Proceedings
of the
Idaho State Bar

VOLUME XXXVII, 1963

Thirty-Seventh Annual Meeting

SUN VALLEY, IDAHO
July 11-12-13, 1963

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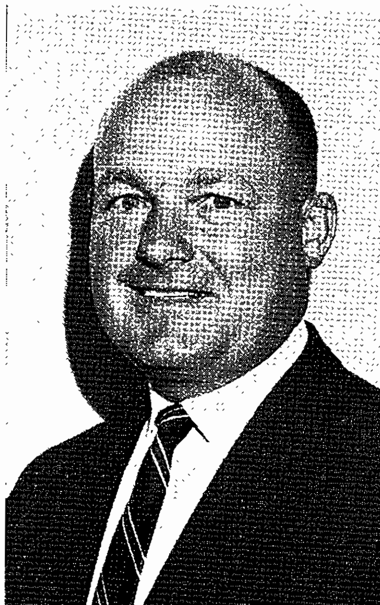
SPEAKERS

Norman E. Risjord
Kansas City, Missouri

Judge James R. Browning
San Francisco, California

Alonzo W. Watson, Jr.
Salt Lake City, Utah



William C. Farrer
Los Angeles, California

Thursday Afternoon,
July 11, 1963,
1:15 p.m.

MR. COUGHLAN: I think we just as well get started. It is my privilege and pleasure to declare the thirty-seventh annual meeting of the State Bar now open and to express to your our pleasure in seeing you here and welcoming you. The first thing on the program, of course, will be the invocation by Reverend W. D. Ellway.

REV. W. D. ELLWAY: Would you just sit for a moment, please, gentlemen. As to those of you who have been here before may remember, I always open a convention in this way because I think that an approach to God should never be done in a thoughtless manner or as a matter of form. It seems to be the the way in which its done at conventions very much for prayer to God is always a serious matter even if it is out on an occasion like this when I am sure you are looking forward more to the pleasures of Sun Valley than you are to the business of the Bar Association. And I wish you would think about what you are here for and what your aim in life is. As I said before, I believe it was in 1960 when I had the pleasure of opening this convention last, lawyers and people connected with the law are the most distrusting group of people in the country. Sometimes I think rightly so when one sees some of the things that go on, specially when the public mind is colored I think pretty much by Perry Mason and so on and I am sure their opinion of the district authorities; prosecuting authorities is taken from that kind of thing. Again, I say justified to a considerable degree, I believe, but when we think of the law in this country, we remember that this country was founded on the principles of liberty and freedom and justice for all and that in a very large measure it is in the hands of people like yourselves to see that this is maintained for all people. Before the world today, and I might say that I get a large number of daily papers from England and France, yet the picture of American justice is not a good one. There is all this shenanigans down in the south. There is the trade union business with Jimmy Hoffa. All those things are played up in the eyes of the world. It is something that everyone connected with the law should think about. And in your own personal practices, do you think about these things all the time or do considerations of, oh, political prestige or vast amounts of money enter into what you do. Of course, often you are called upon to defend the guilty and that is as it should be because that is one of the main principles of liberty, is it not, of justice, that even the guilty should have a fair trial and have somebody capable and qualified to speak for him. That is not what I meant. But if a lawyer set out to put in their own minds and in their own hearts the ideals of honesty and the applications of the laws then I think the picture that the public has of them in this country will change and maybe the picture the world has of the American ideals for the moment will change, too. So as we stand and pray to God, the Father of all of us, at this moment, we pray with these things in our mind that always whoever we may be, not only lawyers but parsons, too, that we will do our best to see that the good is maintained for all people and that liberty and justice and freedom shall be more than an ideal, that it will be an absolute for all people. Let us pray. In the name of the Father and of the Son and of the Holy Spirit, Amen. Oh God, the Father of all, we ask for thy blessing upon those gathered here at this time and upon all those throughout the world who through the practice

of the law are trying to establish thy divine law for all people. We pray that always they may be aware of that which is their mission in life. And specially we pray at this time for those gathered here in particular that their associations with one another here may be fruitful and that their pleasures may be enjoyable in this so beautful part of thy country. Give them at all times health and strength and we repeat, keep them filled in their minds with a sense of mission of their devotion to those who they may serve. This we ask in the name of Jesus Christ our Lord, Amen. Mr. President, gentlemen, and about two ladies, I say it's a great pleasure as always to have the honor to open a convention of this nature and as I say, I hope you have a real good time up here as well as doing business, thank you.

MR. COUGHLAN: Thank you, Reverend Ellway, very much for the invocation and those very timely remarks. Ladies and gentlemen, we are very happy to welcome to our meeting a distinguished gentleman from Utah, the Attorney-General of the State of Utah, Mr. Jack Kessler. (Applause.)

I should also like to recognize Judge Henry Martin, who, I believe, is the only judge that we have here with us today; Judge Martin. (Applause) We received regrets from Senator Church that he was unable to be here; from Senator Jordan and from Governor Smylie. Governor Smylie wrote, "Unfortunately I have accepted another engagement for that day and one that I feel that I must fulfill. I sincerely regret that I will not be able to join you and the members of the Idaho Bar Association on that occasion. Would you be kind enough to give them my highest personal regards and wish them every success in their deliberations in this 1963 convention, with warm personal regards." As probably most of you know, there is a Land Board meeting in north Idaho and the Attorney-General of the State of Idaho is also at that meeting and sent his regrets that he was unable to be here with us.

As my term here is approaching its end, I do want to thank each and every one of you for your very excellent support and help that you extended to the commission during all of my three years tenure and particularly for this past year. I hope you will pardon a personal observation here that I want to make. I have had the opportunity to visit a number of bar associations in other states and I can't help but express the impact received from the opportunity to observe these other associations. I am extremely proud of you gentlemen and ladies in our State Bar of Idaho in the manner in which you have performed. These other Bars in many instances are of course much larger than ours but I am so impressed with the way you cooperate and the esprit de corps which you have with respect to bar work. I, as an example, have heard from young lawyers in other associations that they are unable to perform their duties in respect to disciplinary matters. That they will extend over a period of years and finally just be dissipated away without any action whatever. That they can't get their committees to function and numerous other difficulties which I am so happy to report we don't have in our own state. And when we ask members to perform some duty in bar work, we always receive prompt, willing, excellent service and that is gratifying to the Bar Commission and particularly the President and I think that it requires an acknowledgement to you ladies and gentlemen of our State Bar. One of the things that I'm happy about is the fact that we do have a contest in our Western Division for the new commissioner. I think that is a healthy thing. It indicates interest and I am sure that it means that we will have a good administration of our Bar.

It is necessary for us to appoint a Canvassing Committee and on that committee to canvass the ballots I would like to appoint Mr. Bill Tuson as Chairman; Mr. Francis Hicks as a member and Mr. Jack Voshell. If you gentlemen will contact Tom Miller at the coffee break or after the session is over today he can give you the instructions with respect to this.

We'll move along then to our first speaker and if Mr. Robert Bennett will come forward and introduce Mr. Watson, our first speaker.

MR. BENNETT: Thank you, Glenn. Mr. Watson is a native of Utah. He was born and raised in Salt Lake City. He is a graduate of the grade and high schools there, having graduated from East High School in Salt Lake City. In 1943 he received his Bachelor of Arts degree from the University of Utah and afterwards he went to Georgetown University in Washington, D.C., where he received a Bachelor of Science degree in the foreign service. Thereafter he returned to the University of Utah and received his L.L.B. He practiced in Utah for one year with Crutchlow, Watson and Warnick in general practice and then he moved to Washington, D. C., where he was with the Tax division of the Department of Justice in 1952. He stayed with the Department of Justice and Tax division until 1955, at which time he transferred to San Francisco and was Regional Counsel in the Regional Counsel's office of the Internal Revenue Service as their trial attorney. He left the Internal Revenue Service in 1956 and entered private practice again in San Diego with Gray, Kerrick, Ames and Fry and then he removed to San Francisco where he was with Stevenson, Davis and Larson for two years until 1958 and then he went to Milwaukee and practiced with Godfrey and Conn in 1960. In 1961 he returned to his native Salt Lake with Ray, Quinn and Nebbinger and is a partner at this time. Since he graduated from law school he has devoted his practice exclusively to tax and corporate work and is a member of the American Bar Association Tax and Corporation section. He was married in 1952 to the former Mary Cope and they have two children, Robert H., five, and Ann, age two. This is his professional background and history. It is my understanding if you want any personal details you contact Ed Benoit or Joe Imhoff and they will tell you all about it. Mr. Watson's talk is Tax Dollars and Retirement Plans For Lawyers and it will be prefaced and integrated with the Idaho Professional Corporations Act: Mr. Alonzo W. Watson, Salt Lake City. (Applause)

MR. WATSON: It is a real pleasure to be here and as Mr. Bennett indicated, this is an opportunity for me to renew old acquaintances. The reason for the talk today is the passage of two recent acts. During this last year there was a federal law passed called The Self-employed Individual Retirement Act. Fortunately, this is known as H.R. No. 10 and from now on I'll refer to it. Then this spring your legislature passed the Professional Service Corporation Act which is a law similar, as you know, to law that has been passed by some thirty additional states. Both of these laws are important to us as lawyers, primarily, I suppose, because they provide a tax break for us. They enable the lawyer and other professionals to put aside or to use some dollars that would otherwise go to pay federal tax authorities or state tax authorities for the purpose of providing retirement benefits or for the purpose of establishing some sort of family security.

These laws are not only significant and important in terms of personal advantages since we can now get into groups or organizations that can have retirement plans but it also opens up a number of professional opportunites and

responsibilities. Unfortunately, this area of the law has been watchdogged pretty closely by insurance people; by bank officers and by mutual fund salesmen and if we fail to become equipped to adequately handle this law, I think there is no doubt that this is another area of law that we will default to these people who are so eager to take advantage of it. Now in a sense it is bad to permit this because these are fairly technical laws. Even though the Idaho Law is simple on its face, there are, as I hope to develop later on, a number of really significant problems in connection with the use of a prefossional service corporation and this H.R. No. 10 can be a real booby-trap if it isn't used with considerable care and caution.

These so called interlopers are willing to put it to the utmost and to some extent they do a good job because they get around the word or the knowledge that these things are available and how to use them and to that extent they perform a very important function but when it comes down to actually making the decision and moving forward it seems to me that this is the place we have got to take over. Now if we do, of course, there is a chance for large financial rewards or fairly large at least because the legal work connected with these plans, particularly if it's a corporate plan, rather extensive and it's a bit demanding and it justifies a good fee. Now, under those circumstances, the object of my talk is to try to analyze and evaluate and compare these plans and point out some of the opportunities as well as some of the dangers or pitfalls in them. I think the first thing, by way of general background, is to understand to some extent the nature of the tax break. I think all of you are for the most part familiar with the fact that if you have a so-called qualified retirement plan, it means that you can avoid an immediate tax on a portion of the income you receive. Now, this is supposedly your most productive period of time and consequently your tax rates are going to be as high as they probably ever will be. You put this money aside and by reason of putting it aside you don't have to pay a tax on it. Then too, this money when it's put aside will go to work and it will earn in one of these qualified trusts. Any earnings attributable to the property in the qualified trust is not subject to immediate government tax. That comes out later.

Now the means of achieving these tax breaks are through these so called qualified plans. In essence that is, by complying with the rules of the revenue service. Now, these are set forth for the most part in Sections No. 401 to Section 404 of the Revenue Code but they are over-laid to a substantial degree by regulations, ruling and a lot of administrative practices that go along or are carried on more or less sub rosa. At the present time, a professional person can establish a qualified plan if he follows the rules under H.R. No. 10. H.R. No. 10 was actually an amendment to these Code Sections No. 401 to No. 404 and what it did was extend the coverage of the previous law to self employed. It created a new class and said that these people can come in under the coverage of the law. They can get into this promised tax land but in letting them in they threw in a number of restrictions, some very serious ones, and they reduced the tax benefits down almost to the point of diminimus. The professional service corporations have not yet been able to pass the gauntlet of government inspection.

It's not at the present time possible to get a qualified plan through for a professional service corporation. This despite the fact that there have been professional service corporations for a number of years. The revenue service

has made a real fight out of this business. The difficulty in these professional service corporations in any kind of plan for professionals is that you have got to achieve the status of an employee. The self-employed have been segregated out for tax purposes. They have been discriminated against so to speak and not on the basis of race, color or creed. Actually it seems to be on the basis of affluence. The government has apparently taken the position that you people and the doctors and the accountants and some of the other self-employed are able to adequately provide for your own future and that you don't need any help through the revenue laws but the only real rub to this is that your economic counterpart, the corporate executive or corporate owner who is also an officer, not only is let into this promised land but he is given first class accommodations something equivalent to the Sun Valley Lodge if he happens to be very successful in terms of his present earnings. Well, when the professional looks over the field and sees that his preferred status is also equitable with a drop in his bank account in comparison with these other people, he is annoyed and has been annoyed and has been working very strenuously for a long time. It hasn't been so much the lawyers, even though the lawyers have been active, but it's been the doctors, who are really hard pressed to avoid these high surtax rates, who have led the fight. But I think to understand both of the laws or both these types of plans, the plan for the self-employed as well as for the professional service corporation, and to see what might happen with them or where they might take you, it is necessary to look into the history and background of this effort on the part of professional groups of self-employed to achieve some sort of tax equality with these corporate officers and corporate stockholders who are also employees.

Now the first was a rather indirect approach and that was taken by this very astute group in Montana called the Kettner Medical Association. They decided that they could practice under state law as a partnership but they could by contract among themselves create a number of corporate attributes. Now, in order to achieve this employer relationship or come into the corporate status, you have to have a continuity of life; centralization of management; transferability of interest and limited liability. Now, up there they had read their tax law carefully and they were aware that under the revenue code a corporation for federal tax purposes does not necessarily follow state law. Now, if you'er a partnership for state tax purposes, or trust for state tax purposes, the revenue service has said that is all right for local purposes, but as far as the revenue laws are concerned we have got our own definition and they put that in Section No. 7701. And, then there were some cases interpreted and the leading case and the one most often referred to is the Morrissey Case and there the question was whether a trust was a real trust or a corporation. Now the government was on the other side of the battle as far as this was concerned. The government wanted to get a double tax and they wanted to establish that this particular organization was a corporation so they showed, going all through the courts, and eventually to the United States Supreme Court, that this Morrissey group had more attributes of a corporation, like limited liability, centralization of management, free transferability of interest, so the government won that battle. They got a double tax. But the Kettner people turned it around on them and said, all right, we're going to do the same thing internally in our organization and they did it and they won it in the lower district court in Montana and then eventually they won it in the Ninth Circuit.

Well, this didn't end the thing, unfortunately. The revenue service took a

quick look around and decided that this was not the way they wanted it to go so they issued new regulations under this Section No. 7701 having to do with what is required to become a corporation. In effect they said if under the state law, such as the Uniform Partnership Act or the Uniform Limited Partnership Act, any man can dissolve the corporation by reason of death, insanity, retirement or withdrawal then we are going to say, despite your contractural relationships among yourselves, you're not really a corporation. You can't be a partnership or a limited partnership under uniform laws for state purposes and at the same time be a corporation for federal purposes. So this pretty much put the quietus on all of the Kettner type arrangements and on top of that the revenue service has taken this attitude of not ruling on these types of plans.

Well, that was one approach. The second approach was this more direct one through the state legislature. Groups, particularly medical groups, went to the state legislators and urged on them the passage of these special laws that would permit people who traditionally had been denied the privilege of practicing their profession in a corporate form an opportunity to be corporations while at the same time maintaining their traditional or historical ethical safeguards, and the State's passed a number of these laws. I understand there are now some thirty States that have the laws and there are a number of other States that are now considering passage of other similar type laws. Well, this would have been fine but the revenue service came along with a Revenue Procedure Nos. 61-11 which is one of the toughest administrative rules I think that has ever been promulgated. It has the effect fundamentally of saying, we're not going to let any of these things go through at this stage and they have said you can file your plan and your request for qualified status with the district director's office and the district director will have to look it over. And he looks over a great deal of material. You have to file not only your plan and your minutes and all your authorizing corporate action but you have to submit a brief to say that this association does come within the terms of the regulations and to show clearly the employer-employee relationship. Then after the district director's office gets all this material, it can not pass on it. It can not independently approve the plan, it can only disapprove and, if it disapproves, you have no right of appeal from the district director's office. If they happen to approve, then the plan must be transmitted to the national office, the Tax Ruling Section. Then it is divided up so to speak and one part is considered by the Tax Ruling Section and another one goes over to the employees status part. Now, what the official title is I'm not quite sure. Anyway, they look carefully to see if there is a true-employee-employer relationship and they also check it over to see if it complies with the normal rules that apply to retirement plans.

Well, this in effect makes it very expensive, very time consuming and very difficult to get any of these plans through. Not only that, they have failed to rule on anything up to this point. It is my understanding that some three hundred requests are now on file with the revenue service and only one ruling has come out and this really before the regulations were enacted or promulgated and that was for a special group up in Connecticut that came in under a rather different law. So the indirect approach through internally revising your organization has not gotten too far. The direct approach by means of state legislative acts has not accomplished the purpose, up to this point at least, and that left only the third approach, which was another direct approach, and that was to go to the U. S. Congress and see an amendment to the code sections which would say a self employed professional could

come in and get these tax benefits. Well, it started out very nicely. There was a lot of support both in the Bar and through the A.M.A. and also the accountants and other professional organizations were behind it and the treasury didn't take a position against the law. They seemed to partially favor it. Then the fiscal or financial facts came to the forefront and they started thinking about this in terms of revenue lost and the seriousness of the revenue lost and this must have energized and galvanized the treasury into action because, as a result of some statistical studies, they switched ground, so to speak, and took a strong opposing position. Not only that, they switched really to a counter-attack. They apparently decided this need to bring in the self-employed provides us an opportunity to cut back the other highly competent persons. They were going after the people like the corporate executives. They were going to reduce his tax benefits if they could, so they made up their own law which they proposed to Congress which would have cut back the benefits all the way along the line but Congress refused to buy it on the over-all basis. They said, let the self-employed in on a very restricted basis. So we have the unfortunate and anomalous situation of a law that creates tax benefits for one group of people that are significantly different than the benefits for others.

Now, I think to understand H.R. No. 10, it is necessary to look fairly close to the treasury's position. I mentioned that they have felt that the present law with respect to corporate plans, those that include the corporate officer and stockholder, have not functioned properly. That there has been a failure to prevent sizeable tax benefits or most all of the tax benefits from channeling into the hands of a few of the highly compensated. Now, the code regulations and ruling are over-laid with one fairly fundamental idea and that idea is that when you have these plans you won't discriminate in favor of the highly compensated and against the lower pay. Now this idea floats through all the law and its battle cry for the revenuc service. But as it has turned out, at least in the eyes of the treasury and revenue service, to be kinda like the enfeebled roar of a toothless old tiger, it will frighten away some of the uninitiated and the unsophisticated but in so far as those that work in this field and know the pension and the profit sharing law, they can create a plan which will in effect take the company contributions that are tax deductible and channel most of those into the hands of the people that own the company if it's a small one or to the highly compensated. This frustrates the fundamental purpose of the law which was really to give the lower paid some additional retirement benefits that would help them by supplementing their social security. And the curious thing is that under the law itself there are at least three areas where discrimination is possible in the context of the law. One of them is with respect to coverage and eligibility. What people have to be taken in and benefits provided for. You can do it in this area because under the present law you don't have to take anybody into the fold who hasn't been with you for five years. Now, this means that many of the lower paid will be cut out because their term of employment may be considerably shorter than that. I have looked at a number of plans. If you use five years for eligibility you would knock out fifty to seventy-five percent of all the employees.

The other means, which is just as effective and probably more annoying to most people, is that you can put in a plan that covers salaried only or clerical only which means that if you have a large number of people that are hourly rated you can eliminate all these people and you can in effect take all your

deduction that is going to provide tax benefits and channel it right back into the hands of the highly paid. They are going to be the ones that will be covered and will receive the benefits. Well, that is one of the main areas and then you get into the area where you talk about contributions; the allocation of these contributions. The company can make contributions on the basis of salary. Now, by reason of the fact that they can make it on the basis of salary and what they put in will be distributed among the participants on the basis of salary, it means that your corporate executive having a higher salary will naturally get the biggest cut of the pie. If you add to this the possibility of integrating the plan with social security benefits, you get a further leverage in favor of the highly paid because social security says that up to forty-eight hundred you're already putting in thirty percent of any retirement benefit that you could conceivably give to the person. So if you want to add and you can give ten percent on salary benefits, that would be ten percent on salary up to forty-eight hundred and thirty percent on salary over forty-eight hundred. Well, that means that the higher people are going to get this additional thirty per cent.

I think an example here might illustrate it. If somebody gets a salary of forty thousand—we'll take a fairly extreme case. Now, he is the chief executive officer and you use this thirty percent formula, you can put in twelve thousand for him roughly. It's more complicated than that but just as a simple illustration. The guy that gets forty-eight hundred, you put in about one thousand four hundred and forty-four. Those would be their annual benefits at retirement. Now if you wanted to integrate you could eliminate any payment for the lower pay. You wouldn't have to put in the ten percent for him and you would have to reduce the amount for the higher paid but he would drop down to only ten thousand five hundred and sixty. So you get all this loading on the top by this way and you also get it if you provide benefits for past service because normally the top corporate officer is the one that has some past service. He has been with the company and there are good arguments why he should get a greater share because he has helped build up the company but what you can do is go back and pick up all those past years and give him benefits on the basis of past years as well as in future years.

Then the third major means is through these so called vesting and forfeiture rules. In a pension plan, you can put money aside for a person but it doesn't necessarily mean he is ever going to get it. If he isn't around at retirement time under a pension plan whatever has gone in for him will be forfeited. If he doesn't die in the interim and you have a death benefit and if he should quit a year before his retirement age, which is normally sixty-five, everything that has gone into the plan for his benefit is dropped out. It goes back to pay the employer's cost which in effect comes back into the hands of the stockholder. In a profit-sharing plan, it works a little different; you have to invest but in the past you could have very slow vesting schedules. You could vest nothing during the first five years. Then you could vest five percent or ten percent the sixth year and fifteen and twenty in the seventh year and so on up. So if anybody says quits at the eighth year or ninth year then they may have a right to twenty-five percent of the amount that is in there but you can also provide that they have got to wait until retirement age to get it or they can't take it away from your company and go out and compete with you, at least not until they get sixty-five unless you want to give it to them. If they stay on until they get fifty per cent or something like that all these things are forfeited out and they go back and are re-allocated to the people that remain in the

plan. Well, normally the people that remain in there are the highly compensated.

Now, there are special tax breaks in the present law in addition to these and they are this lump sum distribution with capital gains privilege. If everything is taken down in one year after retirement then the maximum tax is twenty-five percent. Now for somebody who is running along in the fifty or sixty percent tax bracket, this is a very significant benefit but as you can readily understand, it doesn't touch the guy on the lower level. He normally isn't much above the twenty-five percent and the difference because of capital gain distribution is fairly minor. The second major break that is principally for the benefit of the higher paid is this pass through for estate tax purposes. If you die and you have retired and you have benefits coming under a plan, a retirement plan that is not included in your taxable estate for federal estate tax purposes but it shoots through, so to speak, to your heirs so you avoid whatever estate tax might be applicable to your property. Well, with the way it is set up now, for the most part only the people who do make a lot of money get into very high estate tax brackets. The normal employee who has just an average job doesn't have too serious an estate tax problem but the highly paid man does and this is a big benefit for him.

Now, with those things in mind, I think you can readily understand or see what they did with H.R. No. 10. H.R. No. 10 came out and said, you have got to have a plan to cover all employees. You can't exclude anybody on a salaried only or clerical only basis or any other category basis. You have got to cover everybody for three years. Instead of five it has dropped down to three. As far as the amount you put in for them, each year that is going to vest and if they leave, they are going to walk away with it. Now, this throws the cost higher for you as a self-employer if you are not going to have these things coming back to you all along. Then they did the most critical and crucial thing, they put a top limit on the amount of salary which would qualify for tax benefits and for deduction purposes. They said you can put in up to two thousand five hundred a year or ten percent of your compensation, whichever is the lower of those two. You can't go above twenty-five hundred and on top of that you can only deduct one-half of the amount that goes in. Now, this only applies to the self-employed. You can put in as much as you want for anybody lower down that is not self-employed. Well, if you compare this kind of thing, fifteen hundred a year—or twelve fifty a year, I should say, going in for the self-employed compared with the twelve thousand that can go in for a corporate executive, you can see how great the spread is and how much more important and significant a corporate type plan is and this is the reason for your professional service corporation. Rather than being channeled into this area where the tax benefits are very normal, which you could be if you had to go the H.R. No. 10 route, you can switch over and possibly use your professional service corporation as the vehicle for your retirement plan. But there are catches here. As I have indicated, the revenue service has opposed these professional service corporation plans. Fortunately, on May 8th, they issued a so-called T.I.R., which is a technical information release, in which they said we will now issue new regulations under Section No. 7701, which regulations will cover these newly formed professional service corporations and professional service associations. Now, they break down into two categories. Some of the earlier bills they called professional associations. In the later bills I think for the most part they used the term corporation. But now they said we're going to act, but they almost

had to because everybody was on their back, so to speak. Now, at the recent mid-winter meeting of the A.B.A., the Taxation Committee was instructed to take a strong and as forceful a stand against this attitude of the revenue service of not ruling as they possibly could because the frustration was building up. You couldn't get a ruling; you couldn't get the things in the courts; you couldn't test the regulations. The regulations may very well be an unauthorized, administrative act. They may have gone outside of the law on these regulations but you can't even get it to court under the present circumstances. But the revenue service has now committed themselves that they will come forward.

