushed to early completion in the rest of the state.

The Legislative Council has scheduled a meeting for August of this year, at which time it will appoint an advisory committee composed of representatives of the Supreme Court, the district courts, the Bar, and other interested groups within this State, to formulate plans for the utilization of the data being collected, to propose modifications of our existing court system, and to assist in the holding of public meetings regarding the various proposals. Your Bar Committee has been recommended for appointment to this Advisory Committee and, if appointed, will work closely with the Legislative Council in this area of court reform, so important and vital to the Bar and to the public in general. Your committee wishes to acknowledge the complete support and active interest of the Bar Commissioners and Secretary in this important matter of lower court reform. It also wishes to direct attention to the obvious interest the legislature has shown therein, under the lead and guidance of its many able attorney members. Dated July 10, 1965; Thomas A. Miller and George M. Bell. (Applause)

MR. HULL: Thank you, Tom. You will recall a year ago that Tom reported to this convention the Bar Committee's preliminary report which of course has been followed by the legislature.

I think we have a report from the Legislative Committee, which will be included in the Proceedings.

Report of Legislative Committee

On behalf of the Legislative Committee of the Idaho State Bar Association I report herewith the activities of the committee and a final tabulation of bar-sponsored legislation and legislation in which it had a specific interest.

You should know that each of the seven lawyer members of the House and seven lawyer members of the Senate were most receptive of the Bar legislation program and we particularly thank each such legislator for his sincere interest and help. Likewise, you should know that several attorneys outside of the committee assisted and aided in the preparation

of specific bills to accomplish the Bar program and materially aided in their passage by their contribution of time and good efforts in securing passage thereof.

Resolution No. 2 proposing an amendment to Section 18-4604, Idaho Code, was presented but amended in the House so that the value was raised from $60.00 to $150.00 rather than the $250.00 referred to in the resolution. The committee accepted this as a practical matter to effect passage. This bill was numbered H.B. 108 and was drafted by, presented and followed through the legislature by Winston H. Churchill. It has been approved by the Governor.

Resolution No. 5 recommending the amendment of Section 16-1506, Idaho Code, to make investigations by the Department of Public Assistance in the cases of adoption discretionary rather than mandatory was presented in the form of S.B. 41 which passed the Senate by a good vote but was defeated in the House. Our thanks go to Charles Blanton for his efforts in behalf of this measure. I think the Commission is aware of the opposition to this by the League of Women Voters.

Resolution No. 6 involved the matter of changing the venue of certain legal and administrative proceedings to districts other than the Third Judicial District. At the suggestion of this committee the commissioners were contacted with the request that a special committee be appointed to accomplish the purposes of this resolution. Because of the shortness of time and the magnitude of the required legislation, a special committee having been appointed, your Legislative Committee took no further action with respect to this resolution.

Three steps were involved with **Resolution No. 12** involving a program for the reform of courts, the first thereof involving an appropriation for the purpose of making a study of such court reform. This measure which was S.B. 142 was prepared by Tom Miller who more than adequately followed through in securing the passage by both Houses. This bill was approved by the Governor. It contained an appropriation of $35,000.00 to the Legislative Council with additional advisory members from the court and the Bar. The second phase involved the preparation and passage of a joint resolution proposing a constitutional amendment to provide for six-man juries in certain cases. This took the form of S.J.R. 6 which was prepared by Jack Hawley and which passed both Houses. The third phase of Resolution No. 12 involved a court administrator act and appropriation. Your committee met with the Supreme Court, which court advised that it would prepare the necessary legislation and seek its passage through its legislative liaison committee. This was presented as S.B. 156 but was killed in the Senate. Subsequently, the Supreme Court contacted this committee seeking its assistance in the introduction and passage of an appropriation of $50,000.00 to the Supreme Court to be used for the employment of a court administrator, together with travel and related matters. The members of our committee and your Secretary, as well as other attorneys, in the few remaining days of the session made a real effort to have this legislation introduced and passed. The bill was H.B. 340. Passage was effected but the bill was vetoed by the Governor.

Your committee took the view that there was old business remaining, consisting, first, of the so-called **scrivener's bill** which was generally to the effect that any person preparing any legal instrument affecting real property which was to be made a matter of record must contain the name of the scrivener. This bill was introduced as H.B. 248 but because we had a punitive filing fee of $50.00 for filing the same if it did not contain the name of the scrivener, the House committee seemed to think this was too high and the bill never reached a vote.

