IDAHO LAW JOURNAL

NOVEMBER, 1932

PROCEEDINGS

of the

IDAHO STATE BAR

Volume VIII, 1932

Eighth Annual Meeting

Pocatello, Idaho, July [illegible], 1932

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THE MARCH ISSUE

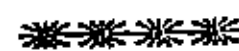
OF THE

IDAHO LAW JOURNAL

Contained the following articles:

Consideration for Corporate Shares With Special Reference to Shares Without Par Value
WILLIAM E. MASTERSON

Power of a Deserted Wife to Deal With Community Real Estate
A. L. MERRILL



THE JUNE ISSUE

Contained the following articles:

The Payment of Legacies
ALVIN E. EVANS

The New Idaho Income Tax
EUGENE A. COX

Onus Probandi and Disregard of the Corporate Fiction
WALTER H. ANDERSON

The Duties of the Attorney-General of Idaho
FRED J. BABCOCK

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MOSCOW, IDAHO

Officers of Idaho State Bar

The Idaho State Bar is organized in conformity to and functions under statutes of the State of Idaho, found as Chapter 211, Session Laws of 1923, Chapters 89 and 90, Session Laws of 1925, and Chapters 63 and 98, Session Laws of 1929.

Rules for Admission of Attorneys, Conduct of Attorneys, Disciplinary Proceedings, and General Rules, as adopted by the Board of Commissioners and approved by the Supreme Court of Idaho, are published in pamphlet form and may be had upon application to the secretary.

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WARREN TRUITT, Moscow, Northern Division........1929-32
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ANNOUNCEMENTS

ATTORNEY'S LICENSE FEES—$5.00, payable annually prior to July 1, to the State Treasurer, Boise, Idaho.

MEETING OF THE BAR—The Northern and Eastern Divisions will hold Division meetings in 1933 at times and places to be fixed, respectively, by Commissioners Ailshie and Owen.

Annual meeting of the Idaho State Bar will be held in the Western Division in 1933, at a time to be announced later.

An election of a commissioner for the Western Division will be held in 1933.

In re Per Curiam Decisions

A New Use for Shepard's Citations

"If, in addition to disposing of the specific case, per curiams are to serve as guides, they must contain some indication, however brief, of the nature of the issues thereafter deemed to be settled. Last term discloses a noticeable improvement in the mechanics of per curiam formulation. Instead of disposing of specific cases by undiscriminating references to the general proposition that the existence of a substantial federal question is a prerequisite to the Court's jurisdiction, it is becoming the practice to refer to past decisions which have settled a substantive doctrine and therefore, as a matter of jurisdiction, preclude the reopening of that particular issue. The new practice, through the aid of Shepard's Citations, enables the bar to trace the application which the Court has given to a doctrine. But there still remains the difficulty of knowing what variants the new case presented but which the Court deemed legally irrelevant. The bar has not easy access, except in the great centers, to the records of the Supreme Court. The Reporter, Mr. Knaebel, is now circumventing this difficulty by adding to the per curiam a citation to the opinion in the court below."

From:—The Business of the Supreme Court at October Term, 1930.
By:—Felix Frankfurter and James M. Landis.
In the:—Harvard Law Review, December, 1931.

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IDAHO LAW JOURNAL

VOL. II NOVEMBER, 1932 No. 4

PROCEEDINGS OF THE IDAHO STATE BAR

HELD AT POCATELLO, IDAHO, JULY 15th and 16th, 1932

Friday, July 15, 1932
10:00 o'clock A. M.

The meeting of the Idaho State Bar was called to order at 10:00 o'clock A. M., at Pocatello, by Hon. William Healy of Boise, Vice President.

VICE PRESIDENT HEALY: Gentlemen, I think we had better proceed to the rather informal morning program we have here. I had a telegram a day or two ago from Judge Truitt that he would not be present. As President of the Commission it would have been his business to preside over your deliberations and he was also on the program for the President's annual address. While I can substitute for him as chairman of your meeting it has not been possible in the few days I had, for me to attempt to double for him in his address; a circumstance for which you ought to be, and probably are duly grateful.

We have no printed programs for this meeting. The Commission thought it best to devote the divisional and the annual meetings to the consideration and discussion of the report of the Judicial Council, a copy of which report has been mailed to all of you some thirty days ago. The idea was to give all the members of the Bar the opportunity to criticize this report and to express their view and opinion of it, to the end that the Bar might present a united front as to the changes and the recommendations of the Council. It is preferable for the members of the Bar to express their discontent to the Bar itself rather than wait for the legislature to convene. It happened that at the two divisional meetings, one held at Coeur d'Alene on June 10, and one at Twin Falls on June 17, the report of the Judicial Council seemed to meet with such a degree of approval that we had very little to discuss. If that is the attitude here we won't have much to discuss here, but we want to devote the time to a discussion of these matters. So much for the nature of the program. Its importance is self-evident.

What will be the outcome of this valley of shadows through which the world is passing at this time no one knows. Whether it will lead us back to normalcy where things retain their old-time familiarity; or whether it will lead us on to some new and strange days, nobody knows. But wherever it takes us, it seems self-evident that many of our old ideas, methods and practices must go into the discard. There is no question but that in the particular branch of government in which we are interested there is plenty of room for improvement, that is, in the administration of justice. It seems clear that the people of the world and of this country have been stirred too deeply, their lives have been affected too profoundly by what has been going on in the last few years

to lend much color to the expectation that they will tolerate many of our old practices in the future.

It seems clear also that more and more in the future government will be called upon to take the lead in our economic and social life. It behooves government, therefore, to fit itself for its growing responsibilities. In that branch of government which is our special and peculiar responsibility it behooves us to set our house in order to the end that in the administration of justice there may be greater economy in money, and in time; that our courts and our methods may be made more flexible, more quickly responsive to the needs of the hour. It is evident to everybody that much of our judicial machinery is the outgrowth of casual and haphazzard legislation. Where it is not, it is still subject to obsolescence in the same sense, although perhaps not in the same degree, that the machinery of industry is subject to obsolescence. It seems to me there is no danger of the Bar making too rapid progress, for the Bar is incurably conservative. The danger is that it won't move at all. There may be genuine danger that if we don't put our house in order, if we fail to see to it that our branch of government is properly carried on, the commercial and business world will find a way to dispense with our services. The things that confront us may have to do as well with our self preservation as with our good citizenship.

The first order of business is the appointment of committees. We have two. One on Resolutions, which has the work of putting in shape what this session does. I have named on that committee, Mr. T. D. Jones, of Pocatello, whom I will ask to act as Chairman. Mr. J. L. Eberle, of Boise, Idaho, Mr. A. L. Morgan of Moscow, Mr. O. A. Johannesen, of Idaho Falls and Mr. Harry Bennoit of Twin Falls. I would like to have Mr. Jones get his committee together after the morning session. If there are any of these men who do not appear we will fill their places.

The committee to canvass the election of the Northern Division. The statute provides that the polls close at noon today. I have appointed on that committee, Mr. R. D. Merrill, Walter H. Anderson and Grant Soule.

The next is the report of the Secretary.

REPORT OF SECRETARY

At the Annual Meeting of the Bar, the Eastern Division re-appointed, at an election, E. A. Owen as Commissioner for that division. The Board selected Warren Truitt, Moscow, as President, Wm. Healy, Boise, as Vice President, and Sam S. Griffin, Boise, as Secretary.

The first meeting of the Board at Moscow, July 8, 9, 1931 was largely occupied with grading examination papers; 8 applicants were examined, of whom 6 were passed and 2 rejected. Two complaints were considered. The death of and a tribute to Willis E. Sullivan, Boise, formerly President of the Idaho State Bar Association and one of those active in the present form of organization of the Bar, as well as in its affairs, was noted in a resolution of the Board.

On October 9, 1932, the Board met at Boise and examined the applications for admission to the Bar presented by ten individuals: 7 were found entitled to be examined (2 conditionally), 2 were rejected, and one recommended for admission upon certificate from Utah. The recommendation for admission of three persons theretofore made was withdrawn nnder the rules, they not having

completed admission within six months. Six complaints against attorneys were considered; in one, a hearing having been had, the Board found that rules of conduct prescribed by the Supreme Court had been violated, and recommended a reprimand, which the court subsequently administered; two were dismissed; hearing was ordered in another, and the others postponed for further consideration. Arrangements were made for the fall examination.

The papers of seven applicants were graded at the meeting of the Board Jan. 7-8, 1932; five were passed and two rejected. Five complaints were considered, of which three were dismissed, and two held open for further preliminary investigation. The Board appointed special committees as requested at the Annual Meeting of the Bar at Moscow, considered the work of the Judicial Council, and appointed to the body, Justice R. D. Leeper in place of Justice Wm. F. McNaughton, resigned.

Six complaints received the attention of the Board April 11, 12, 1932, of which two were dismissed, in one hearing was ordered, and two were left for further consideration. Fifteen applications for admission were considered; 2 were recommended on certificate from South Dakota and Texas; 11 were granted leave to take the examination and 2 were rejected. Arrangements were made for conduct of the examination; for Division Meetings in the Northern and Western Divisions, and for the Annual Meeting. The Board met with the Judicial Council, and appointed thereon Hon. J. L. Downing, a successor of Hon. Ralph W. Adair, resigned. Arrangements were also made to receive, print and distribute to every member of the Bar, a copy of the Report of that body, and later, in May, this was done. This report is the subject of this meeting for approval or rejection of the Council's detailed recommendations.

The final meeting of the year was held at Coeur d'Alene on June 10, 11, 1932. The Board attended the Northern Division Meeting; graded nine sets of examinations, passing eight and rejecting one; recommended one admission from Texas and considered two applications. Action on four complaints was deferred; in one, disciplinary hearing before the Board was ordered. Hearing was also directed against six attorneys who had failed to pay license fees; of these two have since paid up. Further consideration was given to the program for this meeting.

Eighteen separate complaints against attorneys ranging from alleged failure to answer correspondence and advising client of progress to embezzlements and conviction of felony. Eight are pending further preliminary investigation; three were dismissed as showing no cause of action; two were dismissed on satisfactory adjustment and settlement; one dismissed for failure of the complainant to cooperate and furnish evidence alleged to be in his possession; three are in process of being heard, and in one judgment of reprimand was ordered and executed.

A total of 34 applications for admission to practice were considered; 28 were examined, 3 failed to appear for examination and three were admitted upon certificate. Of those examined, 19 passed and nine were failed (one on two occasions) a failure of slightly over 32 per cent. Recommendations for admission of 3 were withdrawn as hereinbefore stated.

The 1931 Proceedings of the Bar were published as an issue of the Idaho Law Journal, a quarterly publication devoted to questions of interest to Idaho

lawyers, edited and published at the College of Law, University of Idaho, to which members of the Bar are urged to lend support by their subscriptions.

The Bar continues financial support to the Judicial Council, demonstrating a worthwhile and unselfish public service.