Now, we have kinda of a pipeline into the revenue service by reason of the fact that one of our newest associates was with the Tax Ruling Section and he called his friend who is working on these regulations. Well, the friend couldn't divulge much of anything but he did say that these regulations had gone through the ruling section and they were now up in the hands of the treasurer so they should be out pretty soon. He was asked a question, are these professional associations and professional corporations going to get through and he said some of them are and some of them aren't. Now, this probably comes as a shock to a number of commentators that have written on this subject because there have been any number of articles, and very learned articles. There is one in the Virginia Law Review, there are a couple in the Western Reserve Law Review, there is a very comprehensive one in the Georgia Bar Journal. California has had a study group that has examined this thing in detail. The Colorado Bar has had a study group that went into it. Now, all of them, all these analyses have come pretty much to the conclusion that these laws were going to make the grade, except for a fellow by the name of Alexander, who is on the Commissioner's Advisory Staff, and I happened to see him in Washington not too long ago and the question came up and he said then; this was before we had this other information, that he had serious reservations about the possibility of these laws getting through. And the thing is, there have been some tip-offs through a man by the name of Isadore Goodman, who is the chief spokesman for the revenue service. He is a very able and a very articulate person and he has been the chief architect of the various laws like H.R. No. 10 and their problem is, if they let these professional corporations through, then you're going to have a disparity between the self-employed who are not incorporated and the people who can incorporate. Now, there are a lot of people who won't be able to incorporate, probably. They are too small; they are psychologically not set up to do it. The cost of incorporating and the problems of incorporating are too large. So you're going to have a group that is going to be on the second tier, so to speak, and the revenue service has to be concerned about this and primarily they have to be concerned I think about the loss of revenue if they go through with this. So, they have got to, if they can, find some way to locking these plans for professional service corporations.

Now, I think if we analyze your law to some extent, we get some feeling about where it may or may not be able to fulfill the bill. Not anything that you can tie down in any way but some hints about what may be your straws in the wind; what may be possible and may not. Now, for the most part as I indicated, these professional service corporation laws are really an amalgam of two considerations. The first consideration being the need, if you want this retirement plan and the tax benefits that go along with it, to achieve the corporate status which means you have to have in effect a true corporation. You have to have limited liability and centralization of management and free

transferability of these interests. Idaho like so many of the others has achieved this by incorporating into the professional service law the business corporation law. It says to the extent that the Professional Service Corporation Act is not inconsistent with the Business Corporation Act, the Business Corporation Act will control. Well, this would in general mean that you would have centralization of management through a board of directors. You would have the normal limited liability that a regular corporation has. That you would be able to freely transfer your interests. There wouldn't be any major restraints on selling what you own in the corporation. And for the most part; well, if you're a regular corporation, your liability would be limited to the amount that you had thrown into the pot; what you paid for your stock. You wouldn't have this open-end sort of liability you would get in connection with a partnership. But your professional service corporation act in order to comply with the traditional and historical ethical rules that have governed the practice of law, has to water down these things to a certain extent. They have had to say, in the context of that law, you don't have true limited liability because you are still to be personally and individually responsible for any misconduct or any wrongful act in relation to any person for whom you have performed professional services. Now, the question can come up, does this depart enough from the normal sort of limited liability you find in a corporation to enable the government to say you havn't quite come up to the mark.

Now, you have got a problem on centralization and management, too. Idaho doesn't say much about it in its law. The assumption is that only the professional people could be on the board of directors. Well, your board of directors is your management in essence even though their directives are carried out by the officers. Well, how are you going to uncentralize management if all the board of directors need to be on there in order to properly determine what fees you are going to charge; what cases you are going to take and things of that sort. And this in a way brings us into the ethical area where you have got the canon of ethics that says every lawyer is responsible for setting his fees and for determining individually and separately what cases will or will not take. These are theoretical problems and they have rattled around for a long time and a lot of people tend to brush them aside but there has been very serious and very continual controversy over this. Now, the Tax Section of the Utah Bar actually recommended against proposing a professional service corporation act. It was taken out of their hands and Utah did enact such a law. The Virginia Bar went on record against it but Virginia has that kind of a law. The A.P.A. has not taken a definite stand. They have said, there is nothing inherently unethical about practicing in corporate form but they have grave doubts that achieving a certain amount of tax benefits justifies departing from the traditional concepts of practicing law as professionals individually and with individual responsibility. The doctors have had less difficulty. Long ago way back in 1957, their House of Delegates said, let's go forward with this, there is nothing wrong with conducting a medical practice in a corporate form and actually the first laws that were drafted have been purported to have been prepared by the Law Department of the American Medical Association and they are the one that fought the hardest for H.R. No. 10. But the A.B.A. has not decided. They have come out with their Opinion No. 303 which is the one that says there is nothing inherently wrong with it but they have said you have got to be careful that you don't cut off this limited liability, that you don't interpose a lay agency between yourself and the client. And really I

suppose the fundamental consideration is whether this corporate entity which is supposed to be separate and apart is going to be a lay agency that will modify or depart from what has been considered the personal, direct, individual responsibility and position of trust.

As I said earlier, most of the commentators have gone over laws similar to Idaho's and have come to the conclusion that this kind of law that you have in Idaho is going to be all right. It meets the ethical requirements. There are enough safeguards in there. I would say nine-tenths of the sections in your law have to do with these ethical considerations. For instance, you have to confine your practice to one profession. The only people that can be stockholders are those that are duly licensed by the state to carry on their profession. Everybody has to continue to have the direct personal responsibility for his work. These laws, I feel, have been worked out with care. Now, let's assume that you can use the professional corporation and that you don't have to go—well, let me say this first, I think it's unwise to do anything until the revenue service comes out with these regulations. As you all know, the time and cost of investigating these things, of setting them up and working out the problems are pretty demanding and more so than Lincoln realized when he supposedly penned those immortal words, our time is the thing that counts the most. We can't afford to start moving into these things and put a lot of time in it and then either not use it for ourselves or do it for a client, say for a medical group. If we get them moving down the road on this; form up their corporation; write them a plan; get all the documents prepared for submission to the revenue service; it could cost them a couple of thousand dollars and then if the regulations come out and say that these things are not going to pass you are going to have a group of people that may not be very happy with you and they may have enough blood at this point that they will say, to hell with them, we're going to run it through because you don't have to get the revenue service's approval. You can wait three years and see what they are going to do about your deductions. It's a bit hazardous if you have made other plans in the interim thinking you're all right. (Laughter) But assuming that you do get this; that you can use a professional corporation and you want to go ahead with it and the track is clear with the revenue service, then you have got all of these myriad tax considerations that come into play whenever you form up a corporation. How are you going to capitalize; what kind of stock are you going to issue; what are you going to transfer into there; if you were practicing as a partnership before, what are you going to do about transferring your receivables for instance. You have got all these receivables in your partnership, if you distribute those out to the partners, you may very well have a lot of income poured into one particular year and you may not have anything to pay the tax liability that would be attributable to having all this income poured into one year. You have got to move pretty carefully there. You can probably do this under this Section No. 351 you can just transfer your receivables over to the corporation so long as the owners to the receivables in the partnership are the owners of the corporation, they receive eighty percent or more of all the stock issued. But if you should issue say twenty-one percent of the stock for personal services for somebody that had no interest in the receivables or any of the other fixed assets then No. 351 wouldn't apply and all this would be treated as a sale or exchange and there would be an immediate tax.

So, you have got to move with some caution in getting this thing organized and I think you have got to at the outset try and decide to the extent that you

can whether you want to use this corporation as a means or a vehicle for building up a sort of separate estate. The tax rates on the first twenty-five thousand of corporate income as you know are thirty percent and over that it's fifty-two percent. Well, these rates may be lower than the rates applicable to an individual if he took everything out in salary. You supposedly could set the corporation up and drain off almost all that would be taxable to it in terms of salaries even though there is a problem there of unreasonable salaries. But assuming that you could then is it better that you pay everything out to the individual as salary and let them pay taxes on their individual brackets or is it better to keep some of it in the corporation and have it taxed at these thirty percent rates maybe, and then invest it in securities; the money that you have got in the corporation, invest it in securities so that you get the benefit of the dividends received credit. Now, if you are in the thirty percent bracket, anything that you may get in the way of income on stock the corporation holds in only taxes at a four point five percent rate. Now if an individual buys securities out of his after tax dollars; say they earn four point eight percent then they may be taxed up to sixty percent so you can save some investment money if you hold these securities in the corporation but you have got to always be aware that sometime it may be necessary to pay this accumulated money out as dividends or out in the form of redeeming stock. Then you get into this double tax situation. You get another twenty-five percent on top of it if there is a redemption and it goes out at regular dividend rates if it has to be dividended out and I don't think there would ever be a situation where you would be forced to dividend out because you can accumlate a hundred thousand dollars within these corporations and for the most part these are not going to be sizeable enough to build up a hundred thousand dollars of accumulated earnings very rapidly and if they do most of the organizations are going to need some of that accumulated money to expand and they can justify holding more so that may not be a problem there but these are the kind of considerations that come up any time where people have been in partnerships before and they are trying to decide whether to move into the corporate form.

Then there are also these additional tax breaks in the form of group term insurance. If you buy a reasonable amount of group term through the corporation, the corporation gets a deduction for it but the amount they pay for the benefit of the individual stockholder is not taxed again. You can also set up an accident and health plan under a corporation if you have got a corporation so that if somebody gets sick and their medical bills are paid, the corporation gets a deduction for it but the person whose bill is paid doesn't have to pick it up as income. Then a somewhat similar situation to the situation involving these qualified retirement plans is this so-called deferred compensation arrangement for individuals. You can take less salary during the period of time you serve the corporation as an employee if--well, you can take less and have the amount that you cut back paid to you after you retire at a time when supposedly you will be in lower rates. Now, the only difference between this and a qualified plan is that you don't get into; the corporation doesn't get an immediate deduction and the person who is taking only part of his salary has no assurance at the end of the line that the corporation is going to have money to pay him this deferred compensation. It might get into a jam or financial difficulty and this money has to be available to pay the corporate creditors so it doesn't have the so-called leverage so far as the earnings are concerned because any earnings are immediately taxed for the money that is supposedly set aside to pay this

deferred compensation obligations. As far as the operation is concerned I think there has to be a good deal of care given to who is going to be on the board of directors; what kind of management decisions they are going to make and I think of primary importance is the need to have employment contracts. Everybody that is an employee, should have an employment contract and the reason for this is that in this Old Colony Medical Ruling where one of these associations got through they put heavy stress on the fact that there was an employment contract with every one of the professionals. And that same sort of thing is carried over in this revenue procedure No. 61-11. So it's clear that the government is going to look more favorably on plans that do have employment contracts and this helps with this so-called employer-employee status. It spells out that the professional is integrated with the corporation; that he is controlled by the corporation and that he is responsible to the corporation at least to some extent, and as I say, the revenue service thinks that this is very important for one reason or another.

Now, just one further word. For the people that can't come under the corporation umbrella, then I think you have go to do some thinking about an H.R. No. 10 plan for them. Everybody that has looked at it considers it to be a savings plan and that is about all. That the tax breaks are not too significant even though when you think you can avoid tax on twelve hundred and fifty dollars a year, that has some importance; that saves some money and over a period of years it's going to amount to quite a bit and you can also save money on what that twelve fifty earns outside in a trust. The thing that you have got to do is figure out whether the person that goes into a H.R. No. 10 plan is going to be in higher brackets when he starts taking it down because you have got to start taking it down at certain ages. The law is specific on that. It says you start paying out seven and a half and you have to pay it out over a fairly brief time and you can't get in under the capital gains ceiling; you can't cut it off at twenty-five percent. So if this particular person might inherit a lot of money, or he might start getting a lot of money from investments or he might lose his wife so that he has only one six hundred dollar exemption and his children grow up and marry and move away so he doesn't have any dependents so he might very well come to the end of the line where he has to start taking this down and his tax rate is going to be higher. One way of avoiding this would be to start giving away at sixty-five or seventy and this would come in Mr Farrer's area in estate planning. I think you can start your estate planning a little earlier if you get one of these plans going if a man is well enough aware of what his situation might be.

But to sum up, I think you're in an area that demands your attention for many reasons and in an area where you have to go slow. You have got to wait now whether you like it or not and sit back finally and just wait for the revenue service to do whatever it wants to do and then determine what you want to do. But there are opportunities here and I think the lawyers ought to take advantage of those opportunities. (Applause)

MR. COUGHLAN: Thank you, Mr. Watson, for a very interesting and discerning presentation on this matter. Gentlemen, I have one presentation to make prior to our coffee break. Mr. Stillman, would you come forward, please? I am proud indeed to have the honor of making a presentation of a special centennial award of the Idaho State Bar. This goes to a man for whom I have great admiration, not only for his many and varied accomplishments but in far

greater measure for his humility and genuineness as a man in view of the many honors that he has received over the years. The finest accolade that I can pay Mark Ware and the most important in my view is that he is in the finest sense of the word, a gentleman. It is disappointing that Mark could not be here in person to receive this symbol which expresses our appreciation as members of the bar for Mark's outstanding efforts over the years in the preservation of the history of the State of Idaho; however, Mark's partner of many years standing, Elbert Stillman, is here to accept this on his behalf. The fact that makes Mark's achievements in this field most remarkable are his many and varied interests, any one of which would be sufficient to occupy the average person as an avocation.

Let me read you the nomination that was made when he received the coveted Award of Merit of the American Association for State and Local History for the year 1961. This tells the story so graphically: "Marcus J. Ware is a man of many parts; a successful lawyer; a member of the State Bar Commission; a student of Gaelic literature; an active and prominent Mason; past president both of the Mayflower Society and the Sons of the American Revolution at the state level. A mainstay of his community, he has found time over a period of many years to be primarily active in his most engrossing hobby, the history of Idaho. He is County Historian of Nez Perce County; organizer and president of the local historical society; member of the board of directors of the Spaulding Museum Foundation; chairman of the highly successful 1961 celebration of the Lewiston Centennial; a significant student of Nez Perce Indian history and an important cooperator in the joint University of California Idaho Historical Society study of the Nez Perce language now under way. He led a committee to a thoroughly scholarly consideration of the location of John Day's grave, an explosive local historical problem with statewide political overtones, and he was the originator and drafter of the legislation which has made possible the new state program of historical marking and he saw it through the session of the legislature. In a community of thirteen thousand people, the able man is called on for every conceivable type of enterprise. Marcus Ware has responded generously to these calls but always with complete partiality for the historical point of view." Now, pursuant to this nomination for the award, the following citation was given Mr. Ware: "For outstanding, time consuming and successful leadership in historical affairs of his community and his state carried out over a period of many years in spite of the needs of a demanding law practice and of extensive community service in other fields." Of course you know that Mark is the immediate past president of the Idaho Bar where he served with distinction and since this time he has been chosen as a member of the American Academy of Trial Lawyers. We're all aware, in this our centennial year, of the relationship of law and history and the significant part that pioneer Idaho lawyers and judges played in the development of our great state. The preservation of this history is of incalculable value to the citizens of our state and it is for this reason that this award takes on a special meaning at this time. The Idaho State Bar bestows upon Marcus J. Ware this plaque which is mounted with a silver centennial medal, and this is a beautiful thing and we are real happy to be able to present this to Mark. This silver centennial medal bears the inscription: "Idaho State Bar Centennial Award, 7-11-63, to Marcus J. Ware in recognition of his contributions to the preservation of Idaho history." This centennial medal is mounted in this plastic and can be turned so that each side of the award of the medal can be seen. We were particularly fortunate in getting number forty-

four. Each of these medals, as you know, is limited in number of issue and each of them has a number. This one is forty-four which makes it a very low number and of course at this early date even now is a collector's item. Mr. Stillman, I am proud indeed to present this to you as Mark's esteemed partner on his behalf.

MR. STILLMAN: Thank you very much.

MR. COUGHLAN: Perhaps Elbert will say a few words to us.

MR. STILLMAN: President Coughlan, I might say simply that the philosophy expressed by the poet is exemplified by the life of Mark Ware. There is a destiny which makes men brothers and no one can go his way alone. All that we put into the lives of others come back into our own. Thank you very much and I know Mark will be very happy with this.

MR. COUGHLAN: Gentlemen, Mr. Watson has prepared for us some written materials to be used in supplement to his address and you will find them on the table at the back of the room and you may pick them up during the coffee break. At this time we will then have our coffee break and if you would, as soon as you have your coffee return promptly so that we can stay on schedule; thank you.
(Recess at 3:15 p.m. 11 July 63 for coffee break.)

MR. COUGHLAN: We will get started now. We'll proceed to our second speaker of the afternoon. I'll ask Mr. Farrer's host, Mr. Carl Burke, to come forward and introduce him.

MR. BURKE: Mr. Coughlin, Commissioners and fellow members of the bar, this afternoon I think we have a rare opportunity to listen to what I consider to be a lawyer's lawyer. Mr. Farrer is known to those who do a lot of bar work with the American Bar Association. He has for years worked with this association. Even as a young man he was chairman of the Junior Bar Conference in 1957. In later years he has been a delegate from California and from the Los Angeles Bar Association to the American Bar Association. He has in fact done so well that not only is he a member of the California Bar Association but I am told that he is an honorary member of the Tennessee and Georgia Bar Associations. He has spoken to many of them, at least fifteen, possibly more in the last few years. It has become his avocation; he is working on a lawyers work; he is working for lawyers; he is interested in the law. He is a partner in the firm; a very small firm for Los Angeles, only twenty-five lawyers in it, of Hill, Flower and Burrell. He specializes in that firm in estate planning and probate work. He has done a tremendous job in this field. He works with the California Bar Association on subjects related to probative estates and estate planning. His topic was announced as tax opportunities in estate planning but Mr. Farrer tells me that he is going to talk on the practical problems and the practical aspects of probate work and give us some examples that we can all work with and that can be used by us in our practice and so its with great pleasure that I represent to you and introduce to you Mr. Bill Farrer from Los Angeles; Mr. Farrer.
(Applause)

MR. FARRER: Thank you very much, Carl.

Today, I thought I would try to give you some of the practical aspects that we face in estate planning, primarily through experiences that we have had

where errors have been committed and where perhaps we haven't taken full advantage of the fact that a lawyer should fully investigate the assets of his client before he begins any estate planning. The first and foremost point that we have is that when you do interview a client, be sure that this client fully discloses all of his assets and that he gives you his family background; his marriages; his divorces; the object of his bounties. Whether he has an interest in his children; his grandchildren; his spouse; in his sons-in-law or his daughters-in-law. Watch what property is held in joint tenancy. That joint tenancy problem has been constantly a downfall as far as California probate is concerned and I am sure that the situation would apply here in Idaho. We have found some of the finest testamentary plans set up by some of the finest lawyers in the state have been defeated by the fact that all the property was held in joint tenancy and passed to the surviving joint tenant. We have had that situation in our state and as I say, I was going to note where I had one experience where irrespective of the fact that the property was all in joint tenancy, we had explained the situation to the court that the party did not intend to hold the property in joint tenancy and that we would go ahead and simply probate the joint tenancy. I considered that quite an accomplishment when we received the courts' permission. I now find that that is standard practice in Idaho and that joint tenancy property is probated and that many of the tax advantages of community property are encompassed in the fact that you do probate community property as joint tenancy in this state.

One of the other factors to basically consider in your initial interview with your client is his interest in corporate entities. If he has a minority stock position, this is a critical factor that we can often stumble over. I know that we had a client come in who had a one-third interest of a very profitable corporate enterprise. He was drawing a salary of about fifty thousand dollars a year. He had a very copisetic relationship with the individual who owned the two-thirds interest and they drew wills which were similar and which their spouses were adequately protected and again this was fine estate planning. We now have a one-third interest for sale in a minority corporation that nobody will buy. The point there being that there was no basic consideration given to an adequate buying and selling agreement and when you have a minority stock interest, it is really impossible to dispose of it unless there is prior planning in this field.

Another factor that you have always got to realize is that when you ask your client to delineate and list all the assets that he has, too often you may forget that he may have a power of appointment. Now again, we had a situation with respect to a power of appointment that was rather disastrous. A fine example of estate planning. Fortunately, we didn't draw the will in this case but there was a series of wills drawn one after the other. The decedent was an elderly bachelor and had accumulated over a period of years approximately three million dollars; at least he stated his net worth to be three million dollars. Unfortunately, one million dollars of this purported net worth was in an irrevocable trust. The provisions of that trust required the specific exercise of the power of appointment. The will was drawn; no reference was made to the power of appointment; as a result, the parties the individual intended the estate to go to were defeated by this irrevocable trust in that it passed to the parties, his relatives, which he wouldn't have anything to do with for many, many years. Another interesting factor in that estate that does bring out the importance of designating an independent entity to act as executor and trustee is that he left his other two million dollars; he left his entire estate including the two million

dollars outside of the irrevocable trust, he left it to nature reserves all over the country. Rather than naming an independent trustee to administer the nature reserves, why, he named a party that happened to be an educational institution. Immediately a contest was filed against this particular will and because of this interest, the estate settled the contest, so rather than having the will of the decedent prevail, the contestants prevailed with all parties simply cutting up the estate. The moral of the story is, watch your powers of appointment, and if you want to do anything unusual, be sure that an independent executor and an independent trustee are selected.

I think a factor that we all run into, at least in our area, which is of some concern, is the great number of will contests that are filed that again defeat the primary testamentary plans. Now, considering the fact that you do spend a great deal of time advising your clients as to how they should set up their estate, you certainly want that will to be protected. Now, we have a couple of factors here that we do follow. One, if there is any possible question as to the testamentary capacity of your client, we always believe in executing a number of wills. Have the will drawn. They may be similar wills but have the will drawn with different witnesses. Have it even drawn to the extent where perhaps you may even use another law firm to draw a companion will so that in the event of a contest the contestant will not only have to knock out the most recent will but will have to knock out all prior wills. This is something that bastically discourages an attack on a decedent's property. (Laughter)

Another point: If you're going to leave yourself something in a will of a client don't do it; be sure it's always drawn by another lawyer. We have had some very unfortunate experiences where I do believe that the client really did mean to reward his attorney but there are some other cases where I'm not sure the client meant to award his attorney. In any event, an independenet counsel whenever an attorney is left a bequest is certainly a very desirable factor. In determining the interests of a client, we all know that probate practice is something that basically is a lawyer's bread and butter; at least it is in our community, it's terribly important. Too often we are inclined not to gauge the client or to gauge his real interests and I have seen many wills which I do not feel really represented what the client wanted. Too often they represented what the lawyer wanted. Now, a typical example of this is too much over estate and too much over tax planning. In a few minutes I am going to come to some of the types of wills that we basically favor but I know you have all heard of the provision that you do save income taxes and you do save estate taxes by setting up trusts wherein you pass through one generation to another generation and you also perhaps give the trustee the opportunity of sprinkling income among the various beneficiaries to cut down on the income tax bracket. Well, we are now faced with a situation where an attorney, who is one of our top attorneys in town, drew this will from a fabulous estate tax savings standpoint. The only point is that he put all non-income producing property into trust and provided that you sprinkle the income. Well, this isn't looked on too favorably by the son who is the sole beneficiary in that here we have this non-income producing asset and we have the income sprinkled among the son and the son's children. The net result has been a will contest which in turn will defeat the testators purpose because the son is contesting against his children and the only party that is going to lose is the estate and the only ones that are going to win are the attorneys and we have got attorneys representing the son and attorneys representing the bank; we have got special

attorneys appointed guardian ad litem for the born and unborn remainder so the net result is a real Donnybrook and I do believe in this case, I blame the attorney.