You will recall that the Administrative Practice Act which the Bar sponsored and passed at the last session of the legislature as H.B. 170 but which was vetoed by the Governor was still an order of business. An updated version of this Administrative Practice Act was prepared with a great deal of work being devoted to it by Blaine Evans and Byron Johnson. Many conferences were held with the Attorney General's office and considerable opposition had to be overcome. This act was introduced as S.B. 238, passed both Houses and was signed by the Governor. The committee feels that this was a real accomplishment in view of the concerted opposition.

The remaining old business consisted of a proposed amendment to the statute involving redemption of trust deeds and the clarifying of payment of attorney's fees. This legislation was presented at the preceding session as H.B. 136 but met considerable opposition. It was redrafted at this session by Bob Copple, was introduced as H.B. 244, and it passed the House but was held in committee in the Senate for the reason that the banking association and many of its members and House counsel took the view that the fees scheduled therein were too high and it would result in fewer redemptions.

In passing, it is only proper that we should mention that many attorneys assisted, but particularly thanks should go to Jim Lynch, your Secretary, who attended all of our meetings, kept minutes and kept in touch with you and District Bar Association presidents throughout the session.

Attached to this report for filing are copies of the bills that were presented, some of which, of course, will appear in the session laws and the code; but those that failed are attached for the benefit of your next Legislative Committee and the comments concerning the same are made for whatever benefit that committee may obtain therefrom.

Another bill in which the committee took an unofficial interest, was H.B. 11, which passed both Houses and was signed by the Governor, providing an appropriation for the making of a study to accomplish the adoption of the Uniform Commercial Code. Likewise, the committee assisted in wherever it could in the accomplishment of an increase in the salaries of the District and Supreme Court Judges. Other matters, of course, were considered but no official action resulted.

I want the Commission to know that all of the persons named herein, and particularly the members of the committee, were most helpful and I enjoyed working with each of them and many others who I may have failed to name.

Respectfully yours,
RANDALL WALLIS.

MR. HULL: Life Insurance Committee, David Doan; I don't believe he has a report. Professional Ethics Committee?

MR. LYNCH: No report.

MR. HULL: Public Relations Committee; I believe it's Milo Pope.

MR. POPE: Thank you, Mr. President. As usual the Public Relations Committee is playing it by ear. We started in December of 1964 and have submitted an article on public relations to the Advocate for every issue since that time and my greatest concern in participating and in preparation of those articles is whether or not they are being read. I wrote Secretary Lynch a letter about a month ago hoping that he would write back and say he has had a tremendous amount of response and he could only say I don't know. So what we are going to do in the near future is send out a questionnaire with the Advocate which will either be returned to me or to Secretary Lynch; first, to determine if there is any interest in the articles that have been appearing in the Advocate, and secondly, to determine if there are any specific areas in the public relations field that you would like us to concern ourselves with. Now, the articles thus far submitted have been based on the Missouri Bar Prestiss Hall survey in 1963 by the Missouri Bar in conjunction with the Prentiss Hall Publishing Company. And as I understand the report or survey was prepared in the State of Missouri because that state is a good sample state for the type of survey conducted. It has two large metropolitan areas and many outlying rural areas which gave the Prentiss Hall people a good cross section of peoples and economic clients from which to get their results, so we feel that the Missouri Bar Prentiss Hall survey had considerable value to us in Idaho. And some of the more interesting statistics from that survey can be found in the Advocate and I invite those of you who haven't read some of these articles to read them now.

Now, the public relations committee hasn't a great deal of pride in what they have done but we feel that the information we have provided you is very important information. For instance, I recall one statistic the lay people questioned or examined during the preparation of the survey were asked about the contingent fees and their responses clearly indicate that they haven't the vaguest understanding of the historic basis of the contingent fee system. They were asked which of the following percentages do you feel to be most fair, and they started at 40%, 33 1/3% and 25% or less. The Missouri Bar Prentiss Hall people concluded that they made a mistake in using the terminology 25% or less because the vast majority of the people who responded to that question said that 25% or less is a very fair contingent fee arrangement. Now, I find this to be a very disturbing statistic. Now, there are many other important areas covered in the survey and it goes beyond public relations. It's a very comprehensive report. Perhaps I shouldn't volunteer this but Dean Peterson had condensed this survey and I obtained some copies of his condensation and I found that very worthwhile and I think that if you are interested in the survey I would suggest that you correspond with Dean Peterson.