The condition of the appropriation, and expenses, from July 2, 1931, to July 8, 1932, follows:

APPROPRIATION REPORT 7/2/31-7/8/32.

Balance reported 7/2/31		$3,527.40
Receipts from licenses		2,915.00
		6,642.40
Office Expenses		$1,313.02
Secretary	$900.00	
Stenographers	181.69	
Stamps, Supplies, etc.	231.33	
Travel		$644.48
Meeting		226.54
Print and Distribute 1931 Proceedings		315.45
Examinations		7.98
Discipline		49.20
Judicial Council		322.10
		$2,878.77
Balance in Appropriation July 8, 1932		$3,563.63

The number of practicing lawyers in Idaho continues the decline shown in last year's report. In 1930-31 the loss was 19. The numbers, and members of June 30, 1931 and June 30, 1932, follows:

Divisions	6/30/32	6/30/31
Northern	131	137
Eastern	125	138
Western	277	269
Out of State	28	26
Total	561	570

Respectfully Submitted,
SAM S. GRIFFIN
Secretary.

THE VICE PRESIDENT: The next is the report of the meetings of the Western and the Northern Divisions. In view of the fact that Judge Truitt is not here I will ask Mr. Griffin to make the Report of the Northern and the Twin Falls meetings.

MR. GRIFFIN: The Northern division meeting was held on June 10th, at Coeur d'Alene and was devoted exclusively to the report of the Judicial Council, which is also to be presented here.

The attendance was pretty largely made up of members from Coeur d'Alene with a few from Wallace and one or two from Moscow. It is unfortunate that the geography of Northern Idaho seems to make it impossible to get a real representation at the meetings. Mr. Ward Arney acted as Secretary and afterward wrote me the details of what had been done and the result of their vote. The meeting favored the redistricting of the state as recommended, they favored the abolition of probate courts, the non-partisian election; the appointment of clerks of the court; the creation of justice courts; the examination of jurors by the court and the provision that all instructions of the court be deemed excepted to. It also approved the recommendation of the Crimminal Law Committee as to informations and witnesses, also the statute creating the Judicial Council as supported by the State, and provision for appeals from the probate court.

It rejected the provision in the Judicial Council report which relates to the necessity of taking exceptions to the instructions and also rejected the provision in the report that the court may comment on the evidence and the credibility of witnesses, and also the Inheritance tax amendment.

The Western Division meeting was held in Twin Falls on June 17, the attendance at that meeting was largely local also. My section of the Country will have more, a better representation here than was at Twin Falls. Frank Martin, the Secretary, explained the report of the Judicial Council, there was a motion made that it be approved and it was approved as it stands. It was moved that this meeting redraft the exemption statute. It was also moved that this meeting be requested to discuss the subject of abolishing or retaining the College of Law at the University of Idaho. It was also moved that some plan of County Bar Association be formulated. That constituted the meeting of that division.

I think that the resolutions committee should consider the difference between the two divisional meetings. We have a rule that where two divisions disagree, then the annual meeting shall formulate a ballot of each question which is submitted in the same way that we ballot on commissioners. That ballot should be formulated at this meeting and sent to all the lawyers so as to constitute a consensus of opinion.

I move that there be referred to the resolutions committee for the purpose of formulating a ballot, the questions upon which the Northern and the Western Divisions disagreed.

Whereupon the said motion was seconded.

THE VICE PRESIDENT: You have heard the motion, which was seconded, is there any remark?

MR. H. E. RAY: Mr. Chairman, I discern, if I heard correctly one of the suggestions by the Twin Falls division which to my mind is wholly objectionable for this association to consider now or at any time, or any place. It is very apparent that it is political in its aspect, something in which this Bar should not interest itself. That is the portion of the report which suggests that this Bar consider the abolition of the College of Law at the University of Idaho. Nothing could be more calculated to defeat, before the legislature, the things worth while in the Judicial Council's report, than this suggestion from this Bar. I wish at least to amend the motion.

THE VICE PRESIDENT: I think the motion did not include the sub mission to a referendum of this subject.

MR. GRIFFIN: The only things that would be covered under that motion would be the matters which are in the Judicial Council report, that is, the matters mentioned in the report. This matter of the College of Law is not in that report. The things which my motion contemplated are the three matters upon which there is a disagreement. Upon which the Northern Division rejected the recommendations of the Judicial Council and the provisions or statutes which they proposed relating to the taking of exceptions to the Judge's rulings; the Western Division accepted that. That would be one matter, and then there would be the question of taking exception to the court's instructions. The court may submit his instructions to counsel prior to giving them and if exception is not taken then the exception is waived. The Northern Division rejected that recommendation and the Twin Falls or Western division accepted it.

JUDGE MORGAN. If the court did not submit the instructions in a timely manner, of course, the exception would not be waived and you would have the statutory exception.

MR. GRIFFIN: Yes, you would have the statutory exception.

The second question on the ballot would be the question of commenting upon the evidence and the credibility of the witnesses by the court. The Northern division rejected that and the Western Division accepted it, and the third recommendation is the recommendation of the Council relating to the Inheritance Tax, the Northern division rejected that and the Western Division accepted it. These are the only things contemplated in the motion.

JUDGE MORGAN: Mr. Chairman, I arise for information. Is there any way that we can submit for referendum a question on which the two divisions have not disagreed. As to the examination of the jury by the court. The Northern and Western divisions are both agreed on that. I would doubt very much whether the major portion of the Bar is agreed with either of them. I don't know that I am ready to adopt the practice of the Federal Court.

MR. GRIFFIN: The rules provide for this referendum of questions on which there is a disagreement. If this meeting should disagree then the question would go to the resolutions committee.

THE VICE PRESIDENT: The adoption of the motion would not preclude the Eastern Division and the State Bar from having its say.

MR. OVERSMITH: I understood that the recommendations were first referred to the Division and the State Bar Meetings. It occurs to me that the motion is premature. It might be that this meeing would reject or approve some of these recommendations and these matters all should be referred to the Bar of the State and it seems that we should discuss these matters before they are referred to the resolutions committee.

MR. GRIFFIN: We have a disagreement now, and under the rules they are to be submitted by ballot.

MR. AL MORGAN: Then, the only thing that the resolutions committee is to do with this is to formulate a ballot, is that not correct.

MR. GRIFFIN: Here is the rule:

(Whereupon the rule was read by Secretary Griffin)

JUDGE MORGAN: I am in favor of the Secretary's motion, provided, it does not preclude us from submitting these other questions, for instance, I don't want to be foreclosed to get in the form of a referendum the question of whether the court or counsel shall examine the jurors, if we are to understand that by voting "yes" we are not foreclosed from further submitting these matters, then I would vote for the motion.

JUDGE AILSHIE: I want to make inquiry—in the first place I suggest that this is premature, this motion is premature. Before we go to submitting for referendum the propositions or recommendations of the Council we had better discuss these questions and determine what particular questions are to be submitted. As I understand it—whether I am correct or not—I think this association has the right to determine what it is going to do in submitting the questions to a vote of the members of the Bar at large, or whether it is going to submit the final conclusions of this Bar. I don't think there was perhaps, over a half dozen members of the Bar of Coeur d'Alene and two or three others at this meeting of the Northern Division. I don't know what was the condition in Twin Falls. This State Bar meeting certainly had a right to determine the questions that are to be submitted for a referendum vote over the state, but before we go to submitting questions we ought to discuss the questions here and determine whether this Association agrees with the Twin Falls or the Coeur d'Alene meetings or whether it disagrees with them both, so I raise the question that this is premature and would suggest that it be deferred until we have engaged in a discussion of this report and determine what this association as The State Bar Association, wants to do and then instruct the committee or submit to the committee the questions that should be submitted to them.

JUDGE DOWNING: I had his thought in mind. The motion of the Secretary was merely to get into the resolution committee this question or questions—to lay upon their shoulders the responsibility of taking care of these particular questions from here on.

If this body should determine to submit any question or questions it has the power to do so. The rules place the responsibility of submitting a question if there has been a disagreement by two divisions. We may go on record for or against any measure and we may direct the resolutions committee to submit that measure together with the differences of the two divisions. That is my understanding. I am asking if that is the situation.

THE VICE PRESIDENT: I understand that the motion is to submit to the resolutions committee the question of formulating a ballot on the question upon which there is a disagreement.

VOICE: I would like to have the rules read again.

(Rule read by the Secretary)

MR. JONES: The point is, if this association decides against or for these questions, what is the necessity of a ballot on them.

MR. GRIFFIN: The rule provides—(Rule read again by Secretary)

MR. GRIFFIN: In other words, my motion was to refer it to the committee for the purpose of getting it before this body, then, whatever resolution the committee decides to bring in, this body decides upon.

MR. OVERSMITH: I arise to a point of order. That report of the Divisional meetings was to be made at this meeting. This meeting acts on this report, not a committee. It seems to me that the motion is out of order. It is before this meeting without any resolution. Your rule reads, "whereever there is a difference"—Without a difference the action of the Judicial Council shall be submitted to this body.

THE VICE PRESIDENT: The Chair rules that the motion is in order.

MR. JAMES: As I understand the rules, this body has the right to determine whether a referendum will be taken. This motion refers the question to the resolutions committee, the objection seems to me to be well taken. I now move that this motion be tabled.

(Whereupon the motion was seconded)

MR. OVERSMITH: I make a motion that the motion be deferred until such time that the State Bar Association has had a chance to consider and pass upon the various matters submitted by the Judicial Council.

(Whereupon said motion was seconded)

THE VICE PRESIDENT: It has been moved and seconded that consideration of the pending motion be deferred until after this meeting has had a chance to consider and pass upon the questions and matters submitted by the Judicial Council.

(Whereupon motion was voted upon and carried)

THE VICE PRESIDENT: The next order of business is the communication from the prosecuting attorneys.

MR. MEEK: We have nothing to report at this time, I want to announce that I would like to know how many prosecuting attorneys are here so that we can have a meeting at the Bannock Hotel this noon.

THE VICE PRESIDENT: Then you can advise us later.

MR. MEEK: Yes.

THE VICE PRESIDENT: I would state that the local bar has made arrangement for a banquet at the Bannock Hotel this evening at six-thirty. While it has been the practice, but not the uniform practice for the local bar to pay for these banquets (laughter) the members of the Bar who attend this banquet this evening will pay the expense.

This concludes the program for this morning, may I suggest that the members of the committee for the purpose of canvassing he election remain here until they have arranged to canvass the vote.

SECOND SESSSION
Friday, July 15th, 1932
1:30 P.M.

VICE PRESIDENT HEALY: In the appointment of the Resolutions Committee this morning Mr. Johannesen of Idaho Falls was appointed on the committee. Apparently he isn't here, and we will substitute on the Resolutions Committee for Mr. Johannesen Mr. Ed. Holden of Idaho Falls. And in the case of Mr. Harry Benoit of Twin Falls who was also appointed on that committee, apparently he is not here, but I have been advised there are some attorneys here from Twin Falls who expect to attend the meeting, among others, Mr. W. Orr Chapman, and I will appoint him in place of Mr. Harry Benoit on that committee.