Coming down to property, I felt that Idaho, being a community property state, followed California law to a great extent and that some of our California rules would be applicable and that we could just go right ahead and discuss joint tenancy and the trials and tribulations that we have with joint tenancy and some of the great advantages of shifting property to community property. Again, I find that Idaho does differ in a number of ways with California. Even your definition of community property varies from ours in that your definition of community property, as I understand it and I am not to be quoted on anything that I say about Idaho law because I don't know it but our California law provides that the rents, issues and profits of separate property are separate and that the rents, issues and profits of community property are community. As I understand it, in Idaho the same law does not prevail. As I indicated earlier, I also understand that in Idaho you probate joint tenancy property. In California, of course, we never probate joint tenancy property. This, of course, is an important factor because in our state where you hold property as joint tenancy, you only received a stepped up basis on the one-half of the joint tenancy that is owned by the deceased joint tenant. The surviving joint tenant takes the tax basis that was his original basis. However, here in Idaho as I understand your probating of joint tenancy, you would therefore receive the stepped up basis on both halves of any community property held in joint tenancy so your only primary disadvantage in Idaho on joint tenancy would be the fact that joint tenancy would pass to the survivor without the benefit of the testamentary estate plan.

Again, we find that the—I can give you a little bit about California because you may have decedents who have property in California and if you wish to transfer property in joint tenancy in California it's the simplest thing in the world whether it's real property or personal property. In order to transfer joint tenancy property, all you do is get your inheritance tax release as far as personal property is concerned and if any of your clients do leave personal property in the State of California, all the transfer agent is a security or a bank. If it's a bank account, all they will require will be a State of California inheritance tax release. This can be obtained simply by filing our Form No. 23 indicating that the deceased or decedent is a non-resident of the State of California. If you have joint tenancy property and real estate it can also be done by simply filing an Affidavit of Death of Joint Tenant which is a standard form. We attach a certified copy of the death certificate to that form. You combine this with an inheritance tax release and the property passes by the operation of the law to the surviving joint tenant and title will be recognized within the surviving joint tenant. The basic problem with real property in California is if it's not in joint tenancy and an Idaho resident dies owning real property in California, the property, of course, will have to be probated down there. Now, I might as a practical suggestion give you an idea of how we do it the easy way in California. If you have an Idaho estate and if you have an Idaho executor named, if he wishes to come down to California to probate California real property, the executor will have to come to the State of California to qualify. He will also have to post bond. This sometimes is inconvenient. What we do and the way we get around our probate code provision where the public administrator will step in is that we have a beneficiary of an Idaho—one of the Idaho beneficiaries

to California real property would assign a portion of that real property; say five percent or ten percent to a California attorney who in turn is designated as the administrator with the will annexed with the understanding that the attorney reconveys the property back. (Laughter) You better get that understanding in writing (Laughter) Therefore, the California attorney acts as attorney and as administrator and can only charge one fee rather than the two statutory fees set for the administrator and for the attorney. Thus your attorney has the responsibility for probating California real property. It's a very simple procedure, you just simply send down your exemplified copy of your letter testamentary and your Idaho will to California; it's admitted automatically; all you have is a six months period in which creditors' claims can be filed; you get your reassignment back from California and your property is distributed to your Idaho estate. I'll tell you, some California attorneys make a real production over this, that is why I am sorta warning you; it's really very simple. Your problem here of joint tenancy of community property for tax purposes, again, really isn't too applicable up here. A lot of my speech has really been cut because I had lunch today and it shows you that Idaho is not like California. (Laughter)

But our problem of joint tenancy as community property in California is rather interesting in that we do favor community property rather than joint tenancy to get our stepped-up tax basis irrespective of the size of the estate and as you know, the federal courts have varied as to; well, they haven't varied, they are actually rather definite, if you can show that joint tenancy was actually community property, it will be held as community property for tax purposes. You have your case of U.S. versus Perody, your 1946 case. You subsequently have your Boyd and Ivy case, your 1957 case which held that although it was community property held in joint tenancy, that you did not overcome the presumption that you did not mean to hold it as joint tenants, therefore, our recommendation is on any community property, hold it as community property. Far better to hold title that way. Now, what title do you hold in community property? In California, your transfer agents, if you; you're permitted to register real property with your title companies who will insure your title any number of ways. They will almost take anything you give them. They will take John Smith, a married man; John Smith and Mary Smith; John Smith and Mary Smith, husband and wife as community property. They will take any of those titles and will register title in those names. The security transfer agents are not nearly that broad in that aspect. They will let you take title as John Smith, period. They won't let you take title as John Smith, a married man. Their answer is, well, how do we know who John was married to; how do we know there wasn't a divorce and how do we know there isn't an agreement that the property is not community? The stock transfer agents require you, if you wish title to be taken as community property, to have it held John Smith, Mary Smith, husband and wife as community property. Now, the three primary transfer agents we have in southern California are, of course, the Bank of America, United California Bank and the First Security Bank. The Bank of America and the California Bank will simply permit a husband and wife to take title on any security for which there are transfer agents by declaration, I would like to take title as community property. However, the Security Bank will require you to file a community property affidavit with them and they discourage taking title in this line. Both of them will require probate of any property held as community property in that they require the appointment of a legal representative to transfer title from the estate to the survivor. Again, this is not at all in line with California

law because basically if the wife dies first and it is community property, you don't need to probate the community property of a predeceased wife. Now to accomplish this purpose, you must therefore hold title just simply as John Smith and the wife of course gets very suspicious when she comes in with this joint tenancy security and you say, well, no, we want to get your name off of it for tax purposes, we want to put John's name on it alone but we try to convince her that really John is holding it for her and the presumption is that it is community property. Now, another thing that we encourage as far as the relationship between community property and separate property is the execution between spouses of an agreement respecting status of marital property. Now, this is to facilitate the determination of any property tax responsibility, and also; we're not in the domestic relations field but certainly it helps from the domestic relations standpoint when everybody is happy to have them decide what is separate and what is community. And on that line when you do tie down the assets that are community and the assets that are separate be sure that you do exclude assets that you have transferred one to the other. For example, if you are transferring the ownership of an insurance policy to your wife don't make in your agreement respecting the status of property, "all property owned as of this date is community property" because here you have just gone ahead and made this transfer out and you have a conflict and you can be sure that the treasury department will try to include the insurance policies that have been transferred out.

Now, in discussing the factor of the stepped up basis of advantage; the stepped up basis that we do have by probate of estates, joint tenancy in Utah and in our state of community property, we certainly must not avoid looking at current tax legislation that is pending, particularly the proposals presented by the administration. Now, I think it's basic; at least in our papers it basically escaped notice the original proposal to tax unrealized appreciation on transfers at death at capital gain rate. I know we have had very little discussion on it as to the importance of this particular factor. Well now, it does become critical irrespective of the so-called limitations that they have. Now, if you're in the seventy-seven—even assuming that they reduce the capital—we're all gambling on these assumptions but the important point is the fact that it was proposed; that we do tax the unrealized appreciation on property at death. Now, if they do reduce the capital rates to 19.5 and do give credit for the capital gains tax, this doesn't make a great deal of difference in our large estates. Say you are in the seventy-seven percent tax bracket; well, you're paying 19.5 percent capital gains tax on the top bracket, therefore, you're getting credit against your seventy-seven percent so your net increase in tax on the estate is really only about 4.5. But get down to the thirty percent bracket and there are a heck of a lot more estates in the thirty percent bracket than in the seventy-seven percent bracket and you find that it results in a net increase of about fourteen percent on estate taxes. Well now, this is a heck of a big bite when you look at federal estate taxes. I might also add that when I looked at Idaho's inheritance taxes I was quite surprised in finding that your inheritance taxes are substantially greater than ours and particularly in larger estates. I might point out that the present proposal is currently in the House Ways and Means Committee and I don't think anybody knows what is going to happen as far as the various and sundry items are concerned. I am sure there is a lot of brick-bat that is going back and forth and probably civil rights legislation will have more effect on tax legislation than any tax legislation. Some of the factors that are eliminated

in this proposal as far as taxing appreciation and capital gains are the fact that assets transferred to a surviving spouse will carry over to the decedents' basis rather than taking up the stepped up basis plus the tax that would be assessed against it. As a practical matter I think we have got to realize that some day this will be done. There is a basic inequity in the fact that if you sell your property before you die and it's substantially appreciated, you have to pay a capital gain on it. If you die with it, you don't pay a capital gain on it. I think that this carry-over basis probably will be enacted. Not that it will be enacted by this current legislature but I think that some day it will be enacted, and it does have some benefits because particularly in our area we have large landholders. Where any intelligent individual would sell those holdings, because of the age of the particular owner, those holdings are not sold. Everybody is sitting around waiting for him to die so they can save the capital gains. Well, this just seems uneconomical and illogical and I think some day there will be a change in this particular area. In addition to the other exemptions in this proposed bill they would permit an exemption on any gain up to fifteen thousand and the gains on personal residences would be excluded with the transferee taking it at its fair market value. They exclude household and personal effects but they would not exclude jewelry or paintings or antiques of substantial value. As I say, that is simply a summary of what I think is going to come and I think we can count that within the next two or three years the end of this factor of appreciation on dated deaths so that all you can do is advise your clients to die soon. (Laughter)

On your tax planning, your factors with respect to your small estates; so many people say, my heavens this estate is only a few dollars, what are we going to do with it? Well, don't bother with a will, everything is going to pass each to the other and that is just the end; we hold it in joint tenancy and it goes from me to you. The factor they forget is, what happens to both of them or what happens to the survivor in case there is no will. Let me encourage each of you every chance you get to tell every client you have to prepare a will, not for their own benefit; whether it's husband or wife, which is of course the standard thing, but certainly the provisions should be made for whatever happens after the husband and wife go with respect to the minor children. We have seen any number of situations where the estate is larger than you think. That you find insurance proceeds from the wife all drop into the estate and you have to have a guardianship; you have to care for the guardianship; you have the bond that has to be posted and then you have the factor that the guardianship, the investments in the guardianship, are far more limited than they would be if the property was set up in trust. You also have the fact that the individuals take at age twenty-one. Sometimes this is a very dangerous thing and a very unfortunate thing to have the entire estate lumped into one group and kids at the age of twenty-one who have been brought up by guardians inherit every penny from their parents. We therefore can't encourage you too much to have all of your clients draw wills. Now, I think again this builds up your probate practice. It's something that is always there and yet so often we see that you represent corporate entities and you have forgotten that they don't have wills and they don't have buy and sell agreements and they don't have so many things that really can be not only to their advantage but can basically be to your advantage.

Again, when you have a substantial estate you have many of the same problems. With a substantial estate, it's even worse. Watch your joint tenancy.

Certainly we favor the fact of the selection of an independent executor; an independent trustee where you do have a substantial amount of money involved. Now, often with a husband-to-wife situation: well now, the wife can handle my assets; she has been my loving helpmate all these years so I will just turn everything over to her. She would be insulted to put anyone else in there. Well, I have had two recent incidents where this has happened that really have been rather tragic. One, there was a small going business that was left to the wife who didn't know anything about running the business. The net result has been that the business wound up in bankruptcy and the widow wound up without a penny. Another situation was where a couple had accumulated pennies over the years to where they had a very substantial estate. They had no heirs. The husband again left everything to the wife with no testamentary trust; no control over these assets. She fell under the influences of a spingolli, if we may say there is such a thing as a spingolli these days, who had managed just to get everything out of her. Now, the problem here is that there are no children; there are no other people that are really interested and here we have this individual impressing his will upon the surviving spouse and there is no one who can really move in and say she should have a guardianship because there is no real party in interest and as I say, this individual is doing her away. I just know the poor old boy is trying so hard and is turning and turning and turning. (Laughter)

A couple of other things: We all try to save dollars and cents. I'm sure your secretarial costs are as bad as ours, so we try to do things as simply as possible. In preparing a will, what we do is prepare the original on bond paper but never send them the bond. We prepare an original and four copies. We send the client a copy of the will. We send the bank or perhaps the executor or co-trustee, we send them a copy of the will, then if there are any changes they want to make, fine, we only have to substitute a page or two in the original will be prepared. This probably saves ten or fifteen pages of typing. Secondly, we always send a copy of the draft will to the bank or trust company and let them review it. You'll find so often that the independent advice that someone can give you is very helpful. I mean there are so many little things that you may overlook. You may have forgotten an invasion clause. So, I do believe that a review is desirable. It is also desirable from the bank or trust company's standpoint in that if they know they have this will, they will follow it up. Perhaps the party may die unknown to you, they will advise you. This may not happen as often perhaps in this community but it frequently happens—not frequently but sometimes happens in Los Angeles where you will find that the probate of an estate has begun; you didn't know you had the will; somebody else is probating a prior will and you get into a real problem.

To effect maximum tax savings, of course, we really favor the marital deduction trust and this has been tossed over time and time again. I'm sure you're very familiar with it. The basic problem is that you set up the wife's one-half of the community property and one-half of the husband's separate property in one trust. You set the other half of the husband's community property and his separate property in the other trust, the residuary trust. Now, the factors there that you must consider depend entirely upon the relationship between the husband and the wife and the business ability of the wife. Normally, in setting up your marital deduction trust, if the wife is very competent, perhaps we don't have to set up a trust so as to her one-half, you just let have have her one-half outright. Basically, we haven't found this to be too good because

you want to keep the assets of the husband and wife together, particularly if there are assets that should not be divided. Therefore, you set up your marital deduction trust and in your invasion and your income provisions, you provide for the family status as it currently exists. As to the marital deduction trust, you have got to permit the wife to have all the income. However, you can also give her greater rights on your marital deduction trust. You can provide that she has the right to withdraw all of it at any time. This may be very desirable because perhaps she wants to give gifts from her marital deduction trust. If you have some question about how free she would be with her money, permit her to invade the marital deduction trust; the principle of the marital deduction trust up to say $5,000.00 a year or any figure that is commensurate with her basic needs or that might possibly be needed in addition to your standard provisions for invasion for emergency or for maintenance and comfort.

As far as the residuary trust is concerned, you want to be more strict with your residuary trust I certainly would limit her to the income of the residuary trust. That is your whole purpose in providing that the residuary trust will pass on down to the children without being taxed in your wife's estate. However, if it is a substantial estate, you can provide your sprinkling or accumulating provisions in your residuary trust and this is where I think you can save money and I do think that lawyers often overlook this and a failure here is a failure to not personally review the wills of clients. I know that as estate increase your clients may be far more wealthy than you realize. They may have a heck of a lot more income than you know they have. Well now, if you have very mature clients and you're setting up your marital deduction trust, your wife is going to have the right to one-half to do with what she wants to basically. As to the other one-half, instead of giving her the income—and her one-half of the marital deduction trust is going to be taxed at her death; therefore, you want her to use that up; you want her to give it away; you want to put any assets in your marital deduction trust that are wasting assets or non-appreciating assets. Over here in your residuary trust, you want to limit her ability. If she has plenty of money for her marital reduction trust why then instead of giving her all the income, give the trustee the opportunity either to accumulate the income or to sprinkle the income among the wife and the children. This way you are reducing all your tax brackets all the way down the line and are making some very effective savings that I often think are overlooked. Again, when you're preparing your marital deduction trust, be sure that you give your executor authority to distribute to your marital deduction trust assets such as bonds that have no appreciation and have the appreciating assets such as an interest in the family owned business that is constantly growing up, have that in the residuary trust so that your appreciating securities which are non-taxed on the death of your wife are included in your residuary trust. I know that we have actually done that without a direction in the will but you're always afraid that someone is going to get you; either the beneficiaries are going to be unhapy about this division but we have always; if you happen to have wills that don't have that provision I would still go ahead with the—the executor has the right to determine what assets can be or the division of assets among the residuary trust and the marital trust and go ahead and take your chances; put your appreciating assets in your residuary trust. The critical thing that we have to point out is that if it is joint tenancy, you haven't got a marital deduction trust; you haven't got a residuary trust; you haven't got anything except all of the money in the surviving joint tenancy.

Now, let me touch very quickly on some of the other significant tax benefits that you should consider when you are preparing an estate plan. Insurance is something that is overlooked and often is the primary asset that individuals of small means will have in their estate. Now, as you know, under the 1954 Code, the payment of premiums test was abandoned and the incidence of ownership test took effect. The gift of insurance to a beneficiary is certainly one of the best things that an individual can do. It reduces the taxable estate. You will often find that the donor doesn't lose any income when he makes the gift. There is, however, a gift tax on the transfer, but the fact that there is a gift tax, the question, if it's a fully paid up policy or a newly issued annual premium policy, would be a replacement cost on the date of the transfer; however, if its' an annual policy that has been in force for a number of years why then the treasury department as far as the gift is concerned uses the interpolated terminal reserve value which is just a little bit greater than your cash value; cash surrender value so that you can again use your insurance; give your insurance policy away by transferring your incident of ownership to your spouse for example or you of course have your three thousand annual exclusion which is an outright gift, that would be possible to use that and of course your thirty thousand annual exemption. Again, watch your payment of premiums. Although your payment of premiums test has been abandoned, we do have a problem that if you do continue to pay the premiums you may get into a certain amount of trouble. The amount of premiums paid during the last three years, there are three tests that they do use. You can either use the test which would be the proportionate share of the proceeds purchased by the premiums paid during the three year period or it would be the amount of the premiums paid during the three year period or could possibly be the full amount of the proceeds. The moral of the story is that if you go to the trouble of transferring the incidence of ownership to the surviving spouse on your insurance policy so that it will not be included in your estate, transfer a fund or make periodic gifts to your wife or to the party to whom the policy is transferred so she can pay the premiums so that there won't be any question about the fact it's her policy and it's not included in her estate.

Of course, if your wife does predecease you, which is a very—I guess your odds; I don't know what your odds are but the odds are way on your side but if she does predecease you the interpolated turnover reserve is included in her estate which of course is of far less significant factor than the basic proceeds of the policy. There are certain non-tax considerations in transferring the incidence of ownership on an insurance policy and one of them of course is the relative stability of the marriage because once you give your wife all of your insurance, she can name anybody she wants as beneficiary of that policy so if there is some question about the marriage, maybe you better not. (Laughter)

I hit a little bit on your gifts. I do think that the factor of gifts is very important. As you all know, you get your three thousand annual exclusion and your thirty life time exemption. Certainly you should take full advantage of these gifts and I don't think that we remind our clients frequently enough to do this. I know that you tell them make your gift, and they come back five years later and they haven't made those gifts I think it's the follow-up that's so important. If you make a recommendation to your clients to make gifts, write them a letter, write them annually or call them up on the phone and make those gifts because it is really the greatest tax saving device that you have; the other one of course, was mentioned by our previous speaker. There is no greater tax

saving device than a qualified profit sharing plan. I would certainly encourage you to do as he said and have all of your clients irrespective of the size of the corporate entity put in a qualified profit sharing plan. You just can't miss on it. One factor that you may have missed in guardianships as far as gifts are concerned and I don't know your Idaho courts but I do know that the Utah courts are liberal on this and I do know that the California courts are liberal on this so perhaps we may assume that the Idaho courts are liberal on this. Where we have a guardianship and we have an incompetent and the incompetent has a lot of money and we see these tremendous estate and inheritance taxes are in view, we have gone in on a petition to the court saying if the incompetent were competent, he would make these gifts and we have been able to prevail. In fact, we have a Utah case where we had an incompetent uncle who had been incompetent for about forty years. He was unmarried and he had no brothers or sisters. He did have, however, two nephews in Los Angeles. I'm not sure whether he had ever seen them or not; in fact, I don't think he ever did see the nephews because I think he was incompetent before they were ever born but the Utah court did go along with the proposition that a very substantial portion of this incompetent's estate could be transferred to these nephews and the primary reason for it was the fact that this was a substantial estate saving and that if he were alive he probably would have given it to his nephews because they were the legitimate objects of his bounty. I'll tell you what the gifts were, they were three hundred and seventy-five thousand dollars to each of the two nephews plus a two hundred thousand dollar tax paid off. We have never been able to do that in California but perhaps you can do it up here in Idaho. One other factor, in very large estates, if you have a surviving spouse who has really no objects of her bounty and she wants to give it to charity, this has certain merit in that you have got to realize how valuable your charitable remainders are. Rather than giving it outright to charity, why not provide that she takes the income from the estate if it's a substantial estate and it will satisfy her needs during her lifetime and then give the remainder to charity. You will get a deduction of a widow say sixty years of age of sixty percent for state tax purposes, thus in a five hundred thousand dollar estate you would save about a hundred thousand dollars in taxes.

Now, touching very quickly, there are other forms of trusts that you may well want to consider when your client comes into your office particularly as I say if it's a substantial client. You may want to consider making gifts at this time into an irrevocable living trust. I think that it has many advantages in that you have to of course pay your gift tax on it; that your gift tax rates are approximately three-quarters of your estate tax rates and you're getting that portion of those funds as well as the gift tax out of the estate of the donor. Now, one thing that you have done here in Idaho that may make the use of irrevocable and revocable trusts desirable is the fact that you do have a restriction on charitable bequests to one-third as I understand it. In California, you know, we have the same restriction on bequests but our charitable bequests are only voidable and therefore we can; and only a party who would take, were it not for the charitable bequest, and contest the charitable bequest in excess of one third so what we do in California is that we leave all of other estate to charity and then provide that charity can't take what goes to Joe Jones who is not a relative, therefore all the relatives are cut out because Joe Jones wouldn't have taken it in the event that the charity isn't there so we don't have a problem in our Mortmain Statutes in California as I understand you do here in Idaho

but you can, I would believe, get around your Mortmain statute by the use of either of an irrevocable or revocable trust. There are some advantages to revocable trusts. I have never been a strong believer in them because there is no gift tax paid and the tax; all the assets in your revocable trust are of course taxed in the estate of the donor. Some people argue that you eliminate administrative expenses by having property in revocable trusts but I have seen that our attorneys down there always charge extraordinary fees to make up for the cost of the tax work so it really doesn't save anybody anything so I don't think that that is a very good argument. We have made a lot of use of reverted trusts down there and I am sure that you have up here. I think these ten year trusts are most desirable where you have an individual say who is fifty years of age; he is in a high income tax bracket; he wants to retire say at age sixty. He has got more income than he needs because he has a good job; therefore he sets aside certain assets to assist his children when they are starting out in business or starting out in married life. You pay your restrictions on your ten year trust; it must be a ten year trust unless you have one of these two year educational and charitable trusts. Your gift tax is approximately thirty percent but in turn you're saving income taxes at that highest bracket and I do think that greater use of reverted trusts could be made.

I have a couple of caveats in closing. Don't forget that when you have elderly clients to encourage them to transfer cash into certain U.S. Treasury bonds which can be redeemed at par in payment of death taxes. I just checked the market the other day and I find that you can buy three and a quarters; two; six; fifteen; seventy-eight at ninety and the field is three and quarter percent and you're only paying ninety for it so you're getting a ten percent bonus there when you cash them in at death or payment of estate tax. There may be a little bit of a problem here as to what constitutes community property, so if you want to play safe and not have the Treasury Department say only half can be included because those were purchased with community assets, have a division of community assets; have the wife buy certain bonds and have the husband buy certain bonds so you're dividing your community property so there is no question but that one segment can be turned in for death duties.

One final point, watch your assets; watch your non-Idaho assets. We have had more trouble over Canadian and Mexican assets. Let them keep their California assets that is easy but your out of state assets have been really impossible. With respect to Canada, I know that you have had experience up there. Perhaps your experience has been better than ours but we find that the problem of liquidating Canadian securities; the problem of having dominion and provincial secession duties can often tie up estate and particularly if you have non-resident beneficiaries; you have got Canadian beneficiaries, the tax returns that have to be filed, unless it's a very substantial estate, just doesn't make it worth while. It always happens; we talk about these five hundred thousand dollar estates but its the ten thousand dollar estates where you have Canadian beneficiaries and you wind up with an income of two or three hundred dollars a year on it and you're filing a state fiduciary and a federal fiduciary and you are filing a U.S. annual income of return to be paid on Form No. 1042 and you're filing a statement of income paid subject to Chapter No. 3, 1042-S, and you're filing a Form 1001-AC and by the time you have filled out all your forms the only one that loses is the lawyer so that I would certainly give consideration, one, to the disposition of small foreign assets if your client is of mature age and

secondly, of not setting them up in trust if you're going to have non-resident beneficiaries.

Finally, we have had a wonderful tax saving device in Mexico that has come into play and I must read you a note of a letter than an executor of an estate which has an asset in Mexico received the other day. I want to stress— this is directed to the executor. "I want to stress the fact that the original settlement on Mr. Green's estate was in the amount of three hundred and fifteen thousand pesos. Due to my personal efforts and by means of a gratification to certain officials the original amount was lowered to a hundred and eighty-nine thousand." (Laughter) "This reduction was fully backed by the governor himself. Later on I succeeded in obtaining a new reduction to the amount of a hundred and twenty-five thousand pesos by means of a gratification of ten thousand pesos, the same to be distributed among the persons that have been handling the whole affair. At the time that I delivered the money, ten thousand pesos, the amount was considered almost insignificant considering the service rendered." (Laughter) So in the United States, we don't have that problem with our taxing authorities, of gratification to all the officials. You may have them in Mexico. It certainly has been a delightful pleasure being here today. I can't tell you how much my wife and I are enjoying the Idaho Bar and I do hope that we will have the opportunity some day to come back and visit you again. Thank you very much. (Applause)

MR. COUGHLAN: Thank you very much for a very instructive and entertaining presentation, Mr. Farrer. We will be adjourned until nine o'clock in the morning.