So this is what we have done: In the future we are going to report on

what response we get from our questionnaire and we sincerely hope that we will get some response because Bob Bennett of Pocatello and Charles Kimball and I feel that public relations is a very very important field because I think it ultimately relates to how much you are making, and so I hope that you will bear that in mind and answer the questionnaire faithfully. Thank you. (Applause)

MR. HULL: Thank you Milo. The next report is the real estate Liaison Committee. I don't believe we have a report from them?

MR. LYNCH: No.

MR. HULL: The unauthorized practice of law; Winston Churchill.

MR. LYNCH: I have his report. The report of the Unauthorized Practice of Law Committee. The Committee consists of one member in each commissioner district as follows: William W. Black, Idaho Falls; James W. Givens, Lewiston, Idaho; Winston H. Churchill, Boise, Idaho. During the last year the U.P.L. Committee has been greatly helped in the handling of U.P.L. matters in two ways; first, Mr. Lynch has set up a numbering system and for the first time has given us a method of keeping up each U.P.L. complaint separate. Referring to particular cases by name and number has helped everyone concerned in keeping the correspondence in each case in its own file. As example, U.P.L. 65-9 John Doe. Mr. Lynch has also set up a very good system of processing each complaint received by the committee or Mr. Lynch. Second, a number of cases were referred to general counsel who have done a thorough investigation in each referred case. No cases were taken to court by the U.P.L. Committee or paid counsel but there are cases pending which could end up in court if the facts are such after investigation to make an airtight case and no other satisfactory solution is available. Your committee is of the opinion that no case should be filed in the court unless it could be won and would be of importance to the Bar and the general public. For more efficient handling of U.P.L. matters by the U.P.L. Committee, it is recommended that as soon as possible after the selection of the U.P.L. Committee a meeting be held with the Bar Commission and Secretary to go over all pending cases and make plans to handle the pending cases and discuss the best manner of handling cases filed. Due to the number of U.P.L. matters being referred to the Committee it is recommended that the State Bar pay travel for the State U.P.L. members to meet at least twice during the year. In the past there has always existed the opportunity to publicize generally the U.P.L. Committee's work in the Advocate and an article every three or four months by the Committee would alert the lawyers to the type of U.P.L. infractions occurring within the State. Mr. Lynch, I am sure, would welcome such articles; Winston H. Churchill, Chairman of the U.P.L. Committee.

MR. HULL: Thank you Jim. The Commission appointed a special committee to work with the Ninth Circuit on Federal Rules and they have submitted a report but the member of that committee, Wes Merrill has passed that report on and it will be in the proceedings.

Report of Committee to Study Federal Rules

In response to the letter to me of June 14, 1965 of James B. Lynch, Esq., Secretary of the Board of Commissioners of the Idaho State Bar I am submitting herewith the report of your special committee composed of Wesley F. Merrill and myself to consider proposed amendments to Rules 19, 23, 23.1 and 24 of the Federal Rules of Civil Procedure.

Leslie H. Anderson, Esq., of Pocatello, Idaho, a member of the committee on Federal Rules of Civil Procedure for the Federal Judicial Conference for the Ninth Circuit has been very cooperative to Mr. Merrill and to me in making available to us the findings and report of the committee of which he is a member. Your committee has also ascertained the views of special committees of the bar of other states within the Ninth Circuit and after carefully considering the arguments for and against the proposed amendments to the rules set out above your committee recommends that the proposed amendments be disapproved.

We are of the opinion that while the proponents for the amendments have developed some convincing arguments favoring their adoption yet your committee is of the opinion that the rules as they now stand are workable and that the adoption of the amendments will merely make the matter more complex and leave the bench and the bar in a state of suspense until the confusion is clarified by decisions of the courts. We concur with the decision of the committee of the Ninth Circuit and with the decision reached by special committees for a number of the states in that circuit in urging that the amendments be disapproved.

We are attaching hereto as an exhibit to this report a resume of the existing rule with the proposed changes as the same are set out in the report of the Ninth Circuit Committee.

Respectfully yours,
WILLIAM S. HOLDEN
Chairman, Special Committee

EXHIBIT TO REPORT OF SPECIAL COMMITTEE OF THE IDAHO STATE STATE BAR ON THE PROPOSED AMENDMENTS TO RULES 19, 23, 23.1 AND 24 OF THE FEDERAL RULES OF CIVIL PROCEDURE

This exhibit is composed of excerpts from the report of the committee on Federal Rules of Civil Procedure for the Federal Judicial Conference for the Ninth Circuit.