Now, gentlemen, the next order of business we have outlined for this meeting is the report of the Judicial Council. Was it your idea to have that report read?

SECRETARY GRIFFIN: No, they are supposed to have read it.

THE VICE PRESIDENT: You gentlemen have all been supplied with printed copies of the report through the mail, and the suggestion was made at the time—I think at the time on the cover of the document itself—that you bring it with you to this session of the meeting that you might have it before you. I don't know how generally you have done that, but there seems to be quite a number of them here.

Now, Mr. Merrill, who has, I think, since its inception been a member of the Judicial Council, and who has actively participated in the preparation of this report, is on the program for an explanation of it, and the chair will recognize Mr. Merrill.

MR. MERRILL: Gentlemen: I have brought with me my files in the matter thinking perhaps some points might develop in the discussion that could be probably answered from the information gathered by the committees, and having the files available that could be more readily supplied.

This problem of Judicial Council work is one that has been growing throughout the United States, as I am sure you are aware. We have had certain guides, particularly in Kansas, and Michigan, California, and a few other of the American states. Our work has been considerably influenced, I am sure, by the work of the Judicial Councils of Michigan and Kansas. It is with the secretaries of the Councils of those two states that I personally have been in correspondence for approximately two years, and have been exchanging ideas with respect to certain features of the work sponsored by the Judicial Council. This is merely for the purpose of enlightenment for we realize we must pioneer some work for our own state because our problems are not precisely the same as the problems of the other states, yet at the same time in many respects similar.

You know, perhaps, the history of this matter. In 1929 at the Bar Meeting at Idaho Falls, a resolution was passed directing the Bar Commission to appoint a Judicial Council to be composed of two members of the Supreme Court, three district judges, and five practicing attorneys chosen from the state at large. The Council, therefore, consisting of ten, was organized and commenced its work in September, 1929. At the next session of the legislature there was an amendment to the Bar Act which enlarged the powers of the commission with respect to the Judicial Council. It is hoped by those who are favorable to the idea that at some future time legislative enactment will be had in Idaho giving the Judicial Council a more permanent and defined standing in the judicial history of the state.

At the first meeting in 1929, in September, the organization of the various committees took place. The council was organized into three committees; one on judicial procedure; one on criminal procedure; and one committee called the survey committee.

The membership of the survey committee was designedly that of lawyers, because it felt the judges did not want to be in any sense embarrassed by

attempting to pass upon their own work, or the work within the various districts of other judges. Thereafter the survey committee undertook to make a very careful and, we feel, quite complete survey of the work of the courts in Idaho within the period of time from 1920 to 1931, or a period of eleven years. Our work covered the work of the district courts, the supreme court, and also the probate courts. There is another very attractive field but the information was so scattered concerning it that we would not get the facts, and that was the justice court work throughout the state, a matter that I will touch on a little later by reason of certain phases of this report.

That which we wanted to do first was to find out exactly what the state was doing in its courts. That information was available. It was obtained in this manner: A draft of a questionaire was prepared, and was submitted by the clerk of the supreme court to the clerks of the district courts throughout the state, and likewise to the probate courts. This questionaire was designed to elicit information touching the number of cases filed in each county each year, the character of those cases, and the disposition of those cases; likewise, the number of cases that had been contested, the number that had been taken by default. Our inquiry likewise extended to the population of the respective counties and districts, the assessed valuation of the wealth within the respective counties and districts in order that we might get an accurate idea of the load of the courts in the various districts and counties throughout the state.

Our aim in securing this information was to see if some definite conclusion could be drawn to do one of two things, either to say, "The system is working well within Idaho, and we don't want to change it," or "We would like to make certain changes, believing these changes to be for the best interests of the state at large, of the profession and of the litigants."

The preliminary report displayed some rather startling and interesting things to which I will now refer. We compiled the report and made certain charts. I have with me here one chart that I want to draw to your attention.

First, with reference to the supreme court: In the state of Wyoming—and we went out into these other states for the purpose of comparison—there was a total population at the time this chart was compiled, and based on the United States census, of 247,000, or 82,000 per supreme court judge, and 27,000 people per trial court judge. In Montana, with a total population of 548,000, there is 77,000 population per supreme court judge and 18,000 per trial judge. Oregon, with a population of 902,000, has 129,000 people per supreme court judge, and 32,000 per trial court judge. In Washington, with 1,587,000 people, there aree 175,000 persons per supreme court judge, and 32,000 per trial court judge.

Now, Idaho, with a population of 546,000 has on that basis 109,000 per supreme court judge, and 34,000 per trial court judge. I call you attention to the fact that in Idaho there are more people per trial court judge than in any of these other states, but with the supreme court judges, Wyoming and Montana are below, that is to say, having less people per supreme court judge than Idaho, with Oregon and Washington ahead.

MR. GRAHAM: Mr. Speaker, have you any of those charts for distribution?

MR. MERRILL: No, I haven't. This is the only one I have. There were only three or four blue prints made.

Now, on this chart you will note these lines here. These attempted to show the load of the district courts. I particularly want to call your attention to the irregularities which tells to us a very interesting story; District No. 1, one judge, population 18,200, valuation $25,269,330. You will note where the line stops with population and with wealth.

Second District: One judge, population 29,200, valuation $27,950,000.

Third District: Two judges, population 59,200, running out to there with the valuation of $58,000,000, in round numbers.

Fourth District: One judge, population 21,700, and valuation $24,000,000, with the line stopping there;

Fifth District: Population 74,500, valuation $68,000,000, running out to there.

Sixth District: One judge, population 37,800, valuation, $29,000,000, running out to there.

Let me pause here to call your attention that District No. 1, with eighteen thousand population, has one judge, and District No. 6, with 37,000 people, has one judge.

District No. 7: Two judges, 70,000 people, $54,000,000 valuation.

Now, the Eighth District: Two judges, 53,000 people, $49,00,000 valuation.

Ninth District: One judge, 66,100 people, and $50,000,000 valuation—and again let us compare that district with District No. 1, and it shows a discrepancy even greater than the other comparison with District No. 1. Here you will see 66,000 population in district No. 9 as compared with 18,000 in district No. 1, and $50,000,000 valuation as compared with $25,000,000, and yet we have one judge in each district.

District No. 10: One judge, $40,000,000 valuation, and 41,000 population.

District No. 11: Two judges, wth 74,000 population, and $53,000,000 valuation.

Now, the average you will observe is 45,000 people, and the average valuation is $43,000,000. Where you have a judge, or judges, in a district where the average is below that in population and in wealth, it is perfectly evident from that, and from other figures which we compiled, that he is not carry ing the load that the judges are carrying in the districts having a larger population, and going above those figures.

Now, a very interesting thing to me is this, and it is perfectly natural if you think it over for a moment: That with the population and wealth correspondingly seems to go the amount of litigation, both civil and criminal, determined by the number of cases filed in those various places. These reports throughout—all three of them—display that fact. Without burdening you with these figures—they have all been presented to you in the various reports of the three reports that have been submitted—I wanted to merely call your attention to the fact that during the ten years that the first report covered the same relative difference appeared in the number of cases disposed of as with the population and wealth, and, likewise, the same ratio in each of those places in the falling off of litigation from the peak of along in 1921 and 1922.

Permit me to further call your attention to the fact that from the years 1921 and 1922 there has been a steady decrease in the amount of litigation in the state, both civil and criminal, to the extent of fourty-four per cent.

Now, these figures, we believe, are as nearly accurate as they can be. Every county in the state reported and gave from the register of actions the numbers of cases filed and disposed of. They were very carefully compiled, because we were working with no thesis to prove. We were after information, and these conclusions that I am endeavoring to draw seemed to us to logically follow as the result of the compiling of that information.

Now, after the first report, which covered the ten years, we felt that we should take another year, confine it to one year, and see what we could do with that. That was the year 1930. We made the same type of examination into the filings in the district collectively, and in the counties and in the counties and in the probate courts, and we found that the same thing existed with respect to the variations. We found the same relative numbers of cases filed. It seemed to us to again prove the correctness of the first report. The second report of the survey committee was then made to the Judiciol Council. Then we tried it again. We got from almost all of the counties for 1931 the report of the filings, disposition of cases, etc., during that period of time, and there, again, the same fundamentals were shown to exist.

Now, from that information gathered in that manner it seemed to us, dealing now entirely with districts, to indicate certain fundamentals:

First: That there were certain districts wherein the work was not at all burdensome to the court.

Second: There are other districts, and I may say in particular the Ninth, where the work seemed to be extremely burdensome.

There points were furthermore fortified and buttressed by the information disclosing the undisposed of cases, the length of time in which odinarily a case was brought on for trial on the average—not those that were pressed up and had gotten right of way and so forth—and then when it was all sized up this conclusion seemed inevitable, viz: If the courts were able with sixteen judges to do the work in the peak times, certainly a lesser number could take care of it when there was a fourty-four per cent decrease, and furthermore that the wealth, the assessed valuation, and population of the state during those years of which I have been speaking have not increased perceptibly. It seems as though we have reached a temporary stage, so to speak, in those two respects. Therefore, we felt that a conclusion was safe, viz: That by a proper redistricting of the state, and by asserting certain business principles in the manipulation of the work in the courts, that the disposal of cases in the district courts could be handled with less machinery than we have at the present time.

Now along with this study we made a study of the probate courts to determine the amount of work done in each of these courts, not only in the probating of estates, but also in the civil jurisdiction of the courts, and in handling of juvenile cases and guardianship matters, and other matters that usually occupy the attention of probate courts, and it further seemed that the major portion of the probate court work could, and ought to be, transferred to the district courts, and that the district courts could undoubtedly carry the load of the probate courts in addition to that which they now carry, and with a decreased number of judges, if we took another step and provided for a properly qualified clerk of the district court.

The Council felt that a great many of the probate matters, and, indeed, a number of the other matters that daily come before the district courts could be handled much more simply and easily if there was a competent clerk of the court to do that, but to get the right type of clerk of the court for that purpose required selection by one who knew the type he needed, and that is the judge. And it did seem to us, after we thought it over, a rather unusual thing to permit a clerk of the court to be chosen by someone having no particular knowledge of the work that the clerk was expected to do, and chosen without reference to their fitness for the work to be done. And so, therefore, if the judge could have the right of selecting his slerks, it would aid him in the disposition of his business; we would get a higher type of clerk of the court, and the courts could, therefore, handle a greater volume of business, and with less labor on the part of the courts.