(Adjourned at 4:40 o'clock p.m.)

12 July 1963
1:30 o'clock p.m.
Friday Afternoon

MR. COUGHLAN: Well, we come now to the exciting part of the day. Would Mr. Tuson come forward and make a report of the Canvassing Committee.

MR. TUSON: Mr. President, the Canvassing Committee consisting of Jack Bershell, Francis Hicks and myself received the ballots from the Bar Secretary and upon counting the votes, we find elected Commissioner from the Western District, Ed Benoit. (Applause)

MR. COUGHLAN: Thank you Bill; is the new Commissioner here?

MR. BENOIT: Thank you all very much and I want to say that if I have to follow in the footsteps of Glenn Coughlan, they are going to be big footprints to follow and I will sure do my best to do the best job possible; thank you very much. (Applause.)

MR. COUGHLAN: Thank you, Ed. We now move along to the next item on our program this morning which I have been awaiting with interest and I am sure that this will be something of real value to us all. I would like to have Vern Kidwell if he will come forward and introduce our next speaker.

MR. KIDWELL: Mr. President and Commissioners and members of the Bench Bar and guests, it is my pleasure and privilege this morning to introduce to you a speaker who is eminently well qualified on the subject that will be under discussion. Our speaker is a University of Wisconsin graduate; a practicing lawyer in Manitowac from 1930 to 1936. He was with Hardware Mutual Insurance Company from 1936 to 1940. During this period of time he was working in the last two years on standard policy provisions for insurance contracts. Since 1941 to date he has been with Employers Reinsurance Corporation. Since 1944, he has been general counsel for that company and since 1952, he has been a vice-president of the company. He has co-authored with Mr. Austin a textbook on automobile liability insurance cases. He has asked me to announce or requested we advise that in the event there are any questions at the end of the address will they please be submitted in writing and would you limit them to the type of policies that he discusses so that we don't get into garage coverage; this type of situation. He also states that he would be happy to meet with the members of the bar individually later on during the day and visit with them on any specific points that they might have in mind. He has chosen as the subject for today, the coverage for use or misuse of the family automobile and he has threatened me with reprisals if I get too flowery in the introduction so it gaves me great pleasure to introduce to you Mr. Norman E. Risjord of Kansas City. Mr. Risjord. (Applause)

MR. RISJORD: Mr. Kidwell, Mr. President and Commissioners and gentlemen of the Idaho Bar and a lady, I think my cautionary statement to Vern still permitted him to talk long enough so that I can tell this story that I think I could tell it only to a friend after the delightful evening we had together last night, I consider him such. There was an occasion when the speaker was the President of the United States, William Howard Taft, all three hundred pounds of him, and he was being introduced by the late Senator from New York, Chauncey DePew, who was a nationally known toastmaster in those days. And Chauncey DePew introduced President Taft by referring to him as that pregnant looking gentleman at my right. So when the President rose to speak, he referred to the fact that Chauncey DePew had referred to him as that pregnant looking gentleman so President Taft said, if it turns out to be a boy, we'll name him Abraham Lincoln; if it turns out to be a girl, we'll name her Martha Washington; if it turns out to be nothing but a bag of wind, we'll name it Chauncey DePew. (Laughter)

While the first few remarks I make might look otherwise, I want to point out that I'm not a textbook writer and if you think in lawbook terms, I'm a casebook writer. So much of my talk this morning will be a series of stories; that is, cases giving facts to some extent because I am a great believer in judging cases on the basis of the facts, and in deference to any of the honorable judges that may be here, I'm not very interested in what the court said, I'm interested in what they do on the basis of the set of facts they have before them. The title to these remarks somewhat selected by myself; the subject matter was not but the title was, coverage for use or misuse of the automobile. The reason for the misuse in parenthesis, is that aside from the rear-end of the preceding car in traffic going forth to the office and back home each day, my principle vision of the automobile does not encompass the proper use which escapes the headlines and the reported cases but rather encompasses the misuses which bring forth congested court calendars and the tons of judicial and other

professional literature, some of which enriches the jurisprudence, and much of which does not.

The automobile liability policy, however, selects the word use. When I speak of automobile policy provisions, I refer to the so-called standard provisions adopted in 1936 by the member companies of the National Bureau which consists of some of the larger stock companies and of the Mutual Bureau which consists of some of the larger Mutual companies. Those policies were originally adopted in 1936 and with many variations and readditions are still in use not only by the member companies but to a large extent by the independents. The coverage of the automobile policy is for liability for injury arising out of the ownership, maintenance or use of the automobile. The Omnibus Clause, so-called, grants coverage, under certain cicumstances, to persons other than the named insured; the named insured of the policyholder. It grants coverage to other persons while using and to other persons legally responsible for the use of the automobile, provided the use is with permission. The use of the automobile includes the loading and unloading thereof. So, use is possibly the most important single word in the policy. Let us consider first a few cases involving some of the more bizarre uses of the owned automobile by the named insured.

Here, by an owned automobile, I mean an automobile owned by the policy holder and covered by the policy. The term "owned automobile," as I said, is one that is owned by the policyholder and insured under the policy. One of the best known and most controversial cases involved Texas law because the policy was issued there although the accident occurred in Colorado. The named insured and three companions were in search of game in Colorado. They saw three deer slightly below and to the right of the car. The named insured who was driving stopped the car and got out of the car on the left side and got ready with his rifle, leaned against the top of the car and was trying to lean the rifle on the top of the car to shoot over the car and hit the deer who were below the car on the other side. The muzzle of the rifle as it turned out did not clear the curved top of the vehicle and the bullet tore through the top of the car and was deflected downward and inflicted fatal injuries to one of the companions who was seated on the right front seat of the vehicle. After a judgment against the named insured in a wrongful death action, there was an action against the insurer in the United States District Court for the Eastern District of Texas. The insurer appealed from an adverse judgment on the verdict, contending that the accident did not arise out of the ownership, maintenance or use of the automobile because the automobile was being used as a gun rest and not as a vehicle. The United States Court of Appeals for the Fifth Circuit affirmed, holding that in the ordinary sense of the word, the death was caused by accident arising out of the use of the automobile. Now while the result seems extreme, it is true, as stated by the court, that the policy does not limit use of the automobile to use as a vehicle, and I feel that the named insured was using the vehicle at the time of the accident and that the accident arose out of his use of the automobile. It should be borne in mind that the policy does not require that the use of the automobile be the cause or even a proximate cause of the accident. In writing up that case, we speculated as to what would have happened had the named insured retreated some ten or twenty feet from the automobile and then undertaken to shoot over it.

That speculation was answered in a way by another case in another court where the accident involved not a rifle but a shotgun. The case involved Michi-

gan law; the federal court in Michigan. The named insured under the automobile policy and three of his friends were hunting. The three friends finished hunting and seated themselves in the car awaiting the named insured's return. He returned and stood in a spot about twenty feet from the the car and proceeded to unload his shotgun. He intended to place it in the trunk of the car, all pursuant to the Michigan statute which forbade him to carry a loaded gun in a car. In the process of unloading the shotgun, he slipped on the icy ground and fell in such a way that the butt of the gun struck the ground and discharged what the court described as a shell at the car and killed one of his companions. There again, the question was whether that accident arose out of the use of the automobile. The named insured was twenty feet from it at the time the shell was fired. In a declaratory judgment action, the United States District Court for the Eastern District of Michigan declared that the named insured had coverage under his policy, holding that, since it would appear that the named insured was fulfilling his statutory obligation by ejecting the shells preparatory to placing the weapon in the trunk, the ejection of the shell was an integral part of the loading process and there was a sufficient causal relationship between the loading of the automobile and the accident. While as I said I rather agreed with the decision in the rifle case that there was coverage, I feel that there was no coverage in this case since it appears to me that in this case, the loading of the automobile had not yet commenced when the named insured was twenty feet from it and in the process; the preliminary process of ejecting the shells from the shotgun

In a case involving Oklahoma law, a girl was riding as a guest in the automobile of the named insured, operated by him, in a sparsely populated area of Oklahoma City. The named insured attempted to put his arm around her and made improper proposals to her. She protested, requested that the automobile be stopped, and urged that she be allowed to leave. He increased the speed of the car, continued his conduct, and said that he would let her out when he was ready. Fearful that she would be attacked, she informed him that she intended to jump from the automobile and started to open the door. He grabbed her and drew her back. She again tried to leave the automobile. As she opened the door and was attempting to leave the automobile, he speeded up the car, swerved it to the left in such a way that her foot slipped and she fell to the pavement and suffered serious injury. After the girl brought suit against the named insured, the insurer brought action for a declaratory judgment against the named insured and the girl. The United States Court of Appeals for the Tenth Circuit held among other things that the increase of speed and the swerving of the automobile constituted negligence in the operation and use of the automobile which was one of the contributing causes of the accident. The Court of Appeals considered whether the injuries were caused by accident as required by the policy and, while I disagree with some of the court's argument pertaining to the subject of, "caused by accident," I find no fault with the result. The named insured may have intended to attack the girl, but he probably did not intend to injure her otherwise. Modesty disclaiming any special knowledge on such matters, I would think that he probably increased his speed and swerved the car so as to frighten her into remaining in the car, rather than to throw her out. Those probabilities would seem to sustain the findings of the District Court that the caused by accident test had been met and it seems clear that the injuries arose from the use of the automobile.

In an Ohio case a practicing physician, who lived on a farm and sold excess

milk not used for family purposes, owned a Studebaker and a Jeep, insured unfortunately by a different company. That is always unfortunate from the policyholder's standpoint. The physician, about to try to start the Jeep by pulling it with the Studebaker, backed or permitted his Studebaker which he was driving to slip backwards, injuring his farm employee who was squeezed between the two vehicles while waiting to attach a tow line to the Studebaker. On appeal from a judgment adverse to the two insurers in a declaratory judgment proceeding brought by the physician against his two insurers and the employee, the Jeep insurer claimed that the accident did not arise out of the ownership, maintenance or use of the stationary Jeep. The Court of Appeals affirmed the judgment against the insurers, holding that there was a clear proximate connection between the ownership and maintenance of the Jeep and the injury to the farm employee. This case raises the rather unfortunate question of whether the use must be by the insured claiming coverage? Clearly, the named insured physician who was claiming coverage was using the Studebaker. Perhaps the employee was using the Jeep, but Query, was the named insured physician, while in the Studebaker and either backing it or permitting it to move backwards, was he using the stationary Jeep? His coverage under the Jeep policy was limited to his liability for injury to the employee arising out of the use of the Jeep. I am inclined to feel that the injury did not arise out of the use by the named insured physician of the Jeep and that accordingly there was no coverage for him under the policy covering the Jeep

An early Mississippi case produced a rather extreme result. A wholesale distributor held a general liability policy with one insurer and an automobile policy which covered his delivery trucks with another insurer. One of the trucks went into a roadside ditch. It was necessary to use several large poles in extricating the truck. When this was done, the operator of the truck drove it away, leaving the poles in the public road. That night, a traveler in a passenger automobile struck one or more of the poles with resulting injuries to him. After the injured recovered a judgment against the named insured distributor, the latter brought action against its two insurers. The Supreme Court of Mississippi held that the automobile policy does not require that the injury be the proximate result of a negligent act which happened in the actual use of the truck; that the use of the poles was an event which arose out of and was necessary to the use of the truck; and that the driving away and leaving the poles in the road had such direct and substantial relation or connection in point of actual fact, as respects the use and operation of the truck, that the liability for the injury was covered under the automobile policy. I feel that the injury in this case did not arise out of the use of the truck and accordingly that the coverage was under the general liability policy rather than the automobile policy.

The most extreme case I know of involving the use of the automobile was decided in New Hampshire. The named insured owned two trucks, one insured and one not. The uninsured truck was being used to transport two horses belonging to the named insured and was being operated by a new employee of the named insured. The uninsured truck was following the insured truck operated by the named insured and was about four-tenths of a mile behind, when the uninsured truck collided with a third truck, killing the operator of the third truck. After a wrongful death action was brought against the named insured, the insurer brought a declaratory judgment action against the named insured and the administrator of the estate of the deceased driver of the third truck. The administrator pleaded three theories of liability, one of which was that

the named insured in the lead truck personally controlled the operation and speed of the uninsured truck, by means of hand signals, in such a way as to cause the uninsured truck to operate at an excessive and unreasonable speed. The jury so found. The Trial Court declared that the insurer was required to defend the named insured in the wrongful death action. The insurer's exceptions were overruled, the Supreme Court of New Hampshire holding that the circumstance that the insured vehicle was not in collision with the third truck and that at the most it was merely a platform from which the named signaled to the operator of the uninsured truck, did not conclusively establish that the injury did not arise out of the use of the insured vehicle and that, if the speed of the uninsured vehicle was unreasonable and imprudent, and its operator's lookout inadequate as the result of the control exercised by the named insured, the conclusion that the injury originated from or arose out of the use of the insured truck four-tenths of a mile away logically followed. Since the insured truck was four-tenths of a mile ahead of the uninsured truck at the time of the collision, the insurer had argued that the contention that the fatal injuries arose out of the use of the insured truck was not only ingenious, but fantastic, with which statement I thoroughly agree. (Laughter)

Now, I have another case that I read the night before I came out here, the night before last. I don't have it in the paper but it's somewhat interesting, in New Mexico. The insured there owned an ice cream truck to which he had attached a music gadget, presumably for the purpose of enticing children to come and buy ice cream. He succeeded in enticing an infant, age unstated, in such a way that the infant ran across the road and into the path of another car and was struck and injured. She brought an action against the ice cream dealer; the owner of the ice cream truck and the music gadget. The insured disappeared and the question of coverage came up from the standpoint of failure to cooperate and the question of default judgment and whether the insurance company had waived the breach of cooperation by virtue of this activity. I'm not going into that phase of it but that question was decided adverse to the insurance company in the Supreme Court in New Mexico. The case then went back on trial of the merits and upon the retrial there was a judgment in favor of the insurer which was affirmed by the Supreme Court on the ground that the allegations of the complaint in the action brought by the infant against the ice cream vendor established a cause of action on the basis of an attractiveness nuisance and the court in the second time that it went to the Supreme Court held that that established the problem of coverage; in other words, coverage dependent upon the allegations in the original complaint and that enticing the child out into the street by the attractive nuisance which constituted the music gadget attached to the truck did not involve the ownership, maintenance or use of the automobile so that there was no coverage under the policy.

Now, we have been talking about use by the named insured. We will proceed to use by an omnibus insured. That is one other than the named insured who claims coverage under omnibus clause of the automobile policy. The first category is a passenger. A recent case involved the question of use by a passenger of an automobile owned by his employer, the custody of which was assigned to the employee. While the employer's automobile was driven by a woman with the employee riding as a passenger, the employer's automobile struck another car from the rear and knocked it into the lane of oncoming traffic where it was struck broadside by an oncoming truck. Four persons in the other car were injured, three of them fatally. In an action to recover for the injury and deaths

brought against the employer's insurer there was evidence that the employee-passenger sat next to the driver in the car and pestered her; that he grabbed the steering wheel just before the accident and thus prevented the driver from turning to the right so as to miss the vehicle ahead; and that the employee-passenger knocked the driver's foot off the brake so that she could not stop before striking the car ahead. A United States District Court for the Western District of Louisiana entered a judgment against the insurer, holding that since the jury had found that the employee-passenger was using the automobile at the time of the accident, he was an additional insured under the policy. I think the result is correct since a passenger is certainly using the automobile and here the accident apparently results from the passenger's use. I will later discuss one or two cases of use by the passenger in relation to a non-owned automobile, that is an automobile not owned by the policyholder.

Another passenger case involved a taxicab. A woman brought an action against her husband and under a city ordinance against the insurer of the taxicab alleging the insurance and that while she was alighting from the taxicab, after having ridden in it with her husband, her husband negligently closed the door on her hand, causing injuries. The insurer appealed from an order overruling its demurrer to the complaint. The Supreme Court of South Carolina affirmed, holding that, under the facts alleged, the husband was using the automobile and the accident arose out of the negligent unloading of the automobile. This was a three to two decision. While there was some confusion in the two opinions as to whether permission was sufficiently alleged, I agree that permission should have been alleged, although there would seem to be little doubt that the closing of the door of the taxicab by the husband was an act within the implied permission of the taxicab driver. If permission was appropriately alleged, there is no question in my mind that the majority opinion was correct since it appears that the husband was using the automobile and therefore was an omnibus insured under the policy covering the taxicab.

We move from passenger to stranger. Since the omnibus clause of the basic automobile liability policy extends coverage generally to any person using, and any person or organization legally responsible for the use of the owned automobile, some of the most interesting cases involve the use, usually loading and unloading of the automobile by a stranger to it; that is, one neither the owner nor the operator nor a member of the crew. The coverage questions are manifold. The stranger is usually an employee of a consignor or consignee of goods shipped in the truck. That consignor or consignee is often insured under a general liability or a non-ownership automobile policy. If the accident involved the use, loading, or unloading of an automobile, the non-ownership policy will cover its named insured but not his employee and the general liability policy will cover its named insured if the accident occurs on premises owned, rented, or controlled by him, but will not cover his employee. If the consignor or consignee, as the case may be, is held liable under respondent superior for an injury caused by his employee in using, loading, or unloading the automobile, he will have a right-over against the negligent employee who, in turn, is insured only under the automobile policy covering the automobile or the truck. If the injured happens to be the truck driver or other employee of the owner of the automobile, the automobile insurer may contend that there is no coverage under the automobile policy for this stranger, the employee of the consignor or cosignee because the injured is an employee of the named insured so that the Employee Exclusion of the automobile policy will apply. The Employee Exclusion ex-

cludes coverage for injury to an employee of the insured and the automobile insurer may contend that the term the insured always includes the named insured so as to preclude coverage for any insured with respect to the injuries to an employee of the named insured. In most states it would be appropriate to cite cases and argue all of these points.

In Idaho, except possibly for the Employee Exclusion question, that is unnecessary since you have one case which answers all of the questions. Unfortunately, perhaps, it is a federal case, not binding on the Idaho courts, but is comprehensive, correct, and I hope that it will be persuasive when the questions do come before your Supreme Court. The case to which I refer is Travelers Insurance Company v. General Casualty Company of America. The Travelers issued its comprehensive automobile liability policy, including non-ownership coverage, to a contractor. The General issued its automobile liability policy to the owner of a transit-mix concrete truck. The concrete truck was dispatched to deliver and unload concrete at a construction site of the contractor. An employee of the contractor was helping the truck driver unload the concrete truck when the truck driver was injured. The truck driver brought action in an Idaho court against the contractor and his employee. In a declaratory judgment action between the insurers, the United States District Court for the District of Idaho, Eastern Division, declared that the automobile insurer of the truck, and not the non-ownership insurer of the contractor, was obliged to defend the damage action and pay any judgment which might result, holding that if the contractor was liable for the alleged negligent act of his employee, he could recoup his losses from the negligent employee. That if the employer might recoup his losses, then his insurer may subrogate and collect from the negligent employee or the enployee's insurer. That the insurer ultimately liable should be obligated to defend in the first instance. That the non-ownership policy covered the named insured contractor but not his employee. That since the employee was using the truck, the truck policy covered the employee and since the contractor was a person legally responsible for the use of the truck by his employee, the truck policy also covered the contractor. And finally, that since any loss must ultimately fall on the truck insurer as the sole insurer of the contractor's employee, there was no "other insurance" available and the truck insurer was obligated to defend both the contractor and his employee. While the court mentioned that the contractor's coverage under his non-ownership policy was "excess" over his coverage under the truck policy, and that is true, the same result should have been reached had the contractor's policy been a general liability policy which would not have been excess. This for the reason that the ultimate liability was that of the contractor's employee, the negligent actor, and he was insured by the truck policy only.

That was the result in the leading companion New York cases on the subject, rather famously known as Wagman and Bond Stores which has been much discussed and cussed over the years. Another point to be noted in your Travelers v. General case is that the issues were reached while by-passing right-over proceedings between the contractor and his employees such as was used in Wagman and Bond Stores and may be vital in New York. Apparently in Idaho, at least in the federal court's view, it is not necessary for the contractor to sue or make a party the negligent employee in order to permit the insurer to subrogate against the automobile insurer as the only insurer of that employee. A third point to be noted in discussing your case is that, while the injured truck driver was an employee of the named insured in the truck policy, the District Court

did not mention the Employee Exclusion, from which omission I assume that the question was not raised. If that is so, hats off to the General Casualty Company of America, the truck insurer. Since the automobile policy excludes injury to an employee of the insured, the question, if raised, would have been, who is the insured? Or, granted that any particular insured is denied coverage for injury to his employee, is coverage denied to any particular insured where the injury is to an employee, not of that insured but of some other insured? I want to discuss that just a little bit more since the question was not raised in the case in Idaho as far as I can tell and since the question is open in Idaho, I believe. In the early days of the standard automobile policy, 1936 to 1940, that question bothered the insurance industry. The question was precisely raised for the first time at a meeting in Chicago in 1940 of the Joint Forms Committee which had prepared and promulgated the standard provisions for compulsory use by the member companies of the National Bureau of Casualty and Surety Companies and the American Mutual Insurance Alliance, and which were voluntarily used by most of the independent companies.

After some discussion, one of the two members of the original drafting sub-committee—there was one member representing stock companies and one representing the mutual companies, and one of the two members of this original drafting sub-committee stated authoritatively that the word insured, as used in the Employee Exclusion and elsewhere in the exclusions, conditions and other limiting provisions of the policy, meant and meant only the particular person claiming coverage, or the particular person, coverage for whom was at issue, so that, so far as the Employee Exclusion was concerned, it applied to deny coverage for any insured only with respect to injury to his employees.

This interpretation was repeated for the members of the National Bureau by successive general counsels of the Bureau, the late Elmer W. Sawyer, who by the way was the other of the two members of the original drafting sub-committee, and James B. Donovan, by bulletins respectively dated February 26, 1941 and June 10, 1954, and was re-emphasized by officials of two Bureau Companies, Dykes in 1958 and Gowan in 1963, and by other writers, some learned and some not. The interpretation which was always intended was expressed and made a part of the standard provisions program in the 1955 editions of the various standard provisions under the title, "Severability of Interests." Now this fifteen-year-late enlightenment was expressed in these terms, the term, the insured, is used severally and not collectively. (Laughter)

Unless you knew what the problem was I don't know how anybody would understand what that was. And it was improved and clarified in the 1956 family automobile and later standard provisions: Quote, the insurance applied separately to each insured against whom claim was made or suit is brought, end of quote. That is somewhat more explicit. There are at least fourteen variations of the issue where one insured claims coverage for liability for injury to an employee of another insured, the most common being the situation where an omnibus insured, often a stranger to the truck crew, claims coverage under the automobile policy for injury to an employee, often the truck driver, of the named insured, usually the truck owner. On that one issue, the jurisdictions properly confining the Employee Exclusion to situations where the injured is an employee of the particular insured claiming coverage are, Arkansas, California, Louisiana, Minnesota, New Jersey, New York, Ohio; although, there is a federal case in Ohio contra; Oregon, Pennsylvania and Wisconsin. And the cases in the

following jurisdictions have misapplied the exclusion to deny coverage in situations where, as previously indicated, the companies intend coverage. Those jurisdictions are Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Mississippi, Missouri, South Dakota, Tennessee, Texas and Washington. So, there are nine jurisdictions with the right answer, thirteen with the wrong answer, one, Ohio, where the answer is equivocal, and twenty-seven including Idaho so far as I know uncommitted. I am thoroughly amazed that the courts, usually disposed to hold against the insurer on coverage questions, wherever possible, are tending more and more to disregard the stated underwriting intent of the companies and to hold that that there is no coverage under situations where the companies expect to grant coverage. I hope that your Travelers against General case points Idaho in the direction of the coverage intended by the companies.