Rule 19. Necessary joinder of parties.

Present Rule. Present Rule 19(a), dealing with necessary joinder of parties, provides that "persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants." 19(b) provides that when persons are "not indispensable" but who ought to be made parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the Court as to both services of process and venue and can be made parties without depriving the Court of jurisdiction

over the parties before it, the Court shall order them summoned to appear in the action. The Court may proceed without making such persons parties and if it does, the judgment rendered does not affect the rights or liabilities of the absent persons.

Proposed Amendments: The proposed rule would entirely delete the present rule and substitute therefor a rule entitled:
"Joinder of Persons Needed for Just Adjudication."

Proposed Rule 19(a), entitled "Persons to Be Joined if Feasible" provides that whenever a "contingently necessary" person is subject to service of process and his joinder would not deprive the Court of jurisdiction over the subject matter of the action, he shall be joined as a party, and if he has not been so joined, the Court shall order that he be made a party. A person is "contingently necessary" if (1) complete relief cannot be accorded in his absence among those already parties; or (2) he claims an interest relating to the property or transaction which is the subject of the action, and he is so situated that the disposition of the action in his absence may, as a practical matter, substantially impair or impede his ability to protect that interest, or leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Proposed Rule 19(b) provides that if a "contingently necessary" person cannot be made a party, the Court shall determine whether in equity or in good conscience, the action ought to proceed among the parties before it, or be dismissed. Four factors to be considered by the Court include:

(1) To what extent a judgment rendered in the absence of such person might be prejudicial to him or those already parties;

(2) The extent to which, by protective provisions in the judgment, by the shaping of relief or other measures, the prejudice can be lessened or avoided;

(3) Whether a judgment rendered in such person's absence would be adequate;

(4) Whether plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Proposed Rule 19(c) would require a pleading asserting a claim for relief to state the names, if known to the pleader, of "contingently necessary" persons who are not joined and the reason for nonjoinder.

Rule 23. Class Actions.

Present Rule: Rule 23(a) presently provides for class actions in three types of situations where potential parties are so numerous as to make it impracticable to bring them all before the court. The first type, commonly referred to as the "true" category, involves "joint or common or secondary" rights. The second, referred to as "hybrid," involves "several" rights which may affect "specific property." The third, or "spurious" category, relates to claims involving "several" rights but

common questions of law or fact affecting them and seeking a common relief.

The classification is of importance in determining the proper extent of the judgment, which extends to all members in the "true" class action and also in the "hybrid" class to the extent it affects specific property involved. In the spurious class it extends only to the parties, including intervenors.

Rule 23(b) establishes special requirements covering secondary actions by shareholders in associations and corporations and 23(c) provides restrictions upon compromise or dismissal of class actions without permission of the court.

Proposed Amendment: The Advisory Committee's proposal contemplates that Rule 23 be repealed in its entirety. The substance of the present Rules 23(b) and (c) would be preserved by re-enactment in Rules 23.1 and 23.2. However, present Rule 23(a) would be replaced by detailed provisions covering not only the procedure but specifying the effect to be given to judgments in class actions.

Rule 24(a). Intervention of Right.

The present rule permits intervention . . . "(2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof."

Under the proposed rule (2) and (3) are combined to read: (2) "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter substantially impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Cal Dworshak is the representative on the Rocky Mountain Mineral Law Foundation but he is not here and has no report.

MR. LYNCH: Yes, he does; I'll read it. A brief report of the Idaho State Bar Trustee of the Rocky Mountain Mineral Foundation. July 1964 your trustee attended the tenth annual meeting of the Rocky Mountain Mineral Law Foundation of the Board of Trustees and the Tenth Annual Rocky Mountain Mineral Law Institute at Salt Lake City, Utah. While there were only three lawyers from Idaho attending, the general attendance was quite good and the Institute presented many interesting papers of the mineral law field. Idaho was the co-sponsor of the institute and Robert Brown, esquire, was able to raise $250.00 from mining companies in Idaho as our share of the expenses. The foundation has finally completed the first work on mining law in many decades and is published by the Dobbs-Merrill Publishing Company in five volumes under the title of American Law of Mining. Scholarships have also been granted by the foundation of various law students including one at the University of Idaho. This is a

continuing project and it is hoped that more students will receive scholarships from time to time. The 11th annual meeting and institute was held at the University of Denver from July 15 through 17, 1965.