Then the question came up: Would that not increase expenses Are we merely in endeavoring to decrease expenses by elimination of certain of the judges in the future and the elimination of the probate courts, at the same time increasing the expenses by adding clerks to be appointed by the judges? We think not. We want to call your attention to your various counties, and while this is not true, of course, in every county, it certainly is true in most of them, the clerk of the district court, being also the auditor and recorder, has assistants, and one of those assistants is usually designated to look after the work of the district court. That expense could be eliminated from the office of the clerk of the district court, so-called now, and the expense used in paying the clerk which the court should select, and then for counties where that clerk would not be required to spend all of his time in looking after the district court matters, provision could be made whereby he, or she, as the case might be, could be employed in the county offices in other ways, and to spend the balance of his or her time in offices now being filled by others, and it is thought that we would not necessarily increase expenses by this move, considering the fact, furthermore, that in many counties the probate court also had a clerk to look after these matters.

Then there developed next the question: What shall we do with certain types of matters handled by the probate court which the district court would not take care of? There is certain small litigation that the probate court, having county wide jurisdiction, can handle very nicely, and does handle in many counties that it is not deemed wise to throw into district court, nor to throw it into the present rather unsatisfactory system of justices of the peace which we have, and so the next thought was this: Permit the district judges to appoint justices of the peace to hold office at the pleasure of the judge, at least two for each county, with county wide jurisdiction, in all matters up to five hundred dollars, excepting those, of course, that involve title to real estate. It was thought it would be best that these justices of the peace be placed on a salary basis rather than on a fee basis, but that last point was not carried out by the Council because of the fact that it would be considered expensive, perhaps. That would eliminate the present justice of the peace

system that we now have. We haven't been able to make a critical study of that system but I am going to offer you a few observations.

The present justices of the peace present their bills to the county commissioners in all criminal cases, as you well know, on a set schedule that has been adopted by statute. The amount that the county commissioners order paid to defray the expenses of the justices of the peace throughout the county becomes quite alarming, if you will give it critical study. I have known instances of this type, where justices of the peace and constables bring in supposed culprits, arrest them, they plead guilty, are given a fine, haven't any money—perhaps they have been accused of stealing a ride on a train—and they are asked to leave, floated. No money comes to the county as the result of that. The county is presented with a bill for the work of the justice of the peace and the constable. How prevalent that practice is, I am not saying. I am merely suggesting that thought to you.

Now it is thought that if the justices of the peace were appointees of the court with county wide jurisdiction dealing with cases up to five hundred dollars, and dealing with juvenile matters, and with certain other matters which the probate court now deals with, but largely on a fee system for the time being, that the expense to the county would be conserved; that the work of the probate courts could be handled by the justices of the peace for the lesser work, and by the district court for the major work, and that there could be a very substantial saving to the state at large in the probate court system.

Let me pause for just a moment to call your attention to these things: The elimination of four district judges would amount to $16,000 a year, and with their reporters at $2,500 a year, would be a total of $26,000 a year. Forty-four probate judges in the state with their salaries ranging, I think, from about nine hundred to probably eighteen hundred dollars a year—say roughly twelve hundred dollars a year, would be approximately fifty thousand dollars in that respect. Many of the probate judges have clerks who likewise receive salaries. They maintain offices. They have considerable stationery and supplies which are duplicated in the office of the clerk of the district court, all of which could be saved, or a considerable portion of it. That same item of saving could go down through the courts of the justices of the peace throughout the respective counties, and a total of a very decided and considerable amount could be saved.

Now those are some of the fundamental facts which seem to us to warrant certain conclusions reached, the first of which is the redistricting of the state, and the forming of what we might say is a unified court system throughout the state.

The redistricting feature has created considerable discussion throughout the state at large, and is likewise creating considerable discussion and occupying the attention of the members of the Judicial Council, and has done so for a considerable period of time. I have here a map which has been prepared showing the present judicial districts of Idaho. This map contains the same information as was contained on the bluee print which I have here, and which I showed you a few moments ago.

It was thought that if we would divide the state into four judicial districts and provide that the legislature could from time to time as need arose add to

or take from the judges in those respective districts, that it would make a flexible system in which the judicial work of the state could always be taken care of with reasonable dispatch, and likewise provide that in each one of these judicial districts there should be a presiding judge, and that he should have certain powers in the way of directing judges within his district to hold court at certain points and to dispose of certain cases, and that there be likewise created a council of judges to be composed of the chief justice of the supreme court and the presiding judges of each of these four districts, the burden of the various judges throughout the state could be equalized.

Now, the point arose, and arose I think at the last bar meeting, or maybe two years ago in this manner: "Why, here, you don't want these judges trotting around in these various districts and not knowing where their home is to be, and furthermore, they should always be available to attorneys who want preliminary orders, and therefore they would be within the more populous centers at all times," and that was a reasonable suggestion, and it was proposed, and it was worked out, that is to say, the Council offered this suggestion to meet that question, viz: That, like the county commissioners come from respective divisions, so would these judges within these various districts come from divisions within the districts, and they would maintain their residence within the division. Now, take the Fifth District, the Sixth District and the Ninth District, which, it is proposed should go into the Fourth District. That is, this tier of counties to the north and around to the southeast, including Caribou, Bear Lake, Power, Oneida and Franklin, and then to the north. Now, there are three larger towns in those various places. There are Pocatello and Blackfoot and Idaho Falls. I think those are the three largest towns. That district, likewise, swings up into Lemhi County, Custer and Butte and also Clark Counties. It covers quite a large district, but it is now served by four judges, and the work within this district comprises just about one-fourth of the work of the state, the population is about one-fourth, and the assessed valuation is about one-fourth, probably slightly more.

Now, if you swing around to the Twin Falls section, there we have two present districts, which it is thought could be thrown into the one, the Fourth and the Eleventh.

Then in the Boise section there are the Seventh District and the Third District, and then the ten northern counties would be in one district.

Some question developed as to the number of judges that the proposed bill provides for. They are not equal. At first it was considered there should be three in each district. When we made a careful study of these three factors, viz: The number of cases filed each year, the number of people in the proposed districts, and the assessed valuation of the property in the proposed districts, it seemed to the council that the twelve judges should be distributed more as follows: Three in the first, which is the northern district; three in the second, which is the Boise district; two in the third, which may be designated as the Twin Falls District,and four in the southeast district. Now, if you will take this report and size up these cases, take the number of cases, take the people, take the valuations, I think you will agree with me that the load in that regard is pretty well distributed.

Now, as I say, that bill is suggestive. The aim is to unify the courts, to provide a method for expending business, and to be on as economical basis

as possible. Those, gentlemen, are the fundamental underlying thoughts of this particular bill. The plan requires some two or three constitutional amendments, one for eliminating the probate courts, another eliminating the clerks of the district court, and another eliminating or modifying the present system with respect to justices of the peace. Those constitutional amendments would have to be adopted before this plan could go into effect, and then the statutory amendments or the enactment of new laws carrying the other phases of the work into effect would have to be passed by the legislature. I assume that all of you have read the proposed bills in that respect, and therefore I don't presume to take your time in doing other than merely calling them to your attention.

Now, there are one or two other points that the Council has passed upon with respect to procedure. There is one I want to mention particularly.

JUDGE MORGAN: May I ask the speaker a question?

First, what are the qualifications of a clerk of the district court? That is to say, must he be a resident of the county to which he is appointed clerk, or would the judges appoint him from any place in the district?

MR. MERRILL: I think that point is not covered in the proposed bill.

JUDGE MORGAN: It should be. Who is to appoint the clerk?

MR. MERRILL: The judge.

JUDGE MORGAN: Who do you mean by "judge," if you have three? Is that covered?

MR. MERRILL: Yes. It is the unified system of three judges, or two judges with a chief justice.

JUDGE MORGAN: Yes.

MR. MERRILL: Or chief judge, I should say, and they appoint them.

JUDGE MORGAN: That is to say, all three of them appoint the clerk according to the bill, and not the one who happens to live in that county?

MR. MERRILL: I think that is the understanding.

JUDGE MORGAN: How about the justices of the peace in each district?

MR. MERRILL: The same thing applies to the justices of the peace.

JUDGE MORGAN: He is appointed by a group of district judges?

MR. MERRILL: Perhaps I had better read the proposed amendment.

JUDGE MORGAN: Yes, I think it would be better if you did.

MR MERRILL: It is short. I might read it all. Beginning on page sixteen, Section 2 provides for the counties in District No. 1; Section 3 provides for the counties in District No. 2; Section 4 provides for the counties in District No. 3; and Section 5 provides for the counties in District No. 4. Now Section 6 provides: "That if any of the counties included in any of said districts shall be consolidated with other counties within the same district, or if any of the counties within said districts be hereafter divided, such new county or such consolidated county shall be and remain part of the judicial district which now comprises said counties."

"Section 7: At the general election, A.D., 1934, and each and every fourth year thereafter, there shall be elected district judges in the several judicial districts as follows: In the First District three judges; in the Second District three judges; in the Third District two judges; and in the Fourth District four judges; provided, however, that the district judges who are now elected and serving shall continue to serve within the district in this Act created in which the resident county of such judge or judges is designated; and, provided further, that if a vacancy occurs in the office of any district judge now serving prior to the expiration of the term for which he is elected, that such vacancy shall not be filled unless it would reduce the number of judges in the particular district wherein said judge resided below the number provided for in this Act."

(At this point in the proceedings the meeting was interrupted by the appearance of a group of "forty-niners,' which rendered the musical selection, "Sweetheart of Old Fort Hall," after which the following proceedings were had:)

THE VICE PRESIDENT: Now that we have had this relaxation and have gotten waked up, Mr. Merrill will continue.

MR. MERRILL: I will begin reading with Section 8:

"Section 8: The various judicial districts provided for in this Act may be subdivided by the Council of Judges into divisions and at least one district judge shall maintain resident chambers in each division so created by the said Council of Judges. The boundary lines of said divisions may be changed by said Council of Judges as the business of the courts might in the judgement of the Council require.

"Section 9: That the judges within the several districts herein created shall organize by the election of a presiding judge who shall act as a presiding judge for one year and may not be elected to succeed himself without an intervening term except by unanimous vote. The presiding judge shall allocate the work to the judges of the district by terms or annually and may assign any judge to the trial of a particular case. In allocating the work the presiding judge shall have regard to the convenience and the distances to be traveled by the judge. The judges in each district shall meet at least once annually for the election of a presiding judge and the arrangement of calendars, assignment of work and the consideration of administration. They may invite the attendance of the members of the Bar at such meetings and hear and dispose of suggestions and complaints. In case of the resignation, death, inability or disability of a presiding judge, the judges of the district shall elect a successor.

"Section 10: Upon request of the judge assigned to the trial of a case the presiding judge may assign a judge to sit as conferee with the trial judge in any case. The proceedings in such case shall be controlled and the judgment rendered by the trial judge, but in case of the sickness, inability or disability of the trial judge occurring during the trial, the judge sitting as conferee may complete the trial and enter judgment.

"Section 11: The presiding judges of the several districts and the chief justice of the supreme court shall compose the council of judges of which the chief justice shall be president. Such council shall meet at least annually at such time and place as may be designated by the chief justice for the consideration of rules, practice and other matters affecting the administration of justice. Rules and practice shall be uniform throughout all the districts. At

such meetings the council of judges may invite the attendance of members of the Bar and may hear and dispose of suggestions and complaints.