Let's turn now for a few moments to some bizarre uses of the non-owned automobile. That is an automobile not owned by the named insured. The standard provisions contemplate coverage for the named insured and spouse and in the family, special and package policies designed for private passenger automobiles, coverage for relatives as defined for the ownership, maintenance or use of certain automobiles not owned by the named insured, spouse or relative, and coverage for persons or organizations legally responsible for such use. It will be noted that the coverage is for maintenance as well as use but the non-owned automobile coverage excludes a non-owned automobile while used in the automobile business, that means the garage business, by the insured, and the automobile business, as I say, is defined as business or occupation of selling, repairing, servicing, storing or parking automobiles. The fact that the coverage includes maintenance as well as use, while the automobile business exclusion pertains only to use has produced three cases in each of which the court held that coverage existed where coverage was not intended. In each of the three the named insured under his own policy on his own car was a mechanic who either regularly or spasmodically repaired automobiles. In one case the mechanic was test-driving the car of a customer upon which he had installed a rear end when an accident occurred. In the second case the mechanic was making adjustments under the dashboard of a new truck about to be delivered to a customer when he turned the ignition key and pressed the starter button not knowing the truck was in gear and the truck struck a fellow workman. In the third case, the mechanic was adjusting the carburetor of the customer's automobile when he raced the engine, the car leaped forward and struck the customer. In each case the court held that the mechanic was maintaining the automobile so as to invoke the coverage but not using it so as to invoke the use in the automobile business exclusion.

In the test driving case, a New Jersey Superior Court held that the automobile being test-driven was not being used in the automobile business so that there was coverage for the mechanic under his own family policy for the use of the non-owned automobile. In the dashboard case, a Louisiana Court of Appeals held that the mechanic was maintaining the new truck but was not using it, so that the use in the automobile business exclusion did not apply and the mechanic had coverage under his own family policy for the maintenance of the non-owned automobile. In the carburetor adjustment case, an Illinois Appellate Court also held that the mechanic was maintaining the customer's car but was not using it, so that he had coverage under his own family policy for the maintenance of the non-owned automobile. Perhaps we can close the discussion

of those three cases by noting that the 1963 editions of the family and special package policies contain an automobile business exclusion which specifically refers to maintenance as well as use so as to avoid the results reached in these three cases.

The use of the non-owned automobile coverage itself has produced two very interesting cases, one incorrectly holding that there was coverage and the other incorrectly holding that there was no coverage. The first case I mentioned arose in Colorado. A passenger in the automobile involved in the accident which we will call the accident car was insured. This passenger was insured in a policy issued to him covering his liability arising out of the use of a non-owned automobile and it also covered as insured any person or organization legally responsible for such use. The driver of the accident car had no policy of his own. The accident car was covered by a policy running to its owner and, of course, including an omnibus clause affording coverage to anyone using it with permission. The prospective "driver" and "passenger" spent the evening at the home of the owner of the accident car. The person I am calling passenger obtained permission to use the accident car to drive the person I am calling driver home, but they left the owner's house with the person I call driver operating the car.

There was a collision, with injuries to persons in another car. The injured sued the driver, the passenger and the owner of the accident car. The owner was dismissed on motion by the injured. Apparently for lack of proof that the driver was the agent of the passenger, the court dismissed the action as against the passenger and entered judgment against the driver alone. After collecting the policy limit from the owner's insurer, the judgment creditors sued the passenger's insurer, claiming that the passenger was using the—as to him—non-owned automobile. The District Court for the City and County of Denver, the same judge who had dismissed the damage suit as against the passenger on the ground that the driver was not his agent, entered judgment against the passenger's insurer, holding that, since the passenger was using the—as to him—non-owned automobile, the driver was a person legally responsible for the use of the accident car and therefore covered under the passenger driver of the car coverage. During appeal by the passenger's insurer, the cases were settld, so that unfortunately they never reached the Supreme Court of Colorado to which that District Judge has been elevated in the meantime. (Laughter)

Under the policy, the legal obligation of the insured, to be covered, must arise out of the use of the automobile. While the passenger was using and was therefore covered, he was held not liable. The driver would have been covered to the extent that he was legally responsible for the use of the automobile, by the passenger. The passenger was undoubtedly using the automobile, but how could the driver have been legally responsible for the use by the passenger when the same court had held that even the passenger was not liable for his own use? How can one be vicariously liable for the use by another who was not at fault and is not liable for his own use? The driver's legal responsibility arose from the driver's use of the automobile and, as to that use, he was not insured under the passenger's policy. Suppose there had been five passengers instead of one each with a family policy? On this same theory the driver who had no policy of his own would have been covered first under the owner's policy probably and then he would have been covered on the family policy of each of the five passengers with whatever multiple limits that might have added up to.

The second case I mentioned, as incorrectly holding that there was no cover-

age for the use of a non-owned automobile involved California law. An insurer issued its automobile liability policy providing coverage for the use by the insured of any non-owned automobile. The male named insured in that policy was the passenger in a girl's automobile, driven by the girl, when it collided with another automobile. Persons in the other automobile brought suit against the passenger, who was insured under his policy for the use of a non-owned automobile, alleging that he negligently engaged in conduct which distracted the girl driver's attention from her driving chores. In a declaratory judgment action brought by the insurer, the United States District Court for the Northern District of California entered a judgment declaring that the insurer was not obligated to defend its named insured passenger nor to pay any judgment against him, holding that there was no evidence that the named insured passenger exercised any authority or control over the girl driver or the manner in which she drove her automobile; that the allegations that the named insured passenger negligently engaged in conduct which distracted the girl's attention from her driving chores was "an issue irrelevant to the matter now before the court" and that the word use, pertaining to use by the insured of a non-owned automobile, could not reasonably be construed to cover the named insured passenger's situation in the girl's automobile since "to do so would, in effect, extend its coverage to any situation wherein the insured is the occupant of an automobile." "Clearly, this is neither the intended nor apparent meaning of the policy."

This opinion of the District Court was wrong in every respect. The policy both intentionally and obviously covers the insured where, as alleged in the damage cases here, he engaged in conduct which caused the driver to lose control of the car. I fail to understand the court's statement that the allegations in the actions brought against the passenger in the State Court were "irrelevant to the matter now before" the District Court, since they were practically the only thing that was irrelevant in determining the obligation of the insurer to defend the passenger, whatever the actual facts may have been, and if the result in the State Court determined that the passenger was liable on some such basis, he obviously had coverage under his own policy. If we assume that the passenger might likewise claim coverage under a policy which might have been issued to the girl owner of the car, I wonder how this court would answer the coverage question for the passenger under the girl's policy. Consistent with the result here, the court would have to say that there was no coverage under her policy either. While the court did not mention it, there might be one appropriate coverage question involved here. It may be that the passenger's automobile liability policy was a recent edition, 1958 or later, of the family policy, so that as a condition to coverage for his use of any non-owned automobile, it required that his use be with the permission of the owner. In that case, there might be a question whether the conduct, not described by the court, in which the passenger engaged and which distracted the girl's attention from her driving chores was with or without her permission. (Laughter)

Thank you very much. I have very much enjoyed coming out to Idaho. I believe this is the seventh State Bar Association at which I have appeared on the program and I am sure that from what has happened so far and the delightful reception I have received that I am going to enjoy this trip as much or if not more than any of the others. Thank you very much. (Applause)

MR. COUGHLAN: Thank you Mr. Risjord for a very instructive and entertaining presentation.

MR. COUGHLAN: I would like to recognize particularly this morning; I hope they are here. Mr. Borgeman and Mr. Leishman of the Bank of Idaho, are either of these gentlemen here? Mr. Borgeman. (Applause) The Bank of Idaho is complimenting our social hour this evening at six-thirty and we all certainly appreciate this gesture on their part.

We indeed are honored and pleased to have the next speaker with us and I can assure you that this is going to be one of the outstanding and high points of the convention. At this time, I would like to call upon his host, Mr. Ray McNichols, to come forward and give the introduction; Ray.

MR. McNICHOLS: Mr. President; Members of the Commission; ladies and gentlemen: as Glenn has indicated, I think you are in for a treat this morning. We have with us James R. Browning, presently a Judge of the Circuit Court of the Ninth Circuit. He is a student of the Supreme Court and of the personnel of the Supreme Court, he having been for several years a Clerk of the United States Supreme Court. Jim Browning is a neighbor of mine; a native neighbor of ours. He was born in Belt, Montana. I am sure some of you never until this time realized what a famous place Belt, Montana was but its a community that has produced our speaker. He is a charming man. He is well noted for the topic in which he is going to discuss today. He spent seven years in the Anti-Trust Division in the United States Department of Justice and then was for three years the Clerk of the United States Supreme Court until two years ago when he was appointed to the United States Court of Appeals for the Ninth District. Jim is a fascinating man to know and you should also know the entire family and Marie Rose Browning is here, a wonderful girl and I think you all should spot her. Marie Rose, would you stand up? (Applause) It does give me a great deal of pleasure to introduce to you the Honorable James R. Browning. (Applause)

THE HONORABLE JAMES R. BROWNING: Thank you Ray. I hope you will be interested in a brief description of the experience that I had as Clerk of the Supreme Court of the United States because it is after all an institution that affects all of our lives deeply and in many ways every day. I intend to try to tell you about my impressions and then if any of you have any questions that are suggested by my remarks, I hope that you will ask them. Don't worry about it, if there aren't any, that will be fine too. One other thing on that point and that is that they don't have to be friendly questions.

You will not be surprised, I am sure, when I tell you that the Supreme Court of the United States is just as impressive close up as it is at a distance. Those of you who have been to Washington, D C., know that the building itself is impressive. It's a magnificent modern Greek temple really erected in honor of the federal judiciary, and the court that sits in that building is the highest judiciary tribunal of the nation that leads the free world. The court that sits in that building after all decides every day the most vital and difficult trials that face our society, some of them at least. And yet, it isn't any of these things that I think are truly the heart of the impressiveness of this institution because after all the City of Washington, D. C. is full of magnificent buildings. Washington, D. C. is the city of power; it's a city in which vital decisions are commonplace and the Supreme Court of the United States has always been a center of controversy. Its history really is a history of one hundred and seventy years of crises, one crisis after another. It isn't these things; it's something else that impresses you and that something else, I think, is just the simple fact

of the day-to-day function of this institution. The tremendous workload that the court handles and the way it handles it. The atmosphere in which the court functions and the attitude of mind with which nine men can sit on that bench and approach the heavy responsibilities that are there. In the three years that I was Clerk of the Supreme Court, in each of them, the Court disposed of about two thousand cases and I understand that this last year it went to almost twenty-five hundred. Now it's true that about half of these cases are prisoner applications. After a man or woman has been in a federal or state penitentiary for an average of about six months, a strong sense of injustice sets in (Laughter) and prisoners begin to file applications in the various state and federal courts and each year the Supreme Court of the United States gets about a thousand of those but the other thousand to fifteen hundred cases are good solid appellate cases. In disposing of those cases, the Court actually decides about four hundred of them on the merits and in doing that they write about two to three thousand closely printed pages of opinion every year.

Now obviously the Court couldn't hear full oral arguments in two thousand to twenty-five hundred cases. It couldn't hear full oral arguments on even the four hundred that the Court decides on the merits so every one of the cases must first go through a preliminary screening process in which the parties; counsel for the parties submit to the Court preliminary papers that are addressed not to the question of whether the decision below was right or wrong but rather at this stage to the question of whether that particular case is of sufficient significance to the nation at large that the Court ought to select it out as one upon which it will hear full oral argument. There are about forty sets of these preliminary papers accumulate each week and are distributed to each of the justices, and I use those adjectives with care. I say each of the justices because the Constitution of the United States says that there shall be one Supreme Court and from the beginning, from 1790, the Court has taken the position that meant that it was not to delegate its judicial responsibilities; it was not to function through committees or through panels. Every one of the justices passes upon every matter that comes before the Court and that includes every one of those thousand prisoner applications. And I say each week because although the Court takes a summer recess from about the end of June or first part of July until the first of October, these accumulating preliminary papers still are circulated to the justices wherever they may be each week of the year and in the case of the justices, particularly Mr. Justice Douglas, that means that some of them have to go a good long way before they reach their target. (Laughter)

The prisoner applications have to be dealt with just a little bit different because normally there is only one copy of those applications. In the ordinary regular appellate case, the Court gets forty printed copies but prisoner applications usually come in in one copy not infrequently hand written. For this reason, the Chief Justice is assigned an extra law clerk. He has three. The other justices of the Court have two except again, Mr. Justice Douglas, who has one, because he would rather have two secretaries. (Laughter) That is the way that works out. The Chief Justice has the extra law clerk because of the extra responsibility of going through this one thousand prisoner applications; checking the opinion of the Court below if there was one; checking the record; calling for a response from the state or the Solicitor General as the case may be and preparing a memorandum in which they set out for the benefit of the Court the points that this prisoner is trying to make. Then that memorandum is prepared in nine copies and is sent to each of the justices of the

Court. In addition, in every capital case, the original papers circulate to each of the justices of the Court. After this circulation of preliminary papers, the Court meets in conference on Friday during term time and decides by a vote of four which of the cases will be selected out for oral argument. You don't need five votes for a majority; on the other hand, three votes won't do you a bit of good.

My last year in private practice in Washington, D. C., I was associated with a former Solicitor General of the United States and the Solicitor General has as his principal function representing the United States in the Supreme Court and he had been there about five or six years and so when he left and went into private practice and I went with him we had a good deal of Supreme Court work. In the last year that I was in private practice in Washington before I became Clerk of the Court, I prepared and filed three petitions for certiorari, petitions for review. Now the deliberations and hopes of the conference are secret but I am absolutely confident that in every one of those cases I got three votes. (Laughter). On the Monday following the Friday that the conference has been held, the Court announces the results. They will have selected out about one in seven of the regular appellate cases and about one in fifty of the prisoner applications for full oral arguments. And at this point, they will appoint counsel to represent the prisoners in the cases that have been selected out for the full treatment. And as a result of the screening process they pull out about a hundred and fifty to a hundred and seventy-five cases each year to set down for full oral arguments. Then the Clerk prints the record and then the lawyers brief the case. Now fellow members of the bar I think, with candor, you will all have to admit that the one thing that all briefs have in common is that none of them are. (Laughter)

In the Supreme Court of the United States they not uncommonly exceed a hundred pages in length. I have seen them run two or three hundred pages. When the briefing is done, the briefs come in and the case is calendared for oral argument. That proceeds in this fashion, the Court comes in on the first Monday in October and in accordance with the statute, it meets and has a formal session and recesses and for the rest of that week it goes over the accumulation of preliminary papers that have built up during the summer, about four hundred of them by that time usually. They they come back the following Monday and they have two weeks of oral argument and then they recess for two weeks and then they sit again for two weeks and then recess for two weeks and they proceed through the term in that fashion. In the week in which they are having oral argument, they hear argument on Monday, Tuesday, Wednesday and Thursday. Friday they have their conference that I mentioned to you before. On an argument day they come in at ten o'clock and they hear argument until twelve, take a half an hour luncheon break and are back at twelve-thirty and hear argument until two-thirty.

Now, let's assume that you lost a case, a grave injustice was done and you petitioned the Court for review; you got four votes; a certiorari was granted and your case was set down for oral argument. Now, this is probably the first case you have had in the Supreme Court of the United States and it may well be the last. (Laughter) Not because of the quality of your performance, of course, but because there are just that few cases. As I have suggested, it will run about three hundred a year and there are about two hundred and fifty thousand lawyers in the United States and as I calculate it, that means that you have one

chance in eight hundred and thirty-three and a third to have a case in any given year or if you practice eight hundred and thirty-three and a third years you will have one. Conscious of that fact then you prepare yourself with the greatest of care. You worked out your argument so that the points are to be presented in the most effective possible way. You have selected each paragraph; each sentence in each paragraph; each word in each sentence for its maximum effectiveness and you have practiced it and you are ready to go. And when you are in the Supreme Court chamber and the Chief Justice calls your case, you rise to the podium not unlike this one and you deliver I would say on the average about two of those pearls of craftsmanship and sentences and one of the Justices, usually Mr. Justice Frankfurter, before he retired, then leans over the bench and asks you the first question. Now from that point on, you are beautifully prepared to argue and it will be delivered to the Court by the Socratic method. (Laughter) That is to say, you fit it in as best you can with the questions that the Court puts to you and these questions run up and down the bench in rapid fire. They have gone over their briefs and they are thoroughly prepared. This can be a little disconcerting to a lawyer who is not used to being grilled in that fashion but after all that is the way it should be because as I have indicated to you, you are not there obviously, of course, to display your oratorical skill, as impressive as that may be. You are not even there primarily to protect the interests of your client as just as his cause may be. You are there primarily to help the Court to find the best possible solution to a difficult problem that caused them to grant a review in your particular case, and you can do that best by answering the questions that are in their minds and they see to it that you do precisely that. Well, on this podium before which you stand, there are two lights, an amber light and a red light. Now, if yours is an ordinary case, you have been given an hour to a side. If it is a case that involves a relatively uncomplicated issue of the law, a small sirloin of the law; as one of the Justices said recently, easily chewed and digested, then they cut you down to thirty minutes. The amber light goes on when you have five minutes left, when your time has expired, the red light flashes on. They used to say that Chief Justice Hughes, Charles Evans Hughes, when that red light would go on, would stop counsellor in the middle of the word a. (Laughter) The present Chief Justice is an amiable westerner and if the question has been very severe and time consuming, he will give you a little more time and allow you to finish your sentence. (Laughter)

After all he can't do much more than that, they have to push on because there is another case behind your case and another case behind that and the work of this Court simply must be done. Well, the Court in this fashion moves through the argument week on Monday, Tuesday, Wednesday and Thursday and then they come to that conference day again. Now on the Friday conference they have, in addition to forty sets of preliminary papers, on about an average of twelve cases that they have heard on the merits that have to be decided. They discuss those cases; they determine preliminarily how they are going to come out and then they assign the writing of the opinion. The opinion writer writes his opinion and having it written he sends it downstairs in the Supreme Court building to a print shop which is maintained within the building, print presses and all, for purposes of security so that there can be no possible leak. The draft is put out in print form to all of the Justices of the Court. They go over it and then the Court enters into a period that I thing should be accurately characterized as a combination. It's a combination of deliberation and negotiation

in the hallway when they meet each other; over the telephone; over the luncheon table; perhaps by written memorandum. The members of the Court talk over this proposed opinion from the point of view of how the case should finally be decided and also how the results should be expressed and by this process they finally reach a decision and an opinion upon which a majority of the Court can agree. Now of course in a process like that votes may change. A Justice to whom the writing of a majority opinion has been assigned may find to his dismay that he has lost votes. He is in a position of dissent, usually at length because he had it all prepared anyway. (Laughter) By the same token, however, a Justice who was in dissent will find that he has been so forceful and so persuasive that he has picked up enough for a majority and he is announcing the opinion of the Court. It happens every term.

Well, in this process also, as you would anticipate the language of an opinion can change. I had a personal experience in that connection that I think dramatically illustrates what happens. I was appointed by the Court when I was in private practice to represent an indigent defendant. His name was Mr. Bell. The case is United States versus Bell. It involved the construction of the Mann Act. I probably need not remind you that the Mann Act is the federal statute which makes it a felony to transport a female in inter-state commerce for immoral purposes. It appears that Mr. Bell had been engaged in driving two young ladies in the evening on a tour of the better southern hotels. They would go to a town, check into the best hotel in town, take care of the local business and move on to the next town and repeat the process there and then drive on to the next and so on through the south. When they were crossing, I think it was between Florida and Georgia, the F.B.I., always on the alert, seized them and in due course Mr. Bell found himself indicted on two offenses under the Mann Act, one for each of the young ladies. And he was sentenced to five years on each count, the sentences to run consecutively and not concurrently. Believe me a strong sense of injustice set in very shortly. Mr. Bell began to file his petitions in the various courts and finally the Supreme Court granted a review. Now aside from the obvious importance of the matter of substance of the question that was involved in this litigation, the Court granted a review because they figured that two of the courts of appeal of the Tenth Circuit had decided the same question differently. One court of appeal held that the unit of the offense under the Mann Act was the act of transportation; one act of transportation, one offense. But another circuit had held, no, the unit of the offense under the Mann Act is the young lady; two young ladies, two offenses. (Laughter)

This unseemly conflict in the federal law had to be resolved, so the review by the process as I have indicated to you, and I was appointed to represent Mr. Bell. I worked all summer on that brief because though it may sound — well, I was impressed with its importance. (Laughter) And in addition to that, though it may sound simple, the unity of offense in the federal criminal law can get to be quite a complicated problem. In any event, I briefed it and filed the briefs and came on for oral argument and all I remember now about our oral argument is that the name of one of the young ladies was Miss Norma Tanner Lay. (Laughter) Of course we argued and the Justices were delighted in asking very solemnly about Miss Lay. (Laughter) We got throught the oral arguments and they went into conference and deliberated and the opinion writing was assigned and the opinion was written and to end your suspense, let me say that justice triumphed, it's only one offense. But it was a divided Court with the Chief Justice and Mr. Justice Minton dissenting. The Chief Justice later told

me what happened. One day he received in the normal course of the day's routine mail a proposed dissent written by Mr. Justice Minton. He was reading down through the dissent and he came upon the following line, I quote, "The majority of this Court announces to procurers that it's cheaper by the dozen." (Laughter) He reached over for the telephone and dialed Justice Minton's number and he said, Sherman, I have been reading your dissent in the Bell Case and I want to join with you. I thing you're absolutely right on the merits of this controversy but don't you think that line is just a little bit rich? (Laughter) Well, Sherman allowed as to how he rather liked it. (Laughter) Well, if the Chief Justice found it objectionable, why, he would cut it out and they did and if you look up the United States versus Bell or Bell versus United States you won't find this line that I have quoted to you in the dissent because it was cut out.

Now the lawyer who represents an indigent defendant in the Supreme Court of the United States receives as compensation his transportation to and from the courthouse for the purposes of the argument. My office was at 14th and K in Washington, D.C., and I received one dollar which was for taxi fare to and from the courthouse. Well, the Clerk of the Court feeling that this was not a sufficient remuneration for the great service that I had performed for mankind got me a half dozen copies of Minton's printed dissent in its original form and that line is still in it and I treasure it. (Laughter)

The point of all this is that there is a constant flow; petitions for certiorari, briefs in opposition, jurisdictional statements, motions to dismiss, reply briefs, drafts of opinion on the merits, the briefs on the merits, the records on the merits. There are about two to three hundred in chambers applications pouring down upon the Justices all through the year. It's a tremendous workload and yet the Court is current. If a review is granted as late as January in any year, that case, the record will be printed, the briefs will be filed, the case will be argued, the case will be decided and the opinion will be announced before the Court arises late in June for its summer recess. The workload of the Court and the way it's handled is a very impressive thing indeed. But there is something else as I have mentioned that was ever more impressive to me; perhaps it's just a corollary of this tremendous workload, but what it is, is the atmosphere in which the Court functions and that atmosphere in a word is the simple dedication to the job. There isn't any time really for posture. There isn't any time for anything but a simple, unpretentious concentration on the work that is there to be done. I think it was Mr. Justice Holmes that said that the Supreme Court functions in the calm of the storm center. There is a lot of truth in that I am sure. As a former Clerk of the Supreme Court, let me suggest that there is another reason for this atmosphere and that is a consciousness on the part of each of those men who sit on the bench that they are a part of a living institution that has endured and survived and served our country well for now over a hundred and seventy years. The Justices of the Court are very much aware of the fact that, for instance, theirs is the only truly continuous body at the heads of any of the three branches of government. This and other facts contribute to a very strong institutional sense of the Court. For example with respect to the continuity of the body, the Justices have often commended upon the fact that the Congress has its continuity interrupted every two years. Every two years we have an election of senators and representatives. The old Congress has adjourned sine die. After the election, a new Congress comes back and they readopt their rules and reorganize. If the last Congress was the eighthy-seventh, this is the eighty-eighth.

There has been a break in the continuity. The same is true of the executive branch, every four years, there is a break in the continuity. We may have the same man serving as President but an administration has come to an end; there has been an election; the President elect has gone back up to the capitol building; he has taken a new oath of office; a new administration is inaugurated and the continuity has been broken.

The Supreme Court of the United States met first on February 1, 1790, in New York City. They didn't have a quorum of the court present because travel was a little difficult in those days and they had to try again the next day and on February 2, 1790, they organized the Supreme Court of the United States. The court which adjourned at the end of the fall term; at the beginning of their summer recess late in June was the same court that had organized February 2, 1790. It has never adjourned sine die. There has never been a break in its continuity. Obviously the membership of the court has changed. Men are mortal; they grow old and they die. But the court has changed only as to those gratuitous accidents of man's fate that bring about a change in its membership. Never in any other way. As I say, the court is very conscious of that. There is a tradition of long service with the court. Ninety-five men have sat upon the Supreme Court of the United States in these hundred and seventy-three years. A statistician has taken the total years of their service and divided it by ninety-five and has come up with a rather startling fact that the average length of service has been fifteen years. And eight of the men who have sat on the Supreme Court of the United States have sat on the court for thirty years or more each. There is another rather startling fact that the whole one hundred and seventy-three years of the court's history has been spanned by the service of just seven men. That means that if you were to go into the court room where the Supreme Court of the United States was sitting on any date from February 2, 1790, until they adjourned, the date they adjourned here late in June, you would have seen sitting there on the bench one or more of just seven men. I have their names here. You would have seen sitting there on the bench Mr. Justice Cushing, Marshall Wayne, Fields, White, McReynolds or Mr. Justice Black; he is the last of that line.