Respectfully submitted,

CAL DWORSHAK, Trustee

MR. HULL: Thank you. That concludes the reports with the exception of the Resolutions Committee and prior to asking for that report, is there anything from the floor that anyone would like to bring up by way of a report or comment on any report? Hearing none, then we will proceed to the report of the Resolutions committee and I have asked Hal Ryan, Senator Hal Ryan of Weiser, to be the parliamentarian. I don't anticipate any difficulties, Hal, because this is the off year as far as the legislature is concerned, but would you come up now and at least be available? At this time then I will turn the meeting over to Jerry Smith who is the President of the Clearwater Bar and Chairman of the Resolutions Committee; Jerry.

MR. SMITH: President Alden and members of the Commission and members of the Bar. The Resolutions Committee met Wednesday and Thursday mornings. And the committee meeting was not productive of many resolutions but was a very productive meeting I think, as a result of this meeting a mid-winter meeting with the Bar Commissioners and the local Bar presidents has been established. This the local Bar presidents feel will help serve to resolve many areas of problems which have arisen with reference to resolutions and other matters between the commissioners and the Local Bars. And we hope that this will serve as a liaison between the local bars and the commissioners in the future.

The first resolution adopted by the Resolutions Committee is as follows: Whereas, the criminal code of the State of Idaho was enacted in its present form by the First Territorial Legislature of the State of Idaho in 1864 and has not been substantially amended or studied since that time, and whereas, the present criminal code is inadequate, in both its substantive and procedural respects, and is vague, inconsistent and in need of complete revision, and whereas, the Thirty-Seventh Session of the Idaho Legislature created and established the Legislative Council to undertake studies of the nature required; now, therefore, be it resolved that the Idaho State Bar Association support and actively campaign for legislation providing for a study and proposed revision of the criminal code of the State of Idaho with a sufficient appropriation to insure that the study will be thoroughly and adequately prepared, and be it further resolved that appropriate legislation be prepared and presented to the next Legislature by the Legislative Committee of this Association. This Resolution was accompanied as required under our rules by appropriate legislation and Mr. Chairman and Mr. President, I move the adoption of this Resolution.

MR. HULL: You have heard the motion for the adoption of Resolution #1 just read; do I hear a second?

MR. MERRILL: I'll second it.

MR. HULL: It's been moved and seconded; is there any discussion? Since this involved legislative matters, we have to vote by association I wonder if we are sufficiently grouped that you can caucus? (Hesitation) Gentlemen, I'll call the roll of the association and announce the vote as I call each association. Shoshone County Bar, 15 votes, how does Shoshone County vote?

MEMBER: 15 votes yes.

MR. HULL: 15 votes yes. Clearwater Bar with 67 votes; how does Clearwater Bar vote?

MEMBER: Votes in favor

MR. HULL: Third District Bar, 193 votes?

MR. RICHARD ANDERSON: The Third District Bar votes in favor of the resolution.

MR. HULL: Third District Bar in favor of the resolution. The Fourth and Eleventh, 87 votes?

MEMBER: We vote yes.

MR. HULL: Fourth and Eleventh vote yes. Fifth with 63 votes?

MR. MERRILL: Fifth votes yes.

MR. HULL: Fifth votes yes. Sixth District with 20 votes?

MR. KESTER: Mr. President, Art Kester, Arco; apparently I am the only member of the Sixth District Association present but I was present in the discussion of the resolution in our summer meeting and if I would be allowed to cast a vote for the resolution.

MR. HULL: Thank you. Fifth District votes twenty votes in favor of the resolution. Seventh District with 55 votes?

MR. JOSEPH: We just caucused all 55; there are three of us here and we voted yes. (Laughter)

MR. HULL: Thank you Frank. Seventh District votes 55 in favor of the resolution. Eighth, 43 votes.

MEMBER: One member of the Eighth District votes yes.

MR. HULL: Thank you. Ninth District, 46 votes.

MEMBER: Ninth District votes in favor of the resolution.

MR. HULL: Ninth District 46 votes in favor of the resolution. Twelfth with 17 votes. (No response) Nobody here from the Twelfth. Thirteenth, 10 votes. (No response) Hearing nothing from the 13th I conclude the voting and I think it's safe to say that it was unanimous. Is that correct?