"Section 12: The judges in attending meetings within their own districts or in attending meetings of the council of judges shall receive their actual and necessary expense."

And then the next section provides for the repeal of certain laws in the present acts.

Article V of the proposed constitutional amendments takes care of the proposed constitutional amendment dealing with the question you last asked, Judge Morgan.

JUDGE MORGAN: What page is that on?

MR. MERRILL: Page nineteen, Section 16. It is proposed to amend as follows:

"Section 16. Clerks of the District Court: A clerk of the District Court shall be appointed for each county by the district judges of the district and shall be removable at the will of such judges.

"He shall receive such compensation as may be provided by law and shall not be prohibited from holding any other public office or position. In uncontested actions, applications and proceedings he may make all such orders, judgments and decrees as may be authorized by law, which shall be deemed to be the orders, judgments and decrees of the court and shall be subject to revision by the court or judge thereof, and shall perform such other business connected with the administration of justice as may be prescribed by law."

JUDGE MORGAN: That doesn't appear to require that the judges appoint a clerk in the county in which he is a citizen.

SECRETARY GRIFFIN: Why should he?

MR. MERRILL: No, and the question is asked, Why should he? I don't know.

JUDGE MORGAN: If they attempt to appoint a man who lives in Elmore County for Ada County,—

MR. McDEVITT: It might be a good appointment.

JUDGE MORGAN: I have no doubt there will be some farmers in the legislature who will take care of that. Now, the justices of the peace, if you will take that up?

MR. MERRILL: That is the same. On the next page.

"Section 22. Jurisdiction of Justices of the Peace. In each county of this state there shall be appointed by the judges of the District Court not less than two justices of the peace with jurisdiction throughout the county. Such justices shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of property or the amount in controversy exceeds the sum of $500.00, exclusive of interest, nor where the boundaries or title to any real property shall be called in question. They shall hold office during the will of the court."

Now, if you will notice, it also is proposed that the term of the district judges shall be extended to six years. It is four years at the present time. That would make it uniform with the terms of the supreme court judges, that is to say, the same as it is now.

In connection with this subject I overlooked calling attention to the further proposal as to the election of judges. We recognized the fact that the term "non-partisan" election might not have the correct meaning by reason of the history of the term, and therefore chose the term "non-political". The theory is that the candidates for justice of the supreme court and for district judge shall be nominated by certificates of nomination in the following manner: A certificate stating the office, the name of the candidate and his post-office address shall be signed by electors as follows: Certificates of nomination for justices of the Supreme Court shall be signed by not less than eighty electors of the state, at least forty of whom shall be members of the Bar in good standing. Certificates of nomination of district judges shall be signed by not less than thirty electors of said district, at least fifteen of whom shall be members of the Bar of said district in good standing. Each signer shall write or have written in connection with his signature his place of residence. The signatures need not be all on the same papers, but all papers so signed relating to the same candidate shall be taken together as constituting the certificate. Such certificate shall be filed in the office of the Secretary of State at least sixty days prior to the date of the general election.

"Section 2. The electors mentioned in Section 1 hereof may sign as many nomination certificates as there are judges to be elected.

"Section 3. The names of candidates for judges of the Supreme Court and of the district courts, nominated as hereinbefore provided shall be printed upon a separate ballot under the designation 'Judicial Candidates.' Such ballot shall make no reference to any political party. Appropriate blanks shall be left on said ballot in order that electors may write in the name of any other person qualified for election to said judicial office, which said blanks shall be so designated upon said ballot as to fully advise the elector of this right.

"Section 4. Where there is more than one candidate for the same office of justice of the Supreme Court or judge of the district court, the names shall be rotated in order on the ballots in the same manner as is now provided in the case of candidates for other offices.

"Section 5. At all general elections, if a candidate for a judicial office is to be elected, the judges of the election shall deliver to each voter the judicial ballot herein provided for at the same time other ballots are delivered to said voter and said voter must return to said judges the judicial ballot along with the other ballots. All judicial ballots shall be counted by the judges as the ballots for other candidates are counted and those judicial candidates, including those whose names are written in on said ballot, receiving the largest aggregate vote shall be elected."

This plan is a modification of several plans that were studied. One of the plans studied was the so-called Los Angeles plan, and one was the Cleveland plan, and then there were several other plans studied, the theory being uppermost in the mind of the council was to provide some method whereby the Bar in the state could have a greater right to make its voice heard in the selection of judges, and that we felt was justified upon the theory that certainly there is no class of people within the state better able to select judges than the lawyers themselves. They ought to know the qualifications; they ought to know which of their fellow members would make the best judges, and that could be, perhaps, at least furthered by this theory of nominating the judges,

and you will note there are forty required for nomination of the supreme court judges, that is, forty lawyers, and fifteen for district court judges. It is readily apparent to each of you why there should be that difference in the number required.

JUDGE AILSHIE: May I ask a question, Mr. Chairman?

THE VICE PRESIDENT: Yes, Judge Ailshie.

JUDGE AILSHIE: You state "The one having the larger number of the votes is elected." Now, take a case here where you only have on justice of the supreme court to elect. There is no limit to the number of candidates that could be nominated. Suppose you had half a dozen candidates and that vote was pretty well divided up. You might have a man under that system elected by twenty or twenty-five per cent of all of the votes cast?

MR. MERRILL: Wouldn't it be true under the bill, however, that a large number couldn't be nominated? The lawyers would sign the nomination papers of the number that could be voted for, or to be nominated. If there are to be two nominated, or three nominated, those lawyers would sign one, or two, or three of those petitions, but no more.

JUDGE AILSHIE: You only require forty for each nomination?

MR. MERRILL: For a justice of the supreme court, yes.

JUDGE AILSHIE: And there are around five hundred lawyers in the state.

MR. MERRILL: But, of course, if there were two supreme court judges to be elected, a lawyer could only sign two petitions.

JUDGE AILSHIE: Forty goes into five hundred quite a number of times.

MR. MERRILL: Yes. Your theory then, Judge Ailshie, is that there should be a majority instead of a plurality?

JUDGE AILSHIE: Yes. If you had five or six candidates, which is entirely possible under this method where it takes no effort to be nominated, you might have five or six candidates on the ballot for one office, and that would divide up the votes. Each man in his own locality would get the votes there, and you might have twenty or twenty-five per cent of all votes cast electing a judge. With the direct primary method you nominate your candidates at the primary election, but here you provide only for a general election.

MR. MERRILL: Yes; I see your point.

JUDGE AILSHIE: If you provide for voting on them at the primary, and then provide that anyone who gets a clear majority of all votes cast would be elected at that time, and then submit the others to the general election, you would have a better plan I think.

MR. MERRILL: I think that is a good suggestion, Judge Ailshie.

MR. OVERSMITH: Have you provided for the canvassing of the votes? I don't remember anything in there concerning that. The State Board should canvas that vote, it seems to me. I don't remember hearing anything read about that. Have you made provision for it?

MR. MERRILL: We thought the statutes took care of the canvassing.

MR. OVERSMITH: I don't know. You are taking it out of the general election.

MR. MERRILL: If there is any danger of any trouble regarding that, we could add another section.

JUDGE MORGAN: Let me ask another question here: Let us read from Section 5 at the top of page nineteen: "At all general elections, if a candidate for a judicial office is to be elected, the judges of the election shall deliver to each voter the judicial ballot herein provided for at the same time other ballots are delivered to said voter and said voter must return to said judges the judicial ballot along with the other ballots. All judicial ballots shall be counted by the judges as the ballots for other candidates are counted and those judicial candidates including those whose names are written in on said ballot, receiving the largest aggregate vote shall be elected." In this coming election we have four candidates for justice of the supreme court running for two offices, but one of those four is going to receive the largest number of votes. Does that mean he is the only one to be elected?

MR. MERRILL: I wouldn't put that construction on it.

JUDGE MORGAN: Certainly you wouldn't put that construction on it, but when a bill is drafted by lawyers it ought to be drafted so that it is incapable of but one construction. You are providing in some districts for three district judges, all to be elected at the same time, and you provide the candidate that receives the largest number of votes is to be elected, and say nothing about the rest of them. If that were presented to a legislature it would be referred at once to the judiciary committee to be reconstructed to mean what the legislation intended to say, and coming from the judicial council, the legislature has the right to expect better things of you.

MR. MERRILL: The council has no pride of opinion in this matter, and while they have worked diligently and hard on it, and while many of us gave up certain ideas we have had in the interest of getting something that we feel is a step at least in the right direction, the matter is submitted to the bar for your full and complete discussion, and if the plan itself fundamentally is not feasible, it should be rejected, and without any offense to anyone who has worked on it. It doesn't make a bit of difference to the council, I am sure, except insofar as they have felt that it is a good idea. If the idea is correct and it can be improved upon or the thought perfected so that there will be no possibility of misunderstanding that will be very graciously recommended by anyone who has worked on this bill. There isn't any doubt about that. It isn't a dogmatic proposition. We don't force it; we don't want to. We merely bring to you the result of our labors. They have been arduous and they have been many, and they have extended over a period of a number of years, and they have been graciously given, and we feel we have been richly rewarded for our studies in these matters. Now, as I say, we have no pride of opinion in the expression of any of these bills or of any of these constitutional amendments. We just submit the whole matter to the bar for its consideration. (Applause.)

MR. GRAHAM: I notice in the redistricting of the state you are cutting down from sixteen judges to twelve judges. And in that you have provided three judges in District No. 1; three judges in District No. 2; two judges in District No. 3; and four judges in District No. 4 which happens to be your own. In that district you just got through telling us this district had one-fourth of the population, one-fourth of the assessed valuation, slightly over one-fourth, but I notice that you have four judges,—

JUDGE DOWNING: I think the speaker misquoted the figures on this district. I think the figures will show this district has one-third of the assessed valuation, one-third of the population and one-third of the cases filed.

MR. MERRILL: Yes, if I said one-fourth, I was mistaken. I should have said one-third.

MR. GRAHAM: You were allowing this district one third of the judges?

MR. MERRILL: Yes.

MR. GRAHAM: Just to look back a little: The purpose and plan of this legislation, and also the constitutional amendments will do away with the probate courts and throw that practice into the district courts. In that event the probabilities are that in the next session of the legislature these proposed constitutional amendments will be proposed, and then voted on in the election of 1934. If they then pass it will be up to the legislature in January, 1935, to pass legislation to put them into execution. That being true, you will find the number of your judges cut, with the work increased. Speaking about our own county, Twin Falls county,—we are fortunate enough in having a lawyer on our probate court bench. That being true, the most of the cases involving amounts of a hundred dollars, or a lot of them even involving more than a hundred dollars, are brought in the probate court; those over a hundred dollars and up to five hundred dollars are brought in the probate court rather than in the district court. The result is that we get practically the same service in the probate court as we get in the district court. I don't know how many counties are so favorably situated with their probate judge. That being true, the number of cases tried in district court is reflected lower than it should be. But I noticed the speaker took into consideration three factors: First, population; second, estimated valuation, and, third, the number of cases tried. I confess I can't see where that second factor should cut very much figure, and that is also true of the first factor, the number of population. The criterion upon which we are trying cases must be the number of cases, and the amount of business before the court, and in that I notice this: That he has taken in the average for the ten years, but he has based it upon the years 1930 and 1931, so as to show a reduction of forty-four per cent in the number of cases.