This institutional sense is supported by a whole cluster of tradition. A lot of them center around the conference that I mentioned to you. For instance, when the Justices of the court enter the conference room, every justice shakes hands with every other justice and they have calculated that it takes thirty-six hand shakes to go all the way around. (Laughter) And they have worked this all over and they have to prove to each other every once in awhile that thirty-six seems to be the right number. One of the justices said recently that this particular tradition is a symbol of the fact that harmony of aim if not of view is this court's guiding principle. They wouldn't let that hand-shake pass for anything and they never do. In the conference room the manner in which they sit around the table is governed by tradition. The Chief sits at one end, the Senior Associate Justice, Mr. Justice Black, at the other and then back and forth across this small mahogany table the other seven justices in order of seniority. By immutable tradition there is nobody in that conference room except the justices themselves. There is no law clerk; the clerk of the court is never there or any of the other court officials. There is no secretary. Just the nine men who are there to do the court's business. The Chief Justice keeps the books and because they have to have some contact with the outside world the Junior Associate Justice is the door keeper and if any messages are to go in or out of the room, the Junior Associate

Justice has to get up and carry them to the door and carry them back from the door. They tell me that it's an occasion for a solemn but none the less a very real celebration when one of the Junior Associate Justices graduates from the position of door keeper. (Laughter) He is succeeded by a justice more junior to service than he is, recently of course, Mr. Justice White; door keeper White was succeeded by Mr. Justice Goldberg, door keeper Goldberg. The order of presentation in the conference is governed by tradition. The Chief Justice begins the discussion of each case and speaks as long as he wishes and when he gets through the next senior associate justice speaks and it goes down the line to the juniors and then the vote is taken in inverse order. The junior associate justice votes first so that he won't be unduly impressed by the vote of the seniors.

Well, these traditions that you find in the conference are found throughout the building. For instance, in matters of dress, the justices when on the bench of course wear their robes. In the case of the Supreme Court of the United States, this is a very desirable thing because beneath those distinguished and judicial robes is a very wide, not to say wild variety of haberdashery. That adds greatly to the dignity of the court to have them covered up. Behind the bench there are four page boys who carry massages to and from the court and they wear the knee breeches and black stockings of earlier days. That has been the tradition since 1790. Just a week ago I received a little institutional bulletin that the personnel of the court circulate among themselves, you know, telling who gets promotions and so forth and in the course of this bulletin they announced that after a hundred and seventy-three years that tradition is going to change. Next year the boys are going to be in long trousers. When I was clerk of the court, my working clothes was a cut-away. A cut-away you know is striped trousers and swallow-tailed coat Every day the court was in session, there I was in that garb. As Ray just told you, I was born and raised in Belt, Montana, and the population is 725 and I used to go into the dressing room, you know, before the court was about to begin its session and put on these striped trousers and this swallow tailed coat and it suddenly occurred to me, what in hell am I doing here? (Laughter) But tradition, I wouldn't like to see changed.

Well, let me see, in the clerk's office where I sat and worked, there was a beautiful piece of furniture. It was called the Lincoln Break Front. You know, a chest of drawers below and book shelves above. It was called the Lincoln Break Front because tradition had it that Abraham Lincoln used that piece of furniture in his office when he was a member of congress where he served before he was President. In that same room there was the Adams couch. It was called the Adams couch because tradition had it that John Quincy Adams who served in the congress after he was President and who was stricken on the floor of the House of Representatives, was carried off into the adjoining clerk's office, stretched out upon the couch, this couch, and there expired. Now the only difficulty with that story about John Quincy Adams is that there is another couch identical to the couch that is in the office of the clerk of the Supreme Court of the United States. It's over in the Capitol Building itself and the employees in the Capitol Building say that theirs is the couch in which John Quincy Adams died. (Laughter) Of course, it doesn't make any difference which couch it is or whether as a matter of fact any of these traditions has any under opinion of fact. The important thing is that they are there, they are respected and they connect the court with its past and with the past of our nation. In the clerk's office there is a clothes closet and in that clothes closet there is a

hat box and in this hat box there is a tall black silk hat. According to immutable tradition that silk hat is worn by the clerk on only two occasions, either at the funeral of a Justice or the inauguration of a President.

Now, I am happy to say that I didn't have an occasion to wear it at a funeral of a Justice but I did have occasion to wear that tall silk hat at the inauguration of a President. When I stood up here; perhaps when you first saw me today or some other time, I'm sure that it passed through many of your your minds that I have seen that face before; it's familiar to me. The reason for that is that you have. January 21, two years ago this last January, there was a picture, on the front page of the local newspaper, of three figures; also it was on the front page of Time Magazine that way. On the left there was a rather hazy profile of the Chief Justice of the United States, you could just barely make him out. On the right there was a rather indistinct profile shot of the President-elect, John Fitzgerald Kennedy. In the center full faced, the clerk. By tradition, one of the functions of the Clerk of the Supreme Court of the United States is to hold the Bible at the inaugural ceremony and there I was holding the Fitzgerald family Bible when that picture was taken. Now, of course, this is the clerk's moment of glory and from the election in November until the inaugural in January the tension mounts. (Laughter) You may wonder why the tension mounts; you might drop the Bible. (Laughter) That might sound a little bit remote to you but let me tell you that it happened not too many years ago and there was a Life photographer there and got a whole series of 8 millimeter shots of this Bible tumbling to the floor and the Chief Justice and the President-elect and the poor Clerk scrambling around to retrieve it at one of these ceremonies. Well, before I was to participate in this ceremony, I called for the file on inaugurations, I wanted to be prepared. I found in that file a letter. Across the bottom of this letter in a firm hand was written, "No answer." I read the letter. It was addressed to the clerk who was the victim of this incident. It was written by some callus and insensitive fellow who should have known better saying, "How did this come about?" and "How did you happen to drop the Bible?" It seemed to me to be so typical and so right that this clerk, too proud a man to acknowledge this intrusion upon his humiliation, was nonetheless too good a clerk to throw it away and he wrote no answer on it and stuck it in the file. (Laughter)

There is a little Bible in the desk in the clerk's office that is not larger than my hand, the palm of my hand. This Bible, if you had an opportunity to look into it, you would see it was printed in England in 1798, I believe. It was purchased by the court in any event in 1808. From that date to this by immutable tradition every Justice of the Supreme Court of the United States has been sworn in on that same little Bible. Every clerk of the court has been sworn in on that same little Bible and every member of the Bar of the Supreme Court of the United States who has stood before the court and who has taken the oath of office as a member of the Bar of the Supreme Court of the United States has taken his oath on that same little Bible. I was the thirteenth man to have served as Clerk of the Supreme Court of the United States in the period of 1790 to 1958 and I remember the first day that I came into the office where I was to work and sat down at the desk in this beautiful room and I looked up around the walls where they had collected oil portraits of the first ten clerks of the Supreme Court of the United States and believe me, this is an impressive group of men. They, as I sat there, stared down at me sort of solemnly, you know. It's a pretty fearsome sight to see. Three years later when it came

time for me to leave to come out to California to my present assignment, I sat there at that same desk in the same office and I looked up at the same ten men and they looked back at me warmly and benignly and wished me God speed. (Laughter)

The atmosphere of the court is one of dedication, of calmness and strength based upon an institutional sense and reinforced by all this cluster of tradition that I have mentioned to you. It's a very impressive thing, indeed. But there is one more thing even more impressive, I think; it was to me, and that is just the attitude of mind in which the nine men on the bench approach the job that they have to do. And I think I can put it in just a few words. Basically, it seems to me it's an abiding concern on the part of each one of them that every case that comes before that court is going to be decided on its real merits in accordance with the law and in the best long range interest of all of our people. That is the common aim that they all share even though their views as to how they are to achieve it may vary widely as would the views of any nine of us if we happened to be selected for that onerous responsibility. I don't want to be polyannic about this thing. These are strong sophisticated men. They know better than you do that though they are intelligent and able and honorable men they are where they are on the Supreme Court of the United States largely through an accident of fate. There are hundreds other than they who might have sat there as well. And they approach the job that they have with a real humility. They know that once that you have a decision from that court the decision is final. There is no place on this earth and this nation at least that you can go for a further review. And Justice Jackson said about that this, "We are not final because we are infallible; we are infallible only because we are final." (Laughter) That is a view they all share, Mr. Justice Frankfurter, I think, put what is in their mind and heart when he said this, "What is essential in judges is first and foremost humility and an understanding of the range of the problems and of one's own inadequacy in dealing with them." Disinterestedness, allegiance to nothing except the search amidst tangled words and amidst limited insight. "Loyalty and allegiance to nothing except the effort to find that path through precedence; through policy; through history; through one's own gifts of insight to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man; between man and state, to reason called law. There is no room for pettiness here and believe me, there is none. Thank you very much. (Applause).

MR. COUGHLAN: What did I tell you, wasn't that marvelous. As you know, the Judge said that he would be happy to answer any questions that any of you might have.

MR. TOM MILLER: Judge, I hope this is not an unfriendly question but will the tradition of using the Bible continue after the recent decision? (Laughter)

JUDGE BROWNING: As I understand it, having a Bible at an inauguration is a purely personal thing and I think that there is no question but that it will continue.

(Adojurned at 11:40 a.m.)

Saturday Morning,
July 13, 1963,
9:15 a.m.

MR. COUGHLAN: We will start out this morning with the reports of our committees and the first report if we could have the Judicial Conference Report. Is Judge McFadden here?

JUDGE McFADDEN: Mr. President and gentlemen, in addition to the fact that the judiciary was up here at Sun Valley tearing up the golf course in no uncertain methods and enjoying a very pleasant time, the Judicial Conference met prior to the Bar Convention. We started off on a new program this year to see how it would work. On Wednesday, we started the conference at ten in the morning and went all that day and we ran until noon on Thursday. That gave an opportunity for the members of the court system in Idaho to meet with the attorneys and to attend the sessions which had not been previously done as long as I have been on the court. I feel that this year the Judicial Conference took some very affirmative and definite strides towards the improvement of the relations within the court system itself; between the Supreme Court and the District Courts. We hope that this avenue of communication will remain open at all times.

We are now hoping to work with the Bar through the President and through the Commissioners. We will be seeking commitments through the Bar to go ahead with work which the court is now engaged in. I might mention this; this is an adjunct of the conference, early last winter, the Supreme Court prior to the session of the legislature met. I was instructed by the members of the court to meet with Dean Peterson and with Mr. Coughlan, your President, to see what could be done to carry forth on this legislative program insofar as the lower courts are concerned. You are all familiar, of course, with the fact that through the efforts of the Bar and the Judiciary, H.J.R. No. 10 was adopted as an amendment to the Constitution of the State of Idaho. This we felt in the courts put a burden on the court to seek information for the legislative committees in trying to improve the judiciary system in this state. A good portion of the conference was devoted to that work. I met with Dean Peterson and your President, Mr. Coughlan, and a program has gotten under way wherein we are seeking statistical information insofar as the justices of the peace are concerned and the probate courts. We are also seeking information in regard to the district courts; the filing; what effect the proposed legislation or possible legislation might have on the load of work in the district courts. This work is now moving. One member of the Supreme Court has taken it upon himself to personally interview many of the probate judges and justices of the peace in this state to see what their problems are so that this work can proceed and we can have affirmative action taken for adoption of legislative courts at the next session of the legislature.

Very briefly, the attendance at the Judicial Conference this year was excellent. Three members of the Supreme Court were in attendance. Justice Knudson and Justice Taylor unfortunately were unable to attend because of a workload that they are facing. They asked me to extend to you their regrets in not attending this meeting and do hope that they can be here in future meetings. We had a very excellent discussion with two legislators that worked with the Joint Liaison Legislative Court Committee. For the first time the legislature had the committee appointed from the Judiciary Committee in the House and in

the Senate that met with the Supreme Court to discuss with the Court the problems that the court had; the district court had that needed attention in the legislature. This committee did an outstanding job and we have an avenue of communication open into the legislative halls which is effective and we feel it is something that will have to continue in the future. Senator Murphy and Mr. Green were the two men from the legislature that met with our conference. They gave an excellent report and it was an outstanding success. In the afternoon we had a very enlightened discussion by Blaine Evans concerning the new State Retirement System comparing it with the Judicial Retirement System. It gave us some ideas that are excellent and we are deeply appreciative of Mr. Evans' efforts and the time spent in making this report. We had Mr. George Bell, who is engaged in the work of examining the statutes of this state in order to attempt to find out what statutes would have to be amended in the event of any changes in the lower court system. He is engaged in this work and he is devoting a good portion of his time this summer in getting this information together. At a later date he will have a report for the court to be molded into the work that we are doing so that finally the report on the lower court system will be in condition to submit to the legislature and to the Bar for their consideration. The tenor of this whole Judicial Conference this year, I feel, was a wholesome one. The tenor of it is that the court system in Idaho needs work. It needs a close cooperation with the lawyers who are a part of the court system. We have seen in years gone by an attrition into the practice of law where commissions are stepping into the judiciary and removing from the judicial functions many, many fields that are inherently over the years have been the function of the courts and the attorneys. This is an area that is going to require the greatest attention by the lawyers of this state and by the courts. This is a field that is going to make or break the practice of law. We have seen what has happened in years gone by where various areas have been taken away from the courts and submitted to commissions. We know that there is discussion going on in your public liability and property damage areas where commissions may be taking that out of the practice of law. Those are areas which we feel that the court must move in and we can only move when we have the support and cooperation of the Bar. The consensus of opinion is that with the closer cooperation by the members of the judiciary, with the Bar Associations we will move in the right areas. At this time, we are serving notice on the members of this Bar that we will be needing your help and will be needing many workmen under the appointment of the court in order to properly prepare and present to the legislature the necessary proposed legislation to bring into being a lower court system that will be more efficient with more highly trained personnel. This is what we are hoping to accomplish and I know that with the cooperation of all parties it will be done.

During the conference we were very, very fortunate in having an excellent discussion by Dean Peterson on a new field of law which has developed; or new area, and that is on the service on out of state transactions. We had the discussion on No. 5-514 Section I. C. authorizing suits against non-residents and this I know was of real interest to all members of the judiciary. Mr. President, I believe that is about all that we have to report at this time. We deeply appreciate the opportunity to meet with you gentlemen and members of the Bar and we trust that in future years we can work this out along the same line. It has been an excellent meeting with the judiciary and we feel that this conference has made real strides and we wish to thank you for your hospiltality and the many courtesies that you have extended. Thank you very much. (Applause)

MR. COUGHLAN: Thank you very much, Judge McFadden, for your report and your line of thinking which opens these avenues between the Bar and the court and I wish to assure you of the cooperation of the Bar. I know that as it has been always true in the past you can count on the unstinting help of each and every member of the Bar whom you may wish to call.

MR. COUGHLAN: The President's report we can; is not necessary because it will be reported in the Bar proceedings so we will dispense with that. Now, I would like to call on Tom Miller to give you the Secretary's Report.

SECRETARY'S REPORT

It is customary for the Secretary of the Idaho State Bar to prepare an annual report covering the financial condition of the Idaho State Bar, membership statistics, 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 Secretary's Report generally is printed in THE ADVOCATE or read at the Annual Meeting, and then included in the appendix of the Proceedings for permanent reference. The following report covers the period from June 1, 1962, to June 1, 1963.

This will be my last report as State Bar Secretary and you will please pardon me if it is extremely sentimental and nostalgic in tone and content. The position has afforded an exceptional opportunity to become acquainted with many attorneys throughout the state, and the friendships that have accrued from the past four years constitute the major recompense of the job. It has been my good fortune to have served under Sherman Bellwood, Blaine Anderson, Marcus Ware, Glenn Coughlan, Wes Merrill and Alden Hull—all of them gentlemen and scholars in the truest sense of the phrase. Each of them has contributed his unique talents to the position, and each has served the Bar well—giving freely of his time, energy and resources without expectation of any tangible compensation. In fact, their three-year terms result in a direct and substantial financial burden to our Commissioners, not to mention the even greater indirect economic loss resulting from the time taken up by Bar work. This three-year term on the average demands and receives a total of about six months' time devoted to Bar work! No one can truly appreciate the job until he has been in office for several months. It is remarkable, however, that each new Commissioner has accepted the challenge and carried his weight. The fact that there is never a lack of candidates for the position ensures a bright future for the integrated Bar in Idaho.

My special thanks go to Paul Ennis for his considerable help to me in my apprentice period. His assistance based upon eight years experience as Secretary made my job easier. I wish to extend my sincere appreciation also to Mrs. Olive Scherer for her loyalty and hard work as Bar stenographer.

Finally, I wish to thank the countless lawyers throughout the state who have helped in many different ways to make the last four years the satisfying experience that they have been. I am speaking particularly of the many attorneys who have served with diligence and competence as chairmen and members of important committees, as district bar officers and in the investigation and prosecution of disciplinary matters assigned to them. Their devotion to the highest ideals of the integrated Bar is most encouraging. The force and weight of their dedication and zeal more than compensates for the neutrality or even

negative drag of the few who feel that the payment of their annual license fee fulfills their debt to the profession.

The writer scribbled numerous other thoughts in preparing this report. Many of them were critical or controversial in tone and perhaps should be saved for some other and unofficial forum. We proceed, therefore, to the real and only reason for this report--to give an accounting to the members of the Idaho State Bar of the financial and other aspects of the Secretary's office.

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, 1962 to June 1, 1963

Personal Services	$ 7,459.50
Travel Expenses	7,266.93
Other Miscellaneous Expense	5,520.14
Capital Outlay	None
Social Security Transfer of Funds	228.90
General Fund Transfers	263.06
TOTAL	$ 20,738.53

RECEIPTS, BALANCE

Balance on June 1, 1962	$ 13,172.80
Receipts, June 1, 1962 to June 1, 1963	29,682.05
TOTAL	$ 42,854.85
Less Expense	20,738.53
BALANCE, June 1, 1963	$ 22,116.32

Personal Services covers salaries of a part-time Secretary, a full-time stenographer, bar examination monitor and occasional clerical help.

Travel Expense includes all costs of transportation, meals and lodging for out-of-town travel of the Commissioiers, the Secretary and other persons engaged in bar activities including Bar committees and 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 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 expense such as rent, telephone, postage, stationery and other supplies, and other miscellaneous Bar expenses.

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

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

TRUST FUND:

The Trust Fund 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 June 1, 1963	$ 1,145.43
Adjustment for sums presently due	400.00
ADJUSTED TOTAL	$ 1,545.43

This compares with $2,361.51 in said account on June 1, 1962.

MEMBERSHIP

BY DIVISIONS:

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

	1962	*1963*	*Change*
Northern Division	131	129	1.5% decrease
Western Division	320	327	2.2% increase
Eastern Division	148	148	None
Out of State	18	13	27.8% decrease
Military	None	2	200% increase
TOTAL	617	619	

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

BY LOCAL BAR ASSOCIATIONS:

	1962	*1963*	*County*
Shoshone County	16	16	None
Clearwater	67	66	1.5% decrease
Third District Bar	184	189	2.7% increase
Fourth and Eleventh Districts	82	82	None
Fifth District	59	59	None
Sixth District	18	19	5.6% increase
Seventh District	54	56	3.7% increase
Eighth District	48	47	2.1% decrease
Ninth District	42	42	None
Twelfth District	19	19	None
Thirteenth District	10	9	10% decrease
Out of State	18	13	27.8% decrease
Military	None	2	200% increase
TOTALS	617	619	

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 that ". . . 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 Death*	*Date of Death*	*Adm. to Bar*
Frank Croner	Fairfield	Sept. 2, 1962	Sept. 9, 1918
Reed A. Williams	Idaho Falls	Oct. 5, 1962	Sept. 25, 1951
Judge John A. Carver	Pocatello	Dec. 23, 1962	Sept. 13, 1918
Pete Leguineche	Boise	Jan. 2, 1963	Aug. 15, 1941
F. Clayton Keane	Wallace	March 31, 1963	June 4, 1920
B. S. Varian	Boise	June 7, 1963	Jan. 9, 1999
*Harry H. Kinsey	Coeur d'Alene	April 28, 1962	Sept. 13, 1920
*Frank E. Smith	Pendleton, Oregon	June 7, 1943	Nov. 2, 1911

**The deaths of these two attorneys were not previously known or reported.*

BAR EXAMINATIONS

Two bar examinations were given since the last annual meeting, one in September, 1962, and the other in April, 1963, both in Boise. Twenty-three applicants wrote the September, 1962, bar examination, and of these eighteen passed and five failed. There were no petitions for review filed in the Supreme Court.

There were fourteen applicants who wrote the April, 1963, bar examination and of these 10 were certified by the Board to the Supreme Court for admission. The four unsuccessful aplicants petitioned to the Supreme Court for review. The Supreme Court denied review to two of the petitioners and granted review to the other two. Whereupon, the bar examination papers of the latter two petitioners were certified to the Court; the matters are still pending.

DISCIPLINE MATTERS

On June 1, 1963, there were 15 disciplinary matters pending before the Board. Two of these ultimately resulted in suspension by the Supreme Court upon recommendation of the Board. (Max "R" Woodall was suspended on October 24, 1962 for three months with reinstatement conditioned upon rehabilitation to good moral character; he has not applied for reinstatement. Russell J. Burns was suspended on April 22, 1963, for one year, with conditions for reinstatement.) Another resulted in a formal reprimand by the Supreme Court. Another matter involved the application of Wayne Loveless for reinstatement. The Board recommended reinstatement and the Supreme Court reinstated him on June 27, 1962. Another of these matters pending on June 1, 1962, has been submitted for decision by the Discipline Committee consisting of two members of the Board and a third attorney, after formal hearing on the merits. The other ten matters have been dismissed after investigation disclosed that formal proceedings were not warranted.

Thirty-four complaints have been filed since June 1, 1962. Twenty-two of these have been dismissed after investigation.

In three of the matters filed since last June, formal proceedings have been

ordered and prosecuting committees have been appointed to proceed by way of formal complaint. One of these is at issue and set for hearing.

Another matter filed since last June is before the Supreme Court, the attorney having moved for a voluntary suspension for three months, with conditions for reinstatement, and the Board so recommended.

Eight of the matters are still pending, awaiting report of the investigating committee or action by the Board on reports already filed.

THOMAS A. MILLER
Secretary, Idaho State Bar

MR. COUGHLAN: Thank you, Tom, for that very comprehensive report setting forth the business of the Commission for the past year. It's an important report and you handled it very well. I am gratified to be able to announce to you that our attendance at this convention is one of the best that we have had for a number of years and I hope that this will continue and more of the lawyers will come to these Bar conventions each year.

MR. COUGHLAN: The next committee report will be the prosecutor's report. Is someone here to give that? Mr. Schoenhut.

MR. SCHOENHUT: We first want to thank the State Bar very much for allowing us to have our meeting here with them. The Prosecuting Attorneys have met three times here at Sun Valley. In order to also attend the regular Bar schedule, our meetings have been short. Our first two meetings were concerned mainly with legislation passed in the last legislature and primarily with the new count pleading. In trying to discover what the legislature had passed and what the effects would be, we were very lucky to have; very honored to have the help of the U.S. District Attorney in Idaho, Mr. Sylvan Jeppesen, whom we wish to thank. The general consensus of opinion of the prosecutors after meeting and discussing the various pieces of legislation passed concerning criminal law was that we are going to have to stop trying to get through criminal law in a piecemeal fashion. There is too much danger there of having each special interest represented in the legislature and by the various lobbies coming in. When you are going in on a bill, they all descend down. A good example of what happens is that during the last legislature the probate judges put through a bill, or put in a bill asking that prosecuting attorneys help represent the person filing a petition in an insanity hearing and the next line said they would also represent the State of Idaho. As prosecutors we objected to that because this could lead to a conflict of interest both representing one who is petitioning and the state. So the legislature in order to cure this knocked out the line; or the senate did it, it later died in the house; knocked out the line that they shall represent the State of Idaho (laughter), thus creating the only field in which the prosecuting attorney would not represent the state but only an individual defendant. Then yesterday, our final meeting, we were very lucky to have Mr. John Minor, Assistant District Attorney for the County of Los Angeles in California. Mr. Minor gave a most interesting discussion. We had quite a few members of the Bar there and defense attorneys. He discussed what is called the new dimension in murder. In this case it was a case of prosecuting a man for murder where words were the only overt act done. Once again—we wish to thank the State Bar and specially I want to thank Tom Miller. When I got down here and found every-

thing prepared for us I really appreciated what the Secretary of the Bar does for us, thank you. (Applause)

MR. COUGHLAN: I wonder now if we could have the report of the Advisory Fee Schedule Committee. Is the Chairman of that committee here? Will Mr. Thomas be here, Tom?

MR. MIILLER: I don't believe so.

MR. COUGHLAN: This is a short one; I have seen it.