MR. LYNCH: Of those who voted, yes.

MR. HULL: The chair announces that the resolution was carried. Mr. Smith.

MR. SMITH: Resolution Number 2. Whereas, the Legislative Committee of the Idaho State Bar has recommended that the Thirty-eighth Session of the Legislature of the State of Idaho should be commended for its action in supporting and adopting amendments to the Idaho Code sponsored by the Idaho State Bar. Now, therefore, be it resolved, by the integrated Bar of the State of Idaho, duly assembled in convention in Sun Valley, Idaho, July 10, 1965, that the Thirty-eighth Session of the Legislature of the State of Idaho be, and it is hereby commended for its action in passing and supporting legislation sponsored by the Idaho State Bar, which in the opinion of the members of the Idaho State Bar would improve the judicial system of the State of Idaho. Be it further resolved, that copies of this resolution be transmitted to the President pro tem of the Senate and the Speaker of the House of said session. Mr. President, I move the adoption of this resolution.

MR. HULL: Thank you. You have heard the resolution and motion for its adoption. Do I hear a second?

MEMBER: Seconded.

MR. HULL: It's been moved and seconded that the resolution be adopted. Is there any discussion? None. The chair rules that this is not a matter of involved legislation, therefore a voice vote will be acceptable. All in favor of the resolution signify by saying aye.

AUDIENCE: Aye.

MR. HULL: Those opposed by the same sign (No response) The chair announces the resolution carried.

MR. SMITH: Resolution number 3; be it resolved that the Idaho State Bar express its appreciation to the members of the Legislative Committee, Randall Wallis, Willis E. Sullivan, Marian J. Callister, Grant Young, Charles Herndon, James Keane, Glenn Coughlan and Thomas A. Miller for the contribution of their time and efforts in promoting the interests of the Bar Association with the State Legislature. Mr. President, I move the adoption of Resolution number 3.

MR. HULL: You have heard the Resolution number 3 and the motion for adoption. Do I hear a second?

MEMBER: Seconded.

MR. HULL: Any discusssion? The Chair then rules that this can be by a voice vote. All in favor signify by saying aye.

AUDIENCE: Aye

MR. HULL: Those opposed the same sign? Hearing none, motion carried.

MR. SMITH: Resolution number 4. Be it resolved that the Idaho State Bar commend Dean Phillip Peterson for his service to the State of Idaho, in assisting the legislature in the drafting of tax legislation, for his assistance to the people and the State Tax Collector's office in attending the various seminars throughout the State, as well as for his efforts in

building a bigger and better law school at the University of Idaho. Mr. President I move for the adoption of resolution number 4.

MR. HULL: You have heard the resolution and the motion for adoption. Do I hear a second?

MEMBER: Seconded.

MR. HULL: Any discussion?

MR. TED EBERLE: Mr. President, Do I understand that this is an endorsement of the sales tax? (Laughter)

MR. HULL: I think, Mr. Eberle, that will be determined in November 1966. Any further discussion? I'll call for the question and the chair rules it can be by a voice vote; all in favor signify by saying aye. Those opposed, same sign? Resolution passed.

MR. SMITH: Resolution number 5; be it resolved that the Idaho State Bar extends to the Honorable Chase Clark, most esteemed and colorful Federal jurist, its sincere wish that he enjoy a speedy and complete recovery from his recent illness. Mr. President, I move for the adoption of Resolution number 5.

MR. HULL: You have heard the reading of Resolution number five and a motion for adoption; do I hear a second?

MEMBER: Seconded.

MR. HULL: The motion seconded and I am sure there is no discussion other than we will join in wishing Chase Clark a speedy recovery; however I will call for a vote. Those in favor signify by saying aye.

AUDIENCE: Aye.

MR. HULL: Those opposed the same sign? Incidentally, could I interrupt just a moment and ask some of you Boise attorneys how Chase is? Any recent report?

MR. BLAINE EVANS: I understand that he is much better, Mr. President.

MR. HULL: That is fine Blaine; thank you.

MR. SMITH: Resolution number 6. Be it resolved that the Idaho State Bar extend to Messrs. John Gavin, Joe H. Tonahill, Robert Allard, Leo S. Karlin, John C. Shepherd, Dean John Reed and Mary Walker our most sincere thanks and grateful appreciation for honoring us by their personal appearance at our annual meeting and delivering to us their inspiring and interesting, and most instructive addresses, program and entertainment. Mr. President, I move the adoption of the resolution number 6.