MR. MERRILL: May I correct my original statement? I have the figures here as compiled for these districts. The first district has a population of 134,993, and an assessed valuation of $143,811,733, with the average number of cases filed in the last ten years of 1,270. The second proposed district has a population of 122,532, with assessed valuation of $113,150,115, and an average number of cases for the last ten years of 1,339; the third district,—that is the one, Mr. Graham, you are particularly interested in,—the third district has a population of 91,221, with an assessed valuation of $77,607,141, and an average number of cases of the last ten years of 1,381; the fourth proposed district has a population of 169,493, with assessed valuation of $147,456,457, and an average number of cases for the last ten years of 2,043. Those figures, I think, are accurate.

MR. GRAHAM: What I wish to call the Bar's attention to is the business which the court has transacted, and I have taken the ten year period embodied in the report. I am sorry I haven't enough of these to pass around. I will pass one or two of these around so you can see what I am referring to. Under the proposed new plan, the first column gives the names of the counties in the Eighth, the First, the Second and the Tenth districts. That is combined to show the first district. Then the second column is the second district, and the third column the third, and the fourth column the fourth. Then we come down to the question of population,—practically what the speaker gave. Then we come down to the number of judges. Under the present proposed plan there are three judges in District No. 1; three judges in District No. 2; two judges in District No. 3; and four judges in District No. 4. Then is shown the number of cases over a period of ten years. Here is where I take exception, which I think should be the guiding star, and it is the paramount feature. In the proposed first district the average number of cases is 1,274, the average number of cases per year in the proposed new district. In the proposed second district the average number of cases per year for ten years is 1,339; in the proposed third district the average number of cases per year is 1,381,—more than either of the other two, and yet you are giving us two judges when you are giving the first and second proposed districts three judges.

MR. MERRILL: What has the fourth?

MR. GRAHAM: And the fourth has 2,043. Let me go back: The average number of cases per judge as proposed in the proposed plan in the first district is 425; in the second district, 448; in the third district 640; and in the fourth district 510. Now, I will leave it to the other members of the Bar of this state, but it seems to me the criterion ought to be the amount of business you do, and not the population or the assessed valuation.

MR. JAMES: One-half of that in our district would be 690 cases per judge.

MR. GRAHAM: I should have said 690. Did I say 640? In the last years the speaker claims the business had been cut down some forty-four per cent.

MR. MERRILL: I beg your pardon. If I said that I misquoted it. I said since the peak in about 1921 it had decreased forty-four per cent. It has raised slightly in the last year.

MR. GRAHAM: Possibly I misunderstood you.

MR. MERRILL: Yes,—I may have misspoken myself.

MR. GRAHAM: But let us assume these figures, the average for the ten years is correct, we have reason to assume that the falling off in all the other districts is equal to the falling off in our district, or district No. 3. If that is true, then in some places there is a discrimination in regard to the number of judges we are going to have. That is a cinch, because if a judge in the first district can only handle 425 cases, and a judge at Boise can only handle 448 cases, it is a cinch the district judge in the third proposed district can't handle 690 cases and do justice to those cases.

JUDGE AILSHIE: May I say that in the first district,—I had nothing to do with it; I was just an onlooker like yourself,—but in the first district conditions are of course different than in any other district, particularly yours, because yours is a compact district. Up there you must allow for travel. It is a four hundred mile stretch from the Canadian line to the southern end of the district, and you have to go into the different county seats.

MR. GRAHAM: Please don't misunderstand my remarks. I am not taking exception to the number of judges in the first district, not at all, but what I am complaining about is that in the proportioning and division of judges we are not given the proper number of judges. I am not finding fault with any other district.

JUDGE DOWNING: The point you are making is simply this, as I understand it, that the district in which Twin Falls would come should have three judges instead of two? Am I correct?

MR. GRAHAM: Yes, if these figures mean anything at all then we are entitled to three judges. I don't know whether this is the proper time or not to suggest an amendment to the proposed report of the Judicial Council. If it isn't, and if you are just considering it generally, I will not make my motion at this time.

SECRETARY GRIFFIN: May I ask a question? As I understand it you are not opposed to the general scheme, but it is one of the details you are speaking of now, the number of judges in your district?

MR. GRAHAM: Personally, I am not opposed to the general scheme, but I do object to the number of judges. That is just a question of detail, but I don't know whether the proper stage has been reached in the proceedings here. I have been absent this morning.

THE VICE PRESIDENT: This is a general discussion of the general report of the Judicial Council.

MR. GRAHAM: I presume you will take it up section by section afterwards and discuss it and adopt it in that manner?

THE VICE PRESIDENT: The resolutions committee undoubtedly will make their report which we assume will cover the report of the Council, and at that time the report will be discussed section by section, and opportunity given for amendments.

JUDGE MORGAN: To put the power into the hands of judges, for instance, in Kootenai county, to appoint justices of the peace, to me is un-American. There isn't anything in this to say you can't go into Canada and get your candidates for justice of the peace. It is proper that a judge should appoint a clerk of the court, but he should be circumscribed in his power so that he should appoint a citizen of the county, and this bill doesn't provide for that. It leaves it to the imagination of a bunch of judges of election to say who is elected judge, when you say "the man receiving the highest number of votes." How do we know the business of those three district judges won't vastly decrease, and two be sufficient?

MR. GRAHAM: And how do we know the converse wouldn't be true?

JUDGE MORGAN: I don't know.

MR. MERRILL: You have to base it on the past, on the best records we have.

JUDGE MORGAN: Not necessarily, unless you propose to fix a hard and fast number of judges for each district.

MR. MERRILL: You have to do that by legislation.

JUDGE MORGAN: The difficulty with the present system is this, that years ago we started out when the state was created and became a part of the Union, we started out with five district judges, and now we have sixteen. It has always been an increase in the number of judges, and never a decrease in the number. We now suffer from the necessity of maintaining a number of judges when there is nothing for any of them to do. That is the condition in our present district. Take it in the proposed district, we have four under the present conditions and no way that I know of to get rid of any of them. We have two district judges in the two present districts, and in Ada county we have two clerks of the district court, each one of them drawing full pay and working half day shifts and not keeping busy at that. The condition is unbearable, but rather than the change suggested a judiciary could be created which would be composed of a number of judges limited by the constitution beyond which the legislature could not go in creating district judges, and then when the judge of a particular jurisdiction gets behind with his work, call to his assistance by the chief justice of the supreme court or by the governor, or by whatever functionary might be designated a member, or members, of the bar to sit for a little time, not to exceed sixty days, to be asked of anyone, to assist in catching up the business of that court. Something of that kind, it seems to me, would constitute an ideal judiciary, but the difficulty with the excellent plan suggested here by the judicial council is that it does not solve the problems from which we are now suffering, that is to say, an overpopulous judiciary with a sadly lacking amount of work for them to do. The work of courts comes and goes; it ebbs and flows, and we are now in a period of stagnation during which contested litigation has practically disappeared. At the same time we have our sixteen district judges, instead of five, and our sixteen court reporters, for the maintenance and support of which in this present biennium the tax payers of the state of Idaho are called upon to produce $210,000, with not work enough to keep more than half of them busy. If you will propose a judiciary composed of a number of district judges beyond which the legislature cannot go, and provide that you can call real lawyers in to sit on our bench once in a while to catch up the work when you get behind, then you will have a judiciary.

THE VICE PRESIDENT: May I make a suggestion? Of course the order of procedure is entirely in your own hands, and you may do it as you please, but we should proceed in some manner if the work is intelligently done, and I suppose it would be advisable, rather than proposing amendments now, that we engage in a general discussion, and propose your amendments when the resolutions committee makes its report, with the suggestion that committee embody in its report its recommendations with reference to these various matters.

MR. GRAHAM: I am afraid the judge, being a candidate for Supreme Court, if sincere, is talking himself out of the job, because if the work of the district judges is decreased there will be no need for five members on the supreme court, and we will only have three again.

JUDGE MORGAN: I am in agreement with you, and I can point out the three.

MR. GRAHAM: The difficulty with the judge now is that he isn't on the bench and hasn't power to overrule my suggestions, but if the chairman is going to rule that we have to wait until such time as the report of the resolutions committee is brought in, I will not take any further time.

THE VICE PRESIDENT: We would be glad to hear from you, Mr. Loofbourrow, inasmuch as we have asked you to discuss this matter, if you care to. If not, we will listen to the field.

MR. LOOFBOURROW: Gentlemen of the bar: Back in 1922 and 1923 I usually smoked good cigars; today I am celebrating a little, I am smoking a nickle one. I usually smoke a pipe these times.

Back in 1913 the cost of government, state and national, was one-fourth of what is was last year, in local government one-third. In spite of that fact the estimated cost of government this year is $124.00 per capita. Last year it was $104.00, an increase of twenty per cent. That means a man with an average family—I believe the average family is four and some fraction of a per cent—that means a man with an average family this year will pay five hundred dollars toward the cost of government. That proportion of increase, from 1913 to 1929, if carried on the next ten years, would mean he must pay two thousand dollars a year for the cost of government, the man with the average family of four, the average citizen.

I quote from a paper which says, "An English publicist writing of his observations in the United States says: 'The substitution of laws for conscience and innumberable statutes for right behavior has created a distrust of all laws. Politics has been allowed to become a more lucrative profession than teaching, and lawyers control the government instead of statesmen.'" The paper says, "The gentleman sees clearly."

Now, we get the blame for that. If we should undertake as lawyers to lower the cost of government we would probably be told to stay home and mind our own business, as people know enough to run themselves. We are entirely within our own province when we follow the suggestions of the judicial council and attempt to reform or re-organize court procedure.

Personally, I am not in sympathy with the basic idea embodied in the report of the Judicial Council. For the last several years the tendency has been for our population to center in the large cities, and now that so many industries are closed down and men who are not working, the young fellow who had gone to the city to make money in a hurry is back on the farm, I think, with dad.

The proposed bill as drawn by the Judicial Council is just another step in that direction to help the big town eat up the little one. Our constitution provides there shall be a senator from each county in the legislature, and I believe there will be enough senators from the little counties to defeat the bill if it is proposed in the legislature. We have a system of gauging the salaries of the prosecuting attorneys of the state, starting with the smaller counties with, I believe it is, twelve hundred dollars a year, and rising gradually. The six larger counties, I think, have salaries of twenty-five hundred dollars a year. I believe we have just as good judicial talent in the smaller counties as you have in the larger ones. I think among the present members of the bar I could point out names of men that have come under our own observation coming from little counties. Some of them in our own county there when they were there we thought they had a pretty hard time getting along. They have come into bigger places and are admittedly drawing down top money in the practice of law in the bigger places. In our own little county down here

I don't believe there is lawyer who would refuse to take the job of district judge at twenty-five hundred dollars a year.