MR. MILLER: Report of the Advisory Fee Schedule Committee. We have reviewed and considered matters pertaining to the fee schedule during the past twelve month period. We find the present schedule is well received and in general usage. Respecting commercial collections, which continues to be a problem, we respectfully recommend that the Bar continue its committee on collection practice, and that that group communicate its recommendations to the Advisory Fee Committee for 1963-1964 for consideration and action at the next regular meeting of this Association. It is evident that the problems in the field of collection practice are unique and deserve and require special study of this character. We continue to believe that the Bar will be best served by the adoption of an official looseleaf binder with sections devoted to the Advisory Fee Schedule, the Appellate Rules of the Supreme Court, the approved Local Rules, etc. I think he is anticipating the judges a little. And at this time the mechanical problem of mimeographed materials and sundry pamphlets of irregular size and description pose an obstacle to the effective functioning of your Advisory Fee Schedule. We believe its re-publication for inclusion in such a binder is indicated, and we strongly recommend official action of the Commissioners to perfect this recommendation. We further find and report that the Advisory Fee Schedule in operation is having a desirable effect from the standpoint of standard of practice and administration of justice in Idaho. We recommend that this Committee be continued in existence for the purpose of further study and service in this area. The Fifth District Bar Association has very recently made certain recommendations respecting amendments of the schedule. Unfortunately, these came so late that your Committee has not had an opportunity to study them and therefore makes no recommendation in this regard. Respectfully submitted, Eugene C. Thomas, Chairman, Advisory Fee Schedule Committee. Copies to Wynne M. Blake and F. M. Bistline and Bert Larson, members.

MR. COUGHLAN: We wish to thank this Committee for the work which it has done during the past year and submission of their report.

MR. COUGHLAN: We come now to Ethics Committee. Do we have a report from the Ethics Committee?

MR. MILLER: Yes. Report of Committee on Professional Ethics, Idaho State Bar, 1963. During the past Bar year the Committee on Professional Ethics has noted a marked increase in the interest of the members of the profession in legal ethics, and more particularly, a desire on the part of the lawyers of Idaho to practice "preventive ethics." The members of the Bar now anticipate ethics questions arising rather than finding themselves in the dilemma of having conducted themselves improperly and then wondering about propriety of such conduct. Particularly noteworthy among the opinions rendered during the last Bar year is Opinion No. 30, which held that it is improper

for an attorney to prepare deeds, contracts and mortgages for a real estate broker or title insurance company who sends to the attorney the information concerning real estate transactions with the request the attorney prepare and return the appropriate legal documents; it being assumed that the attorney has no personal contact with the parties to the transactions. This opinion has subjected the members of the Ethics Committee to criticism even though the opinion was considered and argued at length among the members of the Committee, and despite the fact the American Bar Association Committee on Professional Ethics arrived at the same conclusion. As a service to the Bar your Committee submits herewith a resumé of each opinion which has been rendered to date by the Committee on Professional Ethics of the Idaho State Bar since its inception in 1956. We hope the members of the Bar will retain this resumé for ready reference in the future. Respectfully submitted, Calvin Dworshak, Chairman. Members of that Committee are John Sharp and Bill McFarland. And I might say that this resumé which is very useful will be printed in the Advocate so you will be able to refer to it.

MR. COUGHLAN: Our thanks to the Ethics Committee which it has done we believe an outstanding job during its tenure and we will arrange to get the resumé to you as Tom indicated.

MR. COUGHLAN: At this time we have a very important report, the report of the Insurance Committee. This is something that is of interest to each and every member of this Association and Mr. Dale Clemons has come here specially this morning to make his report to you. Dale.

MR. CLEMONS: Mr. President and fellow attorneys, your Committee consisting of three members has functioned as a committee since sometime in 1959 or 1958. Mr. Eberle was Chairman of that committee and put in a lot of time and effort. His unfortunate accident in December has made it impossible for him to continue and in view of that Mr. Willis Moffatt was put on the committee and I was asked to assume the chairmanship early this year. The membership is composed of Mr. Moffatt, Al Kiser and myself. I have no formal minutes of the meeting that we held prior to May of this year. I'm sure that Mr. Eberle did but I did not make any attempt to get them for you but I believe that in view of our meeting in May of this year that I can bring you a somewhat up to date picture of our program. You will all recall that we have had an insurance program that goes back to probably 1952 or 1954. That program did not seem to be getting off the ground and it was one of the functions of the committee to see about putting some life in the program. Sometime in 1959 we undertook this to look at other plans that could be offered and Mutual of Omaha presented at that time a major medical plan. Now, this plan went over splendidly and I congratulate Mutual of Omaha for the splendid job that they did in that program. By March of 1960 they had their 51 per cent which put it on a non-selective basis which we are shooting for in all our insurance programs. From our meeting of May 13th with the representative of Mutual of Omaha they indicated that there was: the 51 per cent, of course, had gone over in 1960. They are using 453 members as a basis for arriving at the 51 per cent. In other words, we had over 225 lawyers that were enrolled in this program. This program, of course, is opened up from time to time. It was open for thirty days in June of 1962 and of course it could be opened again on the non-selective basis by Mutual of Omaha if they desire at another time. New members as they come into the Bar can go into the program and I am advised that all

new members are offered the right to go into this program during the first thirty days after their admission and then after that, why, it could be that members would have to be on a selective basis. But the current information that I have on the major medicals as of June 5th is that there are now 267 in force. Most of these are written in the southern part of the state as I understand. The response in the north has not been satisfactory as would have been desired and Mr. Kuhn, the representative of Mutual of Omaha, has told me through correspondence there has been a recent change in the management in North Idaho and the Spokane office which they hope will improve that situation but we are happy with this major medical program.

The life insurance program which was adopted along with the disability program at a later date is not so encouraging. There are now 187 policies in force according to figures furnished to me. Of course, this is not the necessary percentage to put it on a non-selective basis. In other words, these are selective cases; people who are eligible for insurance because of their physical condition. But it does not reach those whom we intended and wanted it to reach with our program. The disability program, according to my figures, now has 117 policies in force. There has been some activity lately, and these figures that I have given you include this recent activity, since May, the company has been able to enroll eleven additional major medicals; fourteen additional disabilities and nine additional life policies. As I say, these figures I am giving to you include this increase since May. Again, neither the life or the disability is on the non-selective basis. And this part of the program, at least to the committee, is disappointing because as I have indicated the major objective of the committee was to hope that we could get insurance that would cover those in our association who are not otherwise insurable. Since the program has been in effect with Mutual of Omaha, our members have received $15,603.23 in benefits according to the information furnished to me. I do not have the breakdown on that as to what category; whether it's medical, disability or life. Looking at the program as a whole, I must say that we are happy about the medical but we are not too happy about our life and disability program. The life policies that are written are five year term lifes. Now these of course are cancelable by the underwriter but only on a group basis at an anniversary date and then a member would be given opportunity to some permanent type of insurance based on an attained age at that time. Mr. John Squires of Mutual of Omaha is with us this morning. As a matter of fact, I had invited Mutual of Omaha to be present. I thought there might be questions that you as members of the association would want to ask which he would be in a better position to answer. In any event, this is the report of your Insurance Committee up to date. (Applause)

MR. COUGHLAN: Thank you Dale for that very excellent report which of course is of interest to all of us. As Dale stated, Mr. Squires is present here and if any of you have questions either to Dale or Mr. Squires, I am sure they would be happy to answer them for you.

MR. HAWLEY: What is Mr. Squire's account for the lack of interest in the life program and the disability program so that it is broadened and we can get some of our more uninsurable risks covered, like myself, at least this morning? (Laughter)

MR. COUGHLAN: Mr. Squires, would you come up here and answer Mr. Hawley's question.

MR. SQUIRES: I am also uninsurable this morning, (Laughter) I think the answer to that question is probably a matter of competition more than anything else. As you are probably familiar, the American Bar has a life program and also a disability plan that they have offered to the membership underwritten by the Continental Casualty and many of the lawyers of the state participate in this plan. For that reason, I think primarily, we have not enjoyed the same participation in these two programs as we have in the major medical plan which is somewhat unique in regard to the coverage on it.

MR. HAWLEY: Is there an active solicitation on it?

MR. SQUIRES: Oh yes. As a matter of fact, with general interest, yours in the only professional association that I am aware of in the State of Idaho that has ever been underwritten on a non-selective basis on any insurance program and I congratulate you on that. The doctors and the accountants and anyone else that has tried this but they haven't been successful but this has been accomplished with the Bar Association. Yes?

MR. McINTIRE: They say life begins at 40. When I was thirty-nine, I paid a premium of $7.50; when I became forty, the premium was $17.50; now, of course, I am at the low end of an older group but maybe the coverage is well worthwhile but the change in the rate is what shocked me. (Laughter)

MR. SQUIRES: This program is written on a step rate basis and quite frankly it is so rated to make it attractive to the before forty group; let's put it that way. There is a change in rate every five years on all of the programs and this was so; this was rated in this way rather with the concurrence with your Insurance Committee to make it most attractive to the younger age groups to participate. We had a choice at the time the program was set up of taking a level premium or taking the step rate and your committee felt that the step rate was the most attractive and that is the reason it was arranged in this way. Anything else?

MR. COUGHLAN: John, could you give us an idea of what you think the future portends? Is there a good possibility that we will be able to get these two programs on a non-selective basis which are now on a selective basis?

MR. SQUIRES: Well, I hesitate to make a guess. We're doing our best. Of course, we love to sell insurance and we are trying to sell it all the time. We have fifteen people around the state who are actively soliciting this program and other plans. It's a little hard to corral a bunch of gentlemen who are as independently minded as you are and say you have got to buy this stuff but I would certainly think that we are going to do our best to do this and we hope within the next year or next twelve months that we are going to set this up on a non-selective basis on the life and major medical but it's going to take the cooperation of everybody concerned. Frankly, I don't know why all of you don't buy it because it's about 40% less than you would pay for it on an individual basis; the premiums involved and we are going to do our darndest to try and achieve this result. If we can have your cooperation, I am sure that we will accomplish it within the next year. Yes?

MR. DONALDSON: Charles Donaldson from Boise. If you have the American Bar Association plan on life and on disability, is it necessarily a duplication to have this also? Will they work in conjunction with each other or won't they?

MR. SQUIRES: There is no duplication whatsoever. We will pay benefits in addition to any benefits you receive under any program. Incidentally, I believe that if you will investigate the Idaho Bar plan, which was designed specifically for your use, and compare it with the A.B.A. program, you will find this to be; to have certain things to your advantage. But in specific answer to your question, no, there is no duplication of coverage. Yes?

MR. McDEVITT: Herman McDevitt, without twisting, tell us what these differences are, specially rate wise?

MR. SQUIRES: Specifically, the differences are these: In a life program in comparison with the American Bar, there's a reducing term plan. It starts at a higher initial amount than ours but reduces over a period of time. The program which we sponsor through the Idaho State Bar is a latter term program which has a very important feature in that it can be converted at any time despite any ill health that you might have to any plan of permanent insurance. In other words, if you had some horrible disease and you wanted to fix this life insurance plan at a particular figure at a particular time, you can convert it to ordinary life or twenty pay life or whatever you wish to do. This is a very important feature of any term insurance and a very attractive feature in your program. In regard to the disability program which is also offered by the American Bar, I believe there is a thirty-day waiting period before illness. Now, I could be mistaken in this. Our plan starts from the first day of disability. If you are hospitalized, you begin receiving benefits immediately. If you are ill at home, it begins the seventh day but if you are in the hospital you get your benefits right now and this is a very attractive feature of this plan. These are the major differences between this and the national program. And of course the greatest reason that we encourage participation in the state program is the fact that on a statewide basis we can achieve this non-selective enrollment whereas it is very difficult for the American Bar to achieve the desired percentage from the national point of view whereas we can do it in the State of Idaho. Anything else? Thank you very much for your time. (Applause)

MR. COUGHLAN: Thank you John for appearing here and for your courtesy in furnishing these coffee breaks for us. We do indeed appreciate it. Gentlemen, with your indulgence, I'll try to get through all of these committee reports before the coffee break and then we can take up our resolutions after the coffee break. Pursuant to that, I would like to call on Les Anderson, the Chairman of the Special Committee on Bar Commission Elections for his report.

MR. ANDERSON: Mr. President and Commissioners: Your Committee has considered Resolution No. 11 adopted at the Idaho State Bar meeting in July, 1962, which has reference to the advisability of creating two additional divisions of the Idaho State Bar, or the advisability for rotating commissioners within the existing districts with the number of commissioners to remain the same. Now with reference to the first part, the creation of two additional divisions. The provisions for Bar Commissioners is contained in Section 3-402, Idaho Code, and this section provides for three commissioners, one from each of the three divisions, Northern, Eastern and Western. These divisions are established by and set forth in Section 3-404 of the Idaho Code. Now, I started to say that this; that a majority of the Committee is talking but this is, I think, unanimous. There was one letter that I received where the typewriter blurred just a little and I'm not certain of what was meant, so I will say that a majority of your committee after due consideration is of the opinion that

there is no occasion for any additional commissioners and accordingly recommend that the number of commissioners remain at three. As you know, a committee of the Idaho State Bar, composed of Sherman Bellwood, J. Blaine Anderson, and Russell S. Randall, made an extensive study of the matter of additional commissioners and gave an adverse recommendation. See the Proceedings of the Idaho State Bar for 1962, pages 122-126. I don't suppose there was a petition for rehearing in that previous report but we didn't use that to make our recommendation which was our own idea. Your committee believes that the commissioners, past and present, have been representing all of the lawyers in the State with good results and that probably additional commissioners might complicate rather than aid in the work of the commissioners and might produce further deficits which the last increase in Bar license fees was designed to prevent. Now, with reference to the rotating of the election of commissioners within the existing districts in lieu of additional commissioners. Since the Bar was organized rotation has apparently been working out satisfactorily in the Eastern and Northern Divisions. We're a good bunch, you know, in the Eastern and Northern Divisions. (Laughter) These divisions have been alternating the nomination and election of commissioners from the various parts of each Division. However, in the Western Division there has not been a commissioner elected from the Seventh Judicial District since Judge John C. Rice served and that has been a long time ago. The Committee believes that rotation in the Western Division is feasible as it has been in the Northern and Eastern but it is your committee's opinion that the adoption of a formula or plan is the prerogative of the lawyers by word of mouth, or otherwise, in the particular division. Your Chairman did try to impose the persuasiveness of our entire committee upon the election of this commission and I wrote a letter to the President of the Commission in March and furnished copies of that letter to the Presidents of the Bar Association in the Western Division and stated that I thought that the honor of electing a commissioner should come from the Seventh and made a recommendation to one member of my committee over there that he have nominations started and make a campaign out of it. Well, of course, I don't know how much of a campaign was made out of it or how persuasive my letter was. I don't think it was worth anything, although, I understand that Harry Benoit worked pretty hard to get his son defeated. (Laughter) If rotation cannot result from the action and agreement of the lawyers in the Western Division then some other procedure, probably legal, must be adopted. The members of my Committee were Frank Kibler, William Tuson, T. M. Robertson, Z. Reed Millar, James Givens and Vern Kidwell. Mr. President, being on the defensive most of the time, I would like to close by saying your committee having fully answered, prays to be hence dismissed with its just costs and disbursements herein prayed. (Laughter) (Applause)

MR. COUGHLAN: Les, we thank you and your committee for an excellent job in a very difficult assignment. This is a problem that does have difficult aspects to it but I don't believe it is one that is impossible of solution if we continue to work at it.

MR. FULLER: I would like, Mr. President, to ask a question of Mr. Anderson if I might.

MR. COUGHLAN: Would you state your name, please?

MR. FULLER: Wayne Fuller from Caldwell. Mr. Anderson mentioned that it was possible and feasible to arrange something for rotation on other than

a gentleman's agreement. Did his committee have anything specifically in mind? You may answer that by way of interrogatories if you wish. (Laughter)

MR. COUGHLAN: Would you like to answer that Mr. Anderson?

MR. ANDERSON: Well, when you put it on an interrogatory basis, we'll be just as evasive as any lawyer can be. (Laughter) No, I don't know of any way that it can be worked out. I think it's feasible to work it out if you lawyers in the Western Division can agree. Apparently it's working in the Eastern and the Northern. If you can't agree then it's got to be legislative. And I would think that it all depends on perhaps who your candidates are in these various districts. I think there was a pretty close race this last election, as I understand it, and you had some good candidates. Well, you can't do anything about that unless you just agree to sponsor one candidate from one district and let it go at that. I think that is the way we usually do it over in the Eastern Division. One guy gets ready and we think he is all right, so nobody else opposes him. That is the way I think it is feasible. Maybe you don't like it but its feasible. (Laughter)

MR. COUGHLAN: Are there any other questions while Les is here?
I guess not. Thank you again, Les. We now come to the Professional Corporation Committee. Is there someone here to give this report? Ed Benoit.

MR. BENOIT. I might say that practically all the work of the committee was done by Mr. Eugene Anderson. All of you who know Gene know how thorough he does work and while the other committee members will be named, I think the success of passing and drafting that bill was mainly due to the efforts of Gene Anderson and that you all should know this. The Board of Commissioners of the Idaho State Bar. Your committee, consisting of Eugene H. Anderson, Chairman; Louis Racine, Ray McNichols, Edward Benoit, Dale Morgan and William Furchner, appointed to draft, and present the Professional Service Corporation Act to the Legislature, respectfully reports as follows:

During the 1963 session of the Idaho Legislature the Prefessional Service Corporation Act was drafted and presented by your committee and was duly enacted into law through House Bill No. 138. The effective date of the Act is May 18, 1963. It is the consensus of the committee that in the absence of amendments to the Rules and the Canons of Ethics governing the conduct of lawyers in Idaho, members of the Idaho State Bar cannot incorporate under the Professional Service Corporation Act for the practice of law. Your committee recommends amendments which it deems necessary to the Rules and Canons of Ethics in order to permit lawyers to obtain the benefits and advantages of the Professional Service Corporation Act and at the same time insure the protection of the public and uphold the dignity and tradition of the legal profession in the following particulars: By adding new sections to the Rules of the Board of Commissioners of the Idaho State Bar, governing conduct of attorneys, to read as follows:

1. Professional service corporations organized to practice law pursuant to the provisions of the Professional Service Corporation Act are authorized to engage in the practice of law in Idaho only while all shareholders of such corporation are active members of the Idaho State Bar in good standing and only while such corporation and all of its shareholders, officers, directors, agents and employees comply with the provisions of the Professional Service Corporation Act

and the applicable provisions of the Rules of the Board of Commissioners of the Idaho State Bar.

2. No professional service corporation may engage in the practice of law except through officers, agents or employees who are active members of the Idaho State Bar in good standing.

3. No person shall serve as a director of a professional service corporation engaged in the practice of law except an active member of the Idaho State Bar in good standing. No person shall be elected or shall serve as an executive officer of any such corporation except a person who is a shareholder in such corporation.

4. (a) Before a professional service corporation shall engage in the practice of law, it shall file with the Board of Commissioners of the Idaho State Bar a true copy of its Articles of Incorporation duly certified by the Secretary of State of Idaho and an initial report. (b) Professional service corporations engaged in the practice of law shall file with the Board of Commissioners of the Idaho State Bar such annual reports and such other reports as may be required by each the Supreme Court of the State of Idaho and such Board of Commissioners. Annual reports shall be filed by the first day of August and shall be for the period ending the preceding June 30th. (c) Within thirty days after a change in composition or identity of shareholders, officers or directors of a professional service corporation engaged in the practice of law, a written report of such change shall be made to the Board of Commissioners of the Idaho State Bar and to the Supreme Court of the State of Idaho. A certified copy of all amendments to the Articles of Incorporation shall be filed with the Board of Commissioners of the Idaho State Bar within thirty days after the effective date of each such amendment. (d) The initial and annual reports shall contain the names and addresses of all shareholders, officers and directors, the address of each office of the corporation, the name used to to be used by the corporation and such other information as may be required by this Court or the Board of Commissioners of the Idaho State Bar. (e) Reports of professional service corporations filed with the Board of Commissioners of the Idaho State Bar shall be signed and certified by all shareholders, officers and directors, except when prevented by absence or incapacity. (f) The Idaho State Bar by its rules may prescribe forms and filing fees for all reports filed with it by professional service corporations engaged in the practice of law.

5. A lawyer who, while acting as a shareholder, officer, director, agent or employee of a professional service corporation engaged in the practice of law, violates or sanctions the violation of the provisions of the Professional Service Corporation Act or the Rules or Canons of Ethics of the Idaho State Bar specifically relating thereto shall be subject to disciplinary action. The Canons of Professional Ethics of the Idaho State Bar shall be and they are hereby amended. (1) By revising Canon 33 to read as follows: 33. Partnerships—Professional Service Corporations. Partnerships among lawyers for the practice of their profession are very common and are not to be condemned. The formation and use of a professional service corporation for the practice of law pursuant to the provisions of the Professional Service Corporation Act shall be permissible, subject always to compliance with such rules, regulations and requirements as may from time to time be promulgated by the Supreme Court of the State of Idaho. In the formation of partnerships and professional service corporations and the use

of partnership or corporate names, care should be taken not to violate any law, custom or rule of court locally applicable. Where partnerships are formed between lawyers who are not all admitted to practice in the courts of the State of Idaho, care should be taken to avoid any misleading name or representation which would create a false impression as to the professional position or privileges of the member not locally admitted. In the formation of partnerships and professional service corporations for the practice of law, no person should be admitted or held out as a practitioner who is not a member of the legal profession duly authorized to practice and amenable to professional discipline.

In the selection and use of a firm or corporate name no false, misleading, assumed or trade names should be used, except that a name may be used by a professional service corporation as authorized by the Professional Service Corporation Act. The continued use of the name of a deceased or former partner or shareholder, when permissible by local custom, is not unethical, but care should be taken that no imposition or deception is practiced through this use. When a member of the firm or shareholder in the corporation, on becoming a judge, is precluded from practicing law, his name must not be continued in the firm or corporate name.

Partnerships between lawyers and members of other professions or nonprofessional persons must not be formed or permitted where any part of the partnership's employment consists of the practice of law. The practice of law in any of its aspects by a professional service corporation as hereinbefore sanctioned shall not in any way lessen the responsibilities of an individual lawyer or a group of lawyers under the Canons of Ethics and such a corporation may not be used to lower, and shall not be permitted to lower, directly or indirectly, the ethical standards of the legal profession; and the Canons of Ethics shall be construed accordingly. 2. By adding at the end of the present Canon No. 35 the following unnumbered paragraph, "Professional service corporations organized to practice law pursuant to the Professional Service Corporation Act shall not be deemed lay agencies or such intermediaries."

3. By adding at the end of the present Canon No. 47 the following sentence, "Professional service corporations organized to practice law pursuant to the Professional Service Corporation Act shall not be deemed lay agencies."

4. By amending Rule No. 150 of the Rules of the Board of Commissioners of the Idaho State Bar Governing the Conduct of Attorneys in Idaho, by adding subsection thereto to read as follows: (i) Never permit the use of his name as an attorney by any other person who is not then licensed to practice law or by any corporation other than a professional service corporation organized to practice law pursuant to the Professional Service Corporation Act and the Rules of the Board of Commissioners of the Idaho State Bar or by any firm other than a firm of duly licensed attorneys or be a shareholder in or associated with any professional service corporation which includes in its corporate name any frivolous, misleading or undignified terminology or any expressions inconsistent with the best tradition of the legal profession. Dated June 17, 1963, Eugene H. Anderson, Chairman. (Applause)

MR. COUGHLAN: Our special thanks to Mr. Anderson and his committee on this Professional Service Corporation Act and the follow-up amendments that may be necessary to the Canons and Rules of the Board of Commissioners. It looks to me like we're in good shape; they have prepared this thing well and

if we ever get any proper ruling from the Department of Internal Revenue as covered by Mr. Watson this format then will be available to the lawyers in the State of Idaho in the event they wish to make use of it. We have only two more short reports and we'll try to get these in before the coffee break. The report now on Continuing Legal Education. Is there someone here to give that report? Mr. Berman.

MR. BERMAN: The Committee on Continuing Legal Education for the past year has consisted of Robert Huntley of Pocatello, Charles Donaldson of Boise, and Robert Alexanderson of Caldwell and myself. During the years immediately prior to the past one, the principal function of the Committee was to serve as an adviser to Paul Ennis, director of Continuing Legal Education. With Mr. Ennis' resignation in the summer of 1962, the Committee was asked to resume, on a temporary basis, the task of organizing and directing programs until a replacement for Mr. Ennis was secured.