MR. HULL: You have heard the reading of the resolution number 6 and motion for adoption. Do I hear a second?

MEMBER: Seconded.

MR. HULL: Any discussion? All those in favor signify by saying aye.

AUDIENCE: Aye.

MR. HULL: Those opposed the same sign. Resolution carried.

MR. SMITH: Resolution number 7; 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 move the adoption of Resolution number 7.

MR. HULL: You have heard the reading of the resolution and there is a motion for its adoption. Do I hear a second?

MEMBER: Seconded.

MR. HULL: All those in favor of the motion signify by saying aye.

AUDIENCE: Aye.

MR. HULL: Those opposed? Motion carried.

MR. SMITH: Resolution number 8; whereas, the Bender-Moss Company, Bancroft Whitney Company, the Caxton Printers, Ltd., the Bobbs-Merrill Company, Matthew Bender and Company, the West Publishing Company, and Commerce Clearing House have generously donated various legal publications for door prizes at this annual meeting, and whereas, Mutual of Omaha has donated the funds necessary for the coffee break we had this morning, be it resolved, that the Idaho State Bar extend its tbanks and appreciation to these companies for their generous prizes and contributions which contributed to the interest of those attending this meeting. Mr. President, I move the adoption of Resolution number 8.

MR. HULL: You heard the reading of Resolution number 8 and motion for adoption. Is there a second?

MEMBER: Second.

MR. HULL: Any discussion. All those in favor of the motion signify by saying Aye.

AUDIENCE: Aye.

MR. HULL: Those opposed same sign.

MR. SMITH: Resolution number 9; be it resolved that the Idaho State Bar express its appreciation to the Commissioners and the Officers of the Bar who have served during the past year, for their contribution of time and effort, which has resulted in many accomplishments and an active and productive year of Bar activity. Mr. President, I move the adoption of resolution number 9.

MR. HULL: You have heard the reading of Resolution number 9 and motion for adoption. Is there a second?

MEMBER: Second

MR. HULL: Any discussion? It's like reading your own obituary. (Laughter) Hearing none; all in favor of the motion signify by saying aye.

AUDIENCE: Aye.

MR. HULL: Those opposed same sign. Motion carried (Applause) Thank you very kindly, Jerry. That concludes the resolutions as prepared by the Resolutions Committee. Under the rules of the Bar, resolutions are accepted from the floor. Anything presented requires a two-thirds vote before they will be submitted and then vote on the resolution itself which will be by a majority vote. Are there any resolutions from the floor? Hearing none then we will proceed with the order of business; which seems to be a drawing. (Laughter)

Incidentally, Jerry didn't mention it as I recall but the Resolutions Committee is composed of the presidents of the local associations, and the Commission is very pleased to have the opportunity to discuss future problems with them and I think this is going to be a regular thing not only to act as a Resolutions Committee but to get together with them in the implementation of many problems that the Commission tries to resolve. At this time we are drawing to a rapid close but before I go into the final ceremonies I would like to ask is there any other business that you would like to bring up before this session to this Bar?

If not, then I would like to ask if Harry Benoit would come forward please. Harry would you take a seat next here. I don't think I'll have to introduce Harry Benoit. He was the perennial champ of the limbo contest for years and we certainly missed him this year. Harry Benoit of Twin Falls and we are certainly happy to see him here. (Applause) Well, it comes time now when I have to turn this over to new hands and I am not going to make a report. I am going to thank a few people, of course. I particularly want to thank Ed for his excellent service and I particularly want to compliment him on the tremendous job he did in arranging this convention. There are thousands of details that are never evident to those who attend but they are necessary to get these things organized and off the ground. Ed started last fall immediately after the convention and I think the final product speaks well for his efforts. A big hand for Ed. (Applause)

Vernon Kidwell is a hard-working Commissioner and as I have told so many local groups Vern is my legal adviser and did my briefing for me because we do have many problems and when we didn't use a general counsel I used Vern—who Vern used I'm not sure. (Laughter) But whenever I would call and ask for a report the next morning or a day or so later it was in the mails. I want to thank Vern for his wonderful cooperation. As I told you a year ago, Vern and Ed and I were all undergraduates of the University of Idaho in the late thirties so this is a long-standing friendship and I dare say one of the few commissions that probably had the personal comradeship the three of us had so many years, and even though it has been scattered to the three winds or three corners of the State we haven't let this friendship die or cease and it's been culminated this year on the commission.