What I am getting at, if you will gauge your salaries of judges along the lines of those of the prosecuting attorneys, with a minimum of $2500 in the smaller counties and up to the present salaries in the larger counties, and elect a district judge in each county, give him the same powers they have here, for the appointment of a clerk of the district court, eliminate your probate judge and justices of the peace entirely, and throw those savings toward the expense of the district judge—and incidentally the clerk of the district court should also be his reporter—you will find that when that system is studied and a comparison of the costs made, that it will not be any more expensive than the present system. In fact—I haven't any first hand information as to the exact cost—but making a careful estimate what that might amount to I estimate it would save from fifty to seventy-five thousand dollars over the present system.

We have long talked about the center of power in Washington, and that if the tendency continued eventually the state lines would be no more than what the county lines are at present, and I don't believe any of us would want that to come about. We must adopt some unit in our governmental system. At the present time we can jump in our jitney and get to the county seat probably in less time than it used to take to hitch up Dobbin and drive down town, so it seems to me the county is the logical unit to start with.

We, all of us—I don't think I was ever in a bunch of lawyers for any length of time that visited back and forth that didn't get to telling of their ridiculous experiences before justices of the peace. There is more litigation I believe, before the justice of the peace, considerably more than there is before the district court under our present system. We can pass that off with the thought that it doesn't amount to much, nothing involved, but, gentlemen, the satisfaction of the citizens at large with our instituions is involved. The man with a ten, or fifteen, or fifty dollar law suit in the justice court very often is just as vitally interested in that and it means as much to him as some fellow with half a million dollar law suit in the district court, and so long as we recognize the principles of democracy, so long as the people rule, we must take into consideration the little fellow and try to give him service. Now he isn't getting service under our present system of the probate judge and the justice of the peace and with the district court having original jurisdiction from one dollar up. We overcome that; we to some extent combat the tendency of the larger town growing at the expense of the smaller town, and we have a system just as efficient and more economical than your present system, and just as economical, and I believe more so, than the system proposed by the judicial council. I thank you.

THE VICE PRESIDENT: This whole subject is open for discussion, gentlemen.

MR. JAMES: I wanted to say a few words of a general nature. Calling your attention to page seventeen in reference to these judges: "The various judicial districts provided for in this Act may be sub-divided by the Council of Judges into divisions and at least one district judge shall maintain resident chambers in each division so created by the said Council of Judges." That doesn't say, Mr. Chairman, that the judge must be a resident of that division;

merely that he must maintain his resident chambers there. Under the wording of that section in a district which has a large center of population, such as Pocatello, or Boise, or Lewiston, that center can elect all three judges, and when they are elected one or two can go out and establish resident chambers, and the minute we get into a discussion of that we get into a law suit as to what is meant by "establishment of resident chambers" in said section. Does it mean to be there every day in the week, or three days in the week, or what does it mean?

Now it has been said here that if we could get along with sixteen judges during peak time we should be able to get along with twelve during normal times. It seems to me we should turn the statement around. I don't consider these peak times by any means, and we should remember we are now building, or attempting to build, a permanent structure, not something that is suitable under present economic conditions, and a structure that will not be effective until 1935. In fact, from the standpoint of the fellow who lives in the outlying territory the most favorable feature of the bill is that it will not go into effect for three or four years yet. It is like buying goods on the installment plan—you don't have to pay for them right away.

In reference to the subject of the clerks of the court which was touched upon by Judge Morgan. Under the proposed plan the clerks in the entire district shall be elected by the judges in the district. They can get their clerks from any place they want. Suppose down in the fourth district there is a tie among the four judges? How are you going to elect your clerk? Suppose in the third district there should be a tie among the two judges. What are you going to do? And the same situation exists with the justices of the peace. That brings to my mind this thought: We are endeavoring here to take the election of judges out of politics, which is a move in the right direction, but in doing that we are forcing upon the judiciary the necessary exercise of patronage. For each job there will be from one to a dozen applicants, and any judge who takes on himself the responsibility of apportioning that patronage—I mean the appointment of clerks of the court and the appointment of justices of the peace—will have grief on his hands at once. Look at it from the standpoint of the judges. Take the north district—I don't know how many counties there are up there, but I think I heard somebody say ten counties, and you have three judges. Every man running for office will have to campaign that entire district. Then when he is elected he will serve in his division, or subdivision of the district. Then why give the entire district the right to partcipate in his election? And when you do that, gentlemen, you are disfranchising the people in the outlying territory and gaining nothing. If it was necessary to reduce the judges, let us reduce the judges but let us not take away from the people of the outlying districts the right of electing their own judges. To my mind this scheme is on a par with the proposed seven-county state. It is fine if we can be the county seat.

Now is seems to me this: If under the present conditions, or under conditions which may continue for a number of years, twelve judges will be sufficient, let's change the state so there will be only twelve judges. Personally, I would prefer there be twelve districts rather than four districts with its subdivisions. What reasons are there for making or creating a large district and then subdividing it and having a judge for each subdivision? Then give the people in each district the right to vote on the election of their own judge. What justification is there for that? Down in our district for instance—we are combined with—our district is No. 4 at the present time. Across the river is No. 11. That district wouldn't be as cumbersome as some of the others, but we have a judge over there in our district. Why permit the people on the south side to determine who shall be district judge over there, when after you have done that you divide the territory and make four counties a subdivision and tell a judge to handle the work over there?

This seems to be the problem confronting us: Some method of sending judges from one section of the state to another. In fact, that is being done now all over the state, and one judge is continually calling in another judge to handle some cases when his calendar is crowded. But the thing that I am opposed to in this place, is that it disfranchises the people of outlying territories.

Here is another situation: You are eliminating the probate court, which I think is all right, but if you are going to do that you are giving the district judge more work. Why, then, reduce the number of judges to twelve? Take the instance of a fellow at Challis, or Mackay who might have a little probate matter which is contested, and which would have to come before the district court under the proposed plan. The probate court being eliminated, where does he go? He hunts up some district judge in Pocatello, perhaps, and brings his client down here. Is that fair to the lawyers in that section of the state? I think it is not.

Those are the reasons, gentlemen, why the people of the outlying sections are opposed to this specific plan. We are not opposed to reducing the number of judges, if in the good sense and judgment of this association it be deemed necessary, but we are opposed to creating the state into four districts.

MR. HEIST: Gentlemen: I feel there is some merit in the proposed bill, but I feel it contains very little merit. I think the Council—and what I say is solely extemporaneous—has overlooked the outlying districts, the smaller centers of population that are destined to have their growth.

I think the one thing that is good about the proposed bill is its tendency to take the judiciary out of politics, first, and, second, to transfer the probate court to the district courts. I don't know so much of the practice in other counties, but I do know in our county, in Lincoln county, where I have practiced for nearly a quarter of a century, it has been the practice of bankers, grocerymen, real estate dealers, abstractors and others to attempt to probate estates. Frequently we find them stopping and pausing when partially through with the probating of an estate when they find property maybe in Canada and foreign states, involved. It is an injustice to the bar of this state and to the practicing attorneys to permit, but the probate judges do tolerate it. The probate judges that are usually elected in the smaller counties are men from the farm, from the grocery store, from the justice of the peace office, or from the print shop. At least that has been the history in our county.

Further than that, I believe that the proposed bill is impracticable and impossible of legislative enactment.

Judge Morgan has discussed the matter of the judges appointing the clerks, and that has been my attitude from the time I first read the bill as to the

election of clerks of the court. I do not approve of the judges appointing the clerks of the court. That may be satisfactory in the larger cities, perhaps in eight or ten counties in the state of Idaho—I believe there are forty-four counties in the state—but it would not be satisfactory in the small counties, in at least thirty-eight of them. I don't think that any legislature is going to take away from the people the right of electing their officers that are now constitutional officers, in the first place. In the second place, in many of these small counties the clerk of the district court, who is ex-officio county auditor and recorder, has only part time help. Now if someone should be forced in there, and that someone forced to wait on the people that will devote one-twelfth of the time, perhaps thirty days of the time to court work and the other eleven months of the year to the general work of the office of the county auditor and recorder, I think that it is wrong in principle. I think it is wrong in principle to give the district judges the authority to say who shall do this work, fix their salaries, and so forth, in some of the smaller counties of the state.

Now, further, with reference to the matter of the subdividing of a judicial district, similar to our state highway law, I presume, I frankly believe that the citizens, the electorate of each division, knows more who they want on that bench and can choose better than the electorate in the center of population. For instance if the fourth district now was consolidated with the twelfth district, and the twelfth district would elect our judge for us, they as a rule are not brought before our district judge, and we would have very little to say in the selection of the judge. In other words, our voice would be stilled in that regard. That, to my judgment, is against the modern tendency of legislative enactment, and it would be impossible to pass an act of that kind. Furthermore, I don't know why we should give these district judges more power. I don't know why they should have more authority. In a quarter of a century's practice I have never had a disagreement with a district judge; I have never broken friendship with one, but I say they have authority enough, and why establish—I don't know hardly how to say it—another government, as you might say, supplemental to the present and existing government, by creating a government of courts. To my mind the matter of the court appointing a justice of the peace is entirely wrong.

MR. OVERSMITH: Will the gentleman allow this question?

MR. HEIST: Yes.

MR. OVERSMITH: You are discussing something that has to go to the people in the way of constitutional amendments. Can we not limit this discussion to the action of the legislature next time. Now, so far as the legislature could go would be to redistrict the state. The abolishing of the probate court and the appointment of clerks of the court is something that must be submitted to the people, and I would like to see the debate limited merely to the question of what can be submitted to the next legislature. The question of the court appointing, it seems to me, the clerk of the court, or the question of the abolishing of the probate court is a matter that has to be submitted to the people and is premature at this time, except to suggest to the legislature that they submit that to the people. We are discussing at this time merely the division of the state into four judicial districts. It seems to me we ought to confine our discussion to that.

THE VICE PRESIDENT: It seems to me the speaker was confining his remarks to the subject before us. He may proceed.

MR. HEIST: I will proceed where I left off. In other words we are contemplating a great deal. It is like the two hoboes who were walking down the railroad track. One of them says to the other, "I am not going to buy this railroad," and the other said in reply, "No, I am not going to sell it to you." In other words, the present system as proposed would be something like the story of the free thinker and the divine. They were traveling along a highway together, and they noticed a stork standing in a small stream, reaching in and picking out fish at the bottom of the stream. The divine was explaining to the free thinker how wonderful nature was, how nature had provided the stork with long legs, and with a long bill to reach in and pick out the fish and did not get its body wet, nor its head. The other replied, "That is very good for the stork, but it looks damned hard on the fish." And I think, gentlemen, that is the way it would be with us people in the smaller judicial districts.