The Committee conducted an Institute in Moscow on November 16 and 17, 1962 on the subject matter of Torts and Damages. The speakers and the topics discussed by them are as follows: George Greenfield, "Medical Legal Aspects of Personal Injury Litigation;" Russell Randall, "Land Sale Contracts, Remedies of Vendor and Vendee;" Blaine Anderson, "Damages from Pollution of Air, Surface and Subterranean Waters;" Eugene H. Anderson, "Damages in Condemnation;" Howard Manweiler, "Some Recent Developments in the Law of Damages." Louis F. Racine, Jr., "Insecticides, Agricultural Sprays, and Similar Harmful Substances, Including Liability of Farmer or other Persons Applying Material." Substantially the same topics with the same speakers were covered in an Institute held at Twin Falls on April 25 and 26, 1962.

Mr. Tim Robertson, however, replaced Mr. Russell Randall as a speaker, and Professor George Bell spoke on "Professional Negligence." The Committee wishes to express its deep appreciation to the above members of our Association for their contributions in making the Institute a success. During the year, Professor Brockelbank's book on Community Property in Idaho was completed and the present plan is to utilize the book as a foundation for the Institutes for the coming year. I might say in this connection that the Commissioners have approved the holding of an Institute in Moscow this coming year in 1963 on November 1 and 2 on that subject of Community Property. (Applause)

MR. COUGHLAN: Herb, do you also contemplate that there will be an Institute in the Southern part of the state on this same subject?

MR. BERMAN: Oh yes, we do, more than one. I only mentioned Moscow because that is as far as the present plans that have been made more specific.

JUDGE OLIVER: Is this Institute in Pocatello under the same auspices?

MR. COUGHLAN: Would you give your name sir?

JUDGE OLIVER: Judge Oliver, Pocatello. Is this Tax Institute co-sponsored in Pocatello under the auspices of the Continuing Legal Education committee?

MR. COUGHLAN: As I understand it, there is a joint sponsorship, Judge Oliver, between the Bar and the Tax Institute down there. Mr. Merrill tells me that it's a separate committee, however. We now come to the report of the Legislative Committee. Is the Chairman of that committee present?

MR. MILLER: Dear Glenn, I deem it advisable to make a report of the State Bar Legislative Committee covering its activities during the past session of the legislature. There will be detailed hereafter the specific action on each of the Bar resolutions. Of course, where the proposed bills were passed and have become law, they will appear in the code. Other bills prepared which either were not introduced for the reasons indicated or failed of passage are attached in order that a permanent record can be made of this material. Future legislative committees may desire to use this work as a start on reintroducing similar legislation at the next session. The Commission should know that each member of the Legislative Committee was conscientious in performing his assigned duties, and in addition, many of the Boise lawyers were called upon to assist this committee in shepherding various bills through committees in the House and the Senate. The Committee particularly thanks each of these individuals.

The Commission further should know that the attorney members of the House and Senate at the Thirty-seventh Session were most responsive to the bar legislative program, and our particular thanks go to each such legislator for his sincere interest on behalf of the bar. Attached hereto, then, is a resumé of the resolutions, the numbers of the bills prepared and introduced and the chapter numbers where the same will appear in the 1963 Session Laws. Copies of each of these bills are likewise attached for your files. Yours very truly. And here is the resumé:

Resolution No. 15 adopted at the 1960 bar convention urged the activation of a Legislative Counsel; C O U N S E L. (Spelled Out) A copy of the proposed legislation to accomplish this is attached, indicating an amendment to the act to increase the salary and making an appropriation. Incidentally, they have created the counsel but never appropriated any money. After conferences with appropriate committees this legislation was not introduced because a Legislative Council; C O U N C I L, (Spelled Out) Senate Bill No. 111 was passed by both houses and became law. This bill created an appropriation of $50,000.00 and will be a step in the right direction toward accomplishing interim legislative studies. Resolution No. 6 adopted at the 1961 bar convention recommended the increase of the civil jurisdiction of probate and justice courts to $1,000.00. At the request of the Supreme Court and the waiver by the local bars no action was taken. Resolution No. 7 adopted at the 1961 convention recommending a study leading to the adoption of criminal rules was introduced as House Bill No. 273, passed the House and was referred to the Appropriations Committee in the Senate where it died. The Senate seemed to feel that the Legislative Council was a proper vehicle to make this study.

Resolution No. 8 adopted at the 1961 convention and Resolution No. 9 adopted at the 1962 convention both recommended enactment of a Professional Corporate Practice Act. House Bill No. 138, Chapter No. 282, was passed by both houses and signed by the Governor on March 27, 1963. Resolution No. 10 adopted at the 1961 convention recommending the repeal of Section 15-1835, Idaho Code, relating to guardianship sales of real property was introduced as Senate Bill No. 64, duly passed and signed by the Governor on February 15, 1963, and this will be Chapter No. 27.

Incidentally, this would provide for sales of realty in guardianships in the same manner as in decedent's estates. Resolution No. 2 adopted at the 1962 convention recommending the limiting of numbers of petitioners for nomina-

tion of bar commissioners was introduced as House Bill No. 42, duly passed and was signed by the Governor on February 20, 1963. It will appear as Chapter No. 33. Resolution No. 4 adopted at the 1962 convention recommending an enactment requiring the name of scriveners of legal documents to appear on such documents before recording was submitted as House Bill No. 265. This bill passed the House but died in the Judiciary Committee of the Senate. The biggest problem presented by this bill was the question of notice should such a document become of record without the required scrivener's name appearing thereon. I deem this to be a valid objection and consideration should be given toward curing this objection at the next session.

Resolution No. 5 adopted at the 1962 convention recommending a study of the Uniform Commercial Code was introduced as Senate Bill No. 115 but stayed in committee because the Senate felt that the study could be conducted by the Legislative Council which was created. Resolution No. 6 adopted at the 1962 convention recommending an Administrative Practice Act was introduced as House Bill No. 170, passed both houses but was vetoed by the Governor on March 29, 1963. A copy of the veto message is attached from which you will see that he is in sympathy with the legislation but because insufficient funds were available to the Secretary of State to administer he thought the possible legal entanglements outweighed the benefits. Resolution No. 7 adopted at the 1962 convention recommending an amendment to provide for a reasonable attorney's fee in place of $50.00 on redemption of a trust deed was introduced as House Bill No. 136. This bill passed the House but died in the Committee of the Whole in the Senate. The problem in connection with this is the fact that since there is no court to determine the reasonableness of the fee, it left the matter wide open as to the determination thereof and could affect the validity of a tender on redemption. Should this be presented at a future session of the legislature, these objections should be overcome.

Resolution No. 13 adopted at the 1962 convention recommending an increase in bar dues, House Bill No. 41, passed both houses and was signed by the Governor on March 1, 1963. I might say that two complaints have been filed against attorneys for delinquent licenses. This is partly in answer to a letter that indicated that we were just bluffing. While not a part of our resolutions, House Bill No. 69 was introduced by a layman in an effort to simplify the probate of the husband's estate where all of the property was community property. The committee rendered the attorney members of the House assistance in analyzing this matter. The proposed bill was voted upon but it is attached hereto to point up to the Commission the problem that may arise again, and the bar should be in a position to make positive recommendations for the accomplishment of the intent of such a measure. As the President mentioned, the Bar Commission shall appoint a committee probably today or tomorrow to study the matter of summary probate of estates and so that faith with the legislature will be kept.

The Legislative Council Act, Senate Bill No. 111, Chapter No. 57, is likewise attached for your information. This is not a report but I don't know how many of you realize how much time was spent by Randall Wallis, Willis Sullivan and many other members of this Committee but it was considerable. It ran into so much as one day a week during the Legislative Session and perhaps more. Your President, Mr. Coughlan, being readily accessible to the Legislative halls, was constantly being bombarded with requests from committees to appear. I believe

that he practically divorced himself from law practice during that period. I think this sometimes goes without notice when it should be mentioned. Thank you. (Applause)

MR. COUGHLAN: We wish to express our special thanks to this Legislative Committee and for their report. At this time are there any other committee reports to be made. If not, we will have a drawing and then have the coffee break. We'll go out now and have our coffee break and return to the resolutions. (Coffee break).

MR. COUGHLAN: We come now to the resolutions part of the program. I want to pay special thanks to Orville Hanson who very graciously agreed to act as parliamentarian. Mr. Merrill here will present the resolutions. And so there isn't any misunderstandings about this, Joe Imhoff, who was one of the immediate past Presidents of the Third District Bar was to act in this capacity; however, he has had a serious illness in his family and was unable to be here and we felt that it wasn't fair to try to unload this off onto someone else and I asked Wes if he would do this for us and he has consented to do so.

MR. MERRILL: Thank you, Mr. President. I think what he meant was that he couldn't find anyone else to do it. I'm about the third substitute and I attempted to take off my hat as a commissioner and to be a determinedly impartial Chairman. I don't know whether I succeeded or not, however, the Resolutions Committee, as you gentlemen know, is composed of all of the presidents of the local bars. In this instance, for our meeting commencing Wednesday afternoon, they are William Tuson of the Shoshone County Bar; Jerry Smith, Clearwater Bar; Carl Burke, Third District; Peter Snow, Fourth and Eleventh District; Robert Bennett, Fifth District; Hartley Kester, Sixth District; Clarence Higer, Seventh District; Stephen Bistline, Eight District; Edward Pike, Ninth District; Ray Rigby of the Twelfth District, and Ben Johnson of the Thirteenth District. By the time the committee meeting was in its final stages, all of these gentlemen were present. The Resolutions Committee operated under the following rules:

First, each bar district was granted one vote. Second, the resolutions to be considered had to be filed on or before the 15th of May prior to the annual convention. If they were not so filed, they could not be considered without a two-thirds affirmative vote of the members of the Resolutions Committee. And third, resolutions proposing legislative action had to be accompanied by a draft of the proposed legislation. Of the resolutions before the committee, one was refused consideration under these rules because it proposed legislation without having a draft of the bill and the second ground that it was filed too late. This resolution dealt with the requirement to file a full property disclosure at the opening of an estate proceeding, including information as to joint tenancy, separate property and so forth. One further resolution failed to receive the affirmative two-thirds vote required because of its late filing. This dealt with the problem of insuring title of real property after the two-year determination of heirship and question of tax title and their being insured. Three resolutions were voted down by the Committee. The Resolutions Committee therefore does present the following resolutions:

Resolution No. 1. Whereas, the growth of administrative and regulatory agencies within the State of Idaho manifests ever-increasing jurisdiction and control over the every-day activities of its citizens. And whereas, many claims,

demands, assessments and deficiencies are in the regular course of business of the administrative agencies of the State of Idaho assessed against firms, businesses and individual citizens calling for the payment of sums of money for the regulation by rules or otherwise of various persons, businesses and industries. And whereas, the diverse climate, utilization and economic development of this state requires that such claims, assessments, deficiencies, rules, regulations, claims or protests are often local or regional in character or have much more impact upon certain areas, counties, cities or individuals of this state and from the state in general. And whereas, many of such claims or rules or regulations relate to small or moderate sums of money or isolated instances affecting only one individual, firm or business. And whereas, it has been the practice of the Legislature of the State of Idaho prior to 1963 to place the venue and jurisdiction of all actions and courts and administrative agencies, boards and commissions in the Third Judicial District in Ada County in the City of Boise, Idaho.

And whereas, many of the aforementioned firms, businesses or individuals are located in areas in the state geographically remote from the Third Judicial District, the County of Ada, the City of Boise. And whereas, the cost and expense to many of the citizens of this state in appearing at hearings, producing evidence, being represented by counsel, results in expense to the individual firms, businesses and citizens involved with such dealings far in excess of the amount involved. And whereas, as a consequence of such economic loss and expenses, the attorneys of this state often feel it necessary to advise their clients that even though moral right and the status of the law, both statutory and judicial, is in their favor, that it would be uneconomic, expensive, fruitless and therefore unwise to appear in person, attend hearings, present evidence, be represented by counsel or to any manner have their side of the case, controversy, dispute, claim, protest or appeal heard solely by reason of the venue and jurisdiction being located in many instances in the Third Judicial District, Ada County, City of Boise, Idaho.

And whereas, despite the active cooperation of the members of the Bar of the Third Judicial District in the presentation of such causes, it has been impossible for the members of the Bar of the Third Judicial District to adequately represent clients before boards, commissions, administrative agencies or in the courts when dealing with such agencies without the opportunity to personally interview their clients, prepare their evidence, to secure the rights of such persons, firms or businesses within a reasonable economic cost. That in many cases it has been deemed advisable either to drop such proceedings, not to appear thereat or to pay the costs, assessments, forfeitures and similar charges or to submit to rules and regulations which were felt to be grossly unfair and unjust.

Therefore, be it resolved that the Board of Commissioners of the Idaho State Bar be directed to appoint a special committee to consider the matter set forth in the whereas clauses in this resolution and to draft appropriate legislation to carry such purposes into effect and that such committee be directed to submit a copy of such appropriate proposed legislation to the president of each bar association and the chairman of the Resolutions Committee and the Secretary of the Idaho State Bar on or before March 31, 1964. Mr. President, I move the adoption of this resolution.

MR. COUGHLAN: You have heard the resolution; is there a second?

MEMBER OF AUDIENCE: Seconded.

MR. COUGHLAN: It has been moved and seconded that the resolution be adopted. Is there any discussion?

MEMBER OF AUDIENCE: Question.

MR. COUGHLAN: You have heard the question; all those in favor of the resolution indicate by a voice vote aye and I'll rule here that this will be a vote by membership rather than by association since it involves the appointment of a committee and a study. Ready to vote? All those in favor say aye. Opposed. Resolution passes.

MR. MERRILL: Resolution No. 2. 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 this resolution.

MR. COUGHLAN: You have heard the resolution. Is there a second?

MEMBER OF AUDIENCE: Second.

MR. COUGHLAN: Any discussion? All in favor say aye? Opposed? Resolution is passed.

MR. MERRILL: Resolution No. 3. Whereas the Bender-Moss Company, Bancroft Whitney Company, The Caxton Printers, Ltd., the Bobbs-Merrill Company, Mathew Bender & Company and the West Publishing Company have generously donated various legal publications for door prizes at this annual meeting. And whereas, the 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 thanks 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 this resolution.

MR. COUGHLAN: You have heard the resolution. Is there a second?

MEMBER IN AUDIENCE: Second.

MR. COUGHLAN: Moved and seconded that the resolution pass. Any discussion?

MEMBER OF AUDIENCE: Question.

MR. COUGHLAN: All those in favor of the resolution indicate by aye. Any opposed? Resolution passed.

MR. MERRILL: Resolution No. 4. Be it resolved that the Idaho State Bar extend its thanks and appreciation to the Bank of Idaho for sponsoring the annual social hour for the enjoyment of the members of the Idaho State Bar. Mr. President, I move for the adoption of this resolution.

MR. COUGHLAN: You have heard the resolution. Is there a second?

MEMBER OF THE AUDIENCE: I second it.

MR. COUGHLAN: It has been moved and seconded that the Resolution No. 4 pass. All those in favor indicate by aye. Opposed? Resolution passed.

MR. MERRILL: Resolution No. 5. Be it resolved that the Idaho State Bar

extend to Mr. Alonzo W. Watson, Jr., William C. Farrer, Norman E. Risjord and Judge James R. Browning 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. Mr. President, I move the adoption of this resolution.

MR. COUGHLAN: You have heard the resolution. Is there a second?

MEMBER OF AUDIENCE: Seconded.

MR. COUGHLAN: Any discussion?

MEMBER OF AUDIENCE: Question.

MR. COUGHLAN: It's been moved and seconded that Resolution No. 5 pass. All in favor say aye. Opposed? Resolution passed.

MR. MERRILL: Resolution No. 6: 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 accomplishments of an active and productive year of bar activity. Mr. President, I move the adoption of this resolution.

MR. COUGHLAN: You have heard the resolution. Is there a second?

MEMBER OF AUDIENCE: Second.

MR. COUGHLAN: It's been seconded. Any discussion?

MEMBER OF AUDIENCE: Question.

MR. COUGHLAN: It's been moved and seconded that the resolution be passed, all in favor say aye. Opposed? That resolution is passed.

MR. MERRILL: Mr. President, that concludes the report of the Resolutions Committee. (Applause)

MR. COUGHLAN: Are there any resolutions to be made at this time from the floor?

MR. ANDERSON: Blaine Anderson, Blackfoot, Idaho. I would like to compose the following resolution: Resolved, that the Idaho State Bar extend to Thomas A. Miller its warm appreciation for his loyal, devoted and outstanding service to the Bar of Idaho and to the entire legal profession during his term of office as Secretary of the Idaho State Bar. Mr. President, I move its adoption by unanimous acclamation.

MEMBER OF THE AUDIENCE: Seconded.

MR. COUGHLAN: You have heard the motion that the resolution be passed by unanimous acclamation. Is there any discussion?

MEMBER OF AUDIENCE: Question.

MR. COUGHLAN: All those in favor of that resolution say aye. Opposed? (Loud applause and standing ovation) It is now my pleasure to introduce to you your new President, Mr. Wesley Merrill; Wes. (Applause)

MR. MERRILL: Thank you very much. The office of the President of the Idaho State Bar is, in my opinion, one of a very high honor and I am most

proud to be named as President. Primarily because it lets me participate a little bit more in the profession of the practice of the law, which to me is not only a tradition but a dream of long standing. As some of you might know, my father was President of the Idaho State Bar about in the 1920's. My uncle was President in the 1940's. So it is somewhat of a tradition with us. This job, however, as each year goes by, becomes a little bit more awesome because of the activities of the past presidents and their excellent performances. And in my opinion, having watched it, I am sure that Glenn has done such an excellent job this year, that it makes my job even more difficult than it ordinarily would have been. So I do start with not a little hesitation and somewhat of a feeling of panic.

Let me acknowledge my personal appreciation to Tom for his help to me on the Commission for two years and for all of the contributions which he has made to us. However, we do have a wonderful group of Commissioners in Alden Hull and Ed. Benoit and we have a new Secretary, Jim Lynch, who has already demonstrated to the Commission that he is a find and we are very happy to have him. I can promise you, however, on behalf of myself and the Commissioners, a lot of hard work and a lot of close attention to your affairs because they are your affairs in the Idaho State Bar. To make sure that that promise is at least started, I would like to make one announcement relative to the General Counsel. With the commencement of the new fiscal year on July 1, 1963, the program for the General Counsel for the State of Idaho is to be implemented by the Board of Commissioners. The General Counsel we anticipate will function as the legal representative of the Idaho State Bar with its primary duties to investigate and to prosecute such complaints dealing with disciplinary matters and with the unauthorized practice of law as are assigned to the General Counsel by the Board of Commissioners.

It is anticipated that the General Counsel will be assigned to complete the investigations of those files which appear by preliminary investigation to be of a serious nature. It is currently proposed to engage on attorney located in one of the major population areas, the Boise, Nampa, Caldwell area and this individual will be employed on a part-time basis, paid on a case produced basis. He will operate out of his own office but the facilities of the Idaho State Bar and its office will be available to him. If and when the workload reaches the proportion that it will become economically feasible to hire a General Counsel on a full-time basis, or upon an expanded program of General Counsel on a part-time basis in other areas, this can be done.

MR. MERRILL: We have a new Bar Office, gentlemen, which will be opened Monday morning. We have opened an independent bar office which I think is the first time that that has been done in the history of the Idaho State Bar. At this time it is my distinct pleasure to ask Mr. John Squires to come to the stand.

MR. SQUIRES: Thank you very much, Wes. Glenn, it gives me a great deal of pleasure to present to you, and congratulate you on your term of office, as a token of that office which you have fulfilled the last year and in expression of the appreciation of Mutual of Omaha this gavel and we hope you will treasure it for many years in memory of this most memorable year. Thank you very much. (Applause)

MR. COUGHLAN: Thank you John. I certainly appreciate this gift and be assured that I will always cherish it.

Just a brief comment and I'll let you go. I do want to tell you how much I have appreciated what you have done for me during my year as President. You can look forward to a tremendous year under your new President, Wes Merrill, with Alden Hull and the new Commissioner, Ed. Benoit. I know that they will have a successful year for you and serve you well. And with that, ladies and gentlemen, I now pronounce this convention adjourned. (Applause)

(THE END)

APPENDIX

PRESIDENT'S REPORT

By Glenn Coughlan

A feeling of nostalgia sweeps over me when I realize that my term on the Commission is practically at an end. On the other hand, I would be less than candid if I did not confess that I will be happy to relinquish the presidency to my successor. These mixed emotions, however, in no way detract from the genuine pleasure I have derived from serving these last three years on the Commission. I will always cherish the honor of serving as President of the Idaho Bar. It is my sincere wish that I have been able to contribute something toward the betterment of our State Bar.

The past year has been a busy one for the Commission. The work load was increased because of this being a legislative year. The legislative program of the bar met with moderate success. Little difficulty was experienced in the House with passage of the bar legislation. However, results were rather disappointing in the Senate. Passage of the Professional Corporation Act will probably eventually give the lawyers a choice of using this method to achieve some measure of tax equality or proceeding under the so-called Keogh Bill to set aside retirement funds. We will receive explanations of the two plans at the Convention at Sun Valley.

During the year the Commission has met as often as possible in different sections of the state. This has given us an opportunity to explain to the local bars the work of the Commission and on the other hand, has permitted discussion of mutual problems. In my view, this is one of the most simple, yet effective, methods which has contributed toward achieving a close relationship between the bar and the Commission.

We have had an outstanding continuing legal education program this past year. Special thanks is extended to Herb Berman and his committee for their contributions, which insured the success of the Institutes. The subject of damages was ably presented by the speakers and I congratulate them for their efforts. We are fortunate to have obtained, through the cooperation of the law school, Dr. Brockelbank's book on Community Property, which will serve as excellent material for future institutes. Continuing Legal Education is without doubt a field where the bar can render a service to the lawyers. I recommend that special emphasis continue to be placed on this phase of bar work.

One of the most heart-warming experiences we have had on the Commission is the spirit of cooperation and helpfulness that emanated from the law school. We have received full cooperation in every possible way. I especially thank Dean Peterson for his assistance in many bar programs. This relationship is extremely beneficial to the bar and I suggest that it be carefully nurtured in the future.

Likewise, there has been a real improvement in removing the barrier that has previously existed between the Commission and the Supreme Court. We have had frequent meetings with the Court regarding matters involving the bar and the court and it has indeed been gratifying to receive the wholehearted

enthusiastic support of the court in solution of bar problems. I trust that the Bar Commission will encourage this fine association in the future.

The minimum Advisory Fee Schedule has been up-dated. The acceptance of this schedule has been wide-spread throughout the state and has received general approbation of the bar. This tool is one which can, if used, immeasurably benefit the individual lawyer.

The Committee on Uniform District Court Rules is to be commended upon the excellent job they have done. A generally completed product has been submitted for the consideration of the Supreme Court. The Bar Commission will by resolution recommend adoption of the rules by the court. Uniformity of these rules will be of great assistance to the bench and bar.

Joint effort has been instituted between the Bar Association and the Medical Association to work out a guide for each of the professions in their relationships with each other. I recommend that this program be continued and carried out to its conclusion. The benefits to be derived from establishment of mutually acceptable guidelines will erase the misunderstandings that have existed in the past.

We now have the basis for instituting inferior court reform in our state. Initial work has begun on this. Although it is a program of large scope which will require a great deal of study, careful preparation and drafting, it should be carried forward energetically and with the cooperation of the Bar, Law School and the Supreme Court, and the necessary legislation could be presented to the next legislature.

Because of the forward-looking vision of the members of the bar, we now have the funds to improve the operation of our State Bar. We can now set up a separate bar office with the future goal of a full time secretary. As soon as practicable, a part time general counsel should be established to handle disciplinary and unauthorized practice of law matters. The general counsel will relieve the members of the bar of the onerous task of prosecutions and should more effectively discourage unauthorized law practice. The secretary will have more time to devote to administrative bar work and should be able to handle the editorship of The Advocate so as to increase the usefulness of this publication. We should look forward to the establishment of a full time secretary at the earliest possible time. The progress of our State Bar requires it and it should not now be too long delayed, since we now have the funds to permit it. This office need not be filled by a lawyer and consideration should be given to placing a non-lawyer in the post since few lawyers are willing to devote full time to this position. Use of these funds should be made to expand our Continuing Legal Education program.

Special recognition is given Bud Hagan, Bob Bakes and Frank Elam for their fine work in publishing The Advocate. The Advocate has grown to be a splendid organ for communication among the bar. Special effort should be made to expand it and increase its effectiveness.

Space will not permit me to individually list each of the committees and their membership who have performed so magnificently in carrying out their functions. The Commission and the bar are grateful for the outstanding service you have rendered.

I, personally, wish to express my appreciation to the many individuals who

so ably met their obligations to the bar, often in the performance of unpleasant, but vitally necessary, duties.

Thanks to Tom Miller and his efficient "Lady Friday," Olive Scherer. I am grateful to you both.

The bar is indeed fortunate to have as its new President, Wesley Merrill, and as second in command, Alden Hull. Both of these gentlemen will serve you well.

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