I want to thank Jim Lynch and his staff and his parttime secretary and I think that the work of the commission has increased so much and so fast that it's almost a full-time job and Jim has devoted many hours on weekends and nights plus his usual office hours working in behalf of the

commission and I want to have a standing thanks for Jim and his staff. Jim. (Applause)

I am not going to name all of the committee chairmen, of course, but many of them worked very hard and some of them had less to do because we didn't give them a task to do but they were available and they accepted their committee assignments and with no complaint. The work of the Bar is like any organization; it is largely done by committees and we are constantly changing these committees, they are fluid, with new members and some have dropped off but the effectiveness of the Bar is largely dependent upon the membership of the Bar as evidenced by these committees and so I am thanking those gentlemen both the chairman and the members. At this time I would like to turn the reins over to Edward L. Benoit, Vice President of the Idaho State Bar and wish him every success and he is dynamic and he is energetic and I know he is going to have a great administration and I want to congratulate Edward Benoit. (Applause)

MR. BENOIT: Thanks Alden; this is a real great moment. You have got to forgive me a little when your Dad is standing next to you, is really something. When I first came on the Commission a few years ago we had a rather unusual situation; we had that great gentleman from Pocatello, Wes Merrill and Alden and myself. For the first time in history we had a second generation lawyer commission in the State of Idaho and unfortunately Wes's Dad was not here to see him take over but Harold(?) Hull the wonderful gentleman from Wallace who has worked close with Alden was here. It's people like this that tend the home fires when we are running around on commission business that make this possible. Alden, I hate to see you go; you're a great friend and have been a great President. Vernon, I know you and I will get along great with Jerry and do the best we can. I would like to make one other comment. When I came on the Commission we had another distinction: we had three lovely ladies, a brunet and a redhead and a blonde. So, Marge Merrill, Marge Hull and Norma Lou. Next year Marge Merrill went off the Commission but replaced with another brunette, Glenda Kidwell. Now, I don't know whether we are going to get Betty Lou to dye her hair red to replace the red-headed Marjorie Hull or not, but we are going to try hard. But I would like to have Marjorie Hull and Glenda and Betty Lou and Norma stand up. (Applause) If you would pardon another personal note I would like to introduce the lady who has raised both my Dad and me, my Mother, Leslie Benoit. (Applause) And her namesake and my young daughter Leslie Benoit. (Applause) I want to thank you all very much and I specially want to thank my Dad for coming up here this morning. Thank you. (Applause). One more thing. Perhaps it's a matter of triviality but there has been a custom that the remaining commissioners present a token to the outgoing President. You heard John Gavin's remarks about past presidents in order to aid Alden in his old age and retirement. Vern and I have a little gift for him—Alden.

MR. HULL: Knowing these guys and how they operated last year I shouldn't open this. (Laughter) In fact Vern came up and said, if he gives you anything, don't open it. Well, you werent kidding about the old age, were you . . . a pair of moccasins. (Laughter) Well, after about thirty more years on the commission, I'll enjoy these. (Applause)

Gentlemen, that just about winds it up and I want to thank you all again for coming, members of the court, our guests who we appreciate taking the time to attend. I do see Leo Karlin here; would you stand up and take one more bow, please? (He does) (Applause)

MR. HULL: Bill Young, President from the State of Nevada. Bill would you stand up and take one more bow? (he does) (Applause) I don't see any others at the moment. Some of them have drifted away. At this time of course I officially turn my duties as a commissioner over to Jerry Smith who will be the commissioner in the Northern Division. Anything further?

MR. MERRILL: Mr. President

MR. HULL: Yes Wes?

MR. MERRILL: May I move that this group give a standing ovation at the close of this meeting to the Commission and Secretary and specially our President.

MR. HULL: Thank you Wes. (Applause)

MR. HULL: Thank you one and all. Being nothing further, I declare this meeting adjourned.

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EDITORIAL NOTE

The certificates of Fifty-Year Awards for service as members of the Idaho State Bar were awarded to Ralph L. Albaugh, J. Ward Arney, Chas. E. Horning, and Paul T. Peterson at the banquet on Friday, July 9, 1965.

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