However, getting back to the proposition of the justices of the peace, there is nothing in that bill that provides where the justice would reside, or shall reside. In 1912 I was elected prosecuting attorney of what now constitutes Lincoln, Gooding, Jerome and Minidoka counties. If there were a preliminary hearing to be had, it was tried in Minidoka, or in Rupert, or Jerome, or Wendell, where there was a committing magistrate and where the witnesses were located. I think that is one of the defects of the proposed bill, when you propose only two justices for a county. Further, I think the principle of vesting a district judge with the responsibility and the authority of appointing justices of the peace seems to be putting an extra burden on the judiciary instead of eliminating some of the burdens which the judiciary already has, and it is putting a burden on the judges they shouldn't shoulder. They may be ever so competent, and they may prove to be ever so competent so far as appointment may be concerned, and they may not be, but any way it has that tendency to the establishment of a judicial oligarchy.

Now, I think, personally, that is all I have to say on the subject. I am opposed to the proposed bill, and I do not believe it is a solution to our problems.

MR. MERRILL: Would you also go so far, Mr. Heist, as to take from the district judge the power of appointing his reporter and have him elected by the people also?

MR. HEIST: No, I would not.

MR. MERRILL: Why not?

MR. HEIST: There is a difference between a reporter and a clerk, Mr. Merrill.

THE VICE PRESIDENT: Mr. Eberle has the floor, gentlemen.

MR. EBERLE: I am not going to make a speech, but I am merely curious. I must confess I haven't gotten the angles as presented here today with reference to the centers of population electing the judges, and I have just obtained the figures as to the population of these proposed districts. District No. 1 would have a population of 134,993; District No. 2, 122,532; District No. 3, 91,228, and District No. 4, from which I come, 169,493.

MR. MERRILL: You are not in the fourth district, Mr. Eberle, you are in the second district.

MR. EBERLE: The proposed second district has 122,000. There is no town in any of these districts that has a population to exceed twenty or twenty-one thousand. In my particular district we have Nampa and Caldwell, which might be also called big towns, but I never heard of them agreeing with Boise on anything, and I was just wondering where these big centers of population would come from where you have in each district only from 91,000 to 169,000 people?

MR. OVERSMITH: Gentlemen: It occurs to me that quite a number would rather play politics than work for a good judicial system. I come from Latah County. If you put ten counties in one district up there I presume we would not have a resident judge in our county. I am not particular about that if the Judicial Council would go further and provide for a court commissioner to sign orders for injunction and so forth, which can be worked into the scheme by the Judicial Council, if it sees fit. In all probability if the ten northern counties are set aside in one district there will be one resident judge at Lewiston, one at Coeur d'Alene, and one at Sandpoint. That would be the natural division of the district. I think the bar, at least of our county, would prefer having men of rather outstanding ability as judges selected, selected for ability rather than for their popularity in the district or their ability to get votes. Personally, I don't care if you send in a judge, if he is a judge, to preside over a court before which I practice, or any court before which one has a case, I don't care whether he comes from Ada County, Pocatello, or any other place, so long as he is a judge.

THE VICE PRESIDENT: Is there any further discussion of this subject, gentlemen?

JUDGE AILSHIE: Gentlemen: There is one thing I want to call to your attention. It is proposed that you amend the constitution to provide for the appointment of a clerk of the district court for each county in this state by the judges, and to authorize those judges to appoint justices of the peace. Now, we might readily agree to that ourselves, but you can't get the people of Idaho to agree to it. They will never submit that power—permit it to be delegated to the district judges or to anybody else, and I don't believe they ought to. Now, what is the benefit to be derived from the appointment of clerks of the district court? What is the benefit? Let us analyze this for just a minute. You propose to abolish the office of probate judge, and you will eliminate a salary ranging from—I don't know what the salaries are, but somewhere, I judge, from one thousand to fifteen or eighteen hundred dollars a year—someone says two thousand dollars a year is the maximum. You are going to cut those out. Are you going to get anybody for clerks of the court for any less? The suggestion is made in this report they will give him a similar job somewhere else. Where is he going to get that job? If he is working in a store or a bank, or any place like that, nobody will have him, because the work of the court will be cutting into his time, and if he is not going to have an office he will not serve the purpose for which you are appointing him. The purpose of appointing him is that he may file papers, sign orders and that sort of thing. I am opposed to investing any clerk of

the district court with judicial powers. You will have to pay him just as much as you are paying your present probate judges if you get anybody worth having. If you get a deputy in some other office to act as clerk of the district court, if you try to do that you are doing the same thing, with the additional danger that no man is going to appoint a man as his deputy and stand responsible for his acts unless he is going to name him. He is not going to have someone else name him—district judge or anybody else. If he is going to appoint him as deputy clerk in the auditor's office he is going to want to know who he is, and he may be personally distasteful, or politically distasteful, or any of a number of reasons why he would be opposed to having him. You are not making anything in the way of expenses, the way this looks to me at the present time. I know only of one county in the state—there may be more—but I only know of one county in the state where the clerk appoints a deputy and sets him aside to look after the district court work solely. That condition exists in Nez Perce county. They have a deputy for that purpose.

MR. GRAHAM: We have it in Twin Falls county.

MR. MERRILL: We have it here in Bannock county and they have two at Boise.

JUDGE AILSHIE: In our part of the country, the clerk—take Kootenai county for example—the clerk designates a man—I think the clerk now does it himself because the deputy who did do that work for many years has resigned—but formerly he had a deputy who attended to that work, and then when court adjourned he went down and attended to other work in the office. He was busy all of the time. Now, I think the clerk himself goes up and does the court work and when he is through with that he goes down and does other work in the office. In Bonner county the clerk, Mr. McCrea, does the work of the clerk of the court when court is in session, and then afterwards he goes down in his office and attends to other business.

There isn't any reason whatever for changing the system with reference to clerks. The clerks of the court will take care of that. And the people are going to elect those. They have a right to.

We laugh a great deal at the justices of the peace. That is a stock-in-trade, but after all, gentlemen, there isn't any set of men or officers in the state who settle more neighborhood quarrels and do more effective good in administering crude rough justice than the justice of the peace. They dispose of more cases than the district judges and supreme court judges, all together, in the state. I know one judge, one justice of the peace who reported some thirteen hundred cases in one year that he had disposed of, and included in that of course is the small claims court. This justice of the peace is doing good work. He is settling the business of people who have small claims, and as someone said here this morning, the man who has a small suit involving ten dollars, that is just as important to him as one is to another man who has a law suit involving ten thousand dollars is to him, and he has the right to have it determined, and he has the right to have it determined in his own bailiwick by a man he helped to elect or tried to defeat. The principle of the justice of the peace, like the old English squire, is as old as the common law, and you can't abolish the squire in England, and in my judg-

ment you can't change the system with regard to the present justices of the peace in this state. I have been somewhat familiar with what has been going on for the last twenty years, and that was railroaded through by the fellows from the big cities like New York, Chicago, San Francisco, Boston, St. Louis, and the fellows from the country districts like myself voted against it, and we voted it down in the conference of the commissioners of state laws, and refused to recommend it. That is the body which is represented by from two to five members, as you gentlemen know, appointed by the chief executives of the states, and I have had the honor to represent this state for about four years, and the governor did me the honor to reappoint me the other day. I won't forget to tell you about that.

Now I call your attention to the fact that these justices of the peace about whom we are talking don't know much, but there is another fellow that don't know much either, and—

JUDGE MORGAN: About your recently having been appointed—just who is the forgotten man?

JUDGE AILSHIE: You have a committee out now searching for him in the great unwashed party. But the people select these justices of the peace. In some instances, as you will recall perhaps in your own community, there is some old gentleman who has been in there for years and years, and he has settled hundreds of disputes and controversies. He may not have followed the statutes and the decisions of the supreme court, but after all he has gained the confidence of the community and he has settled their disputes and hundreds of them have been disposed of which never went to the district court and never went to the supreme court.

Let's not get radical because these are hard times, and because we want to do something as the bar and remodel things. I think we might very well leave these matters for the legislature, but let's maintain those justices of the peace in their various precincts and districts, and let the people elect them to dispose of their business, and whatever we do, let's not undertake to take that away from the people and have the district judges appoint them. The district judges do not want to do that anyway, and there is every reason for not loading down a district judge with patronage. It is enough for him to appoint the court bailiff. He has trouble enough with that. Everybody wants the job. But let's not go any further. He has trouble finding his reporter. This thing of appointing a reporter you asked about, it is difficult to get them these days.

But I call your attention to these two defects, and I submit, if you gentlemen please, that it isn't safe, it is unwise to undertake to recommend such a change as that.

Now, so far as the elimination of the office of probate judge is concerned, I think that is all right, and vest that power in the district court.

So far as this matter of redistricting the state is concerned, why, I have no particular objection to it. Things might be said on both sides of it. There is this that may be said in favor of larger districts—I have never been elected district judge and I have never sat on a trial bench, but I have witnessed in some forty odd years the difficulties and adversities of a good many trial judges—if a trial judge is elected in a large territory where he is not personally acquainted and where the people are not his household neighbors and friends and visitors, if he is elected by a majority of people with whom he is not acquainted, and with whom he has no social relations, he is freed from a lot of embarrassment in deciding cases that come before him. To the man elected in a small community where he knows every man, woman and child, it must be difficult and often times very embarrassing to have to decide a case against a long time friend of his or his family. In a case of that kind with a large district and with two or three judges, he can very well be shifted around and not have that embarrassment, and I think such would be better for the administration of justice in such cases, but that is only one phase of it. There are things, on the other hand, in a large district like we would have up north stretching from the Canadian line on the north to this side of Cambridge on the south, a distance in the neighborhood of four hundred miles, it is going to have its disadvantages. Take that large a district and then scatter three judges through it, and as Mr. Oversmith has said there is no telling where they might reside. They might reside in Nez Perce county—

MR. OVERSMITH: All three of them.

JUDGE AILSHIE: Yes. I submit those questions for your judgment, and there is one thing further about which I asked Mr. Merrill, and I want to call your attention to that, and that is with reference to this non-partisan judicial election—

MR. MERRILL: Non-political.

JUDGE AILSHIE: Yes. I notice you are touchy on that. I am not so touchy. A good many years ago I had the opportunity of supporting a measure that provided for the election of judges in non-political elections. The nominations were made by political parties and after their nominations their names, as you recall, were placed on a judicial ballot, and no party designation was given anybody. Well, something happened. An election took place and somebody was elected, or defeated, and they got sore, and they changed the law as quickly as they could. I have advocated re-enactment of a similar statute to the one which is recommended. I am generally in accord with that with this thought: That there should be an amendment submitted to the section that you read, to which I called your attention, providing that there should be a majority election. This thing of electing a judge by fifteen, twenty or thirty per cent of the entire vote of the state, or the district, isn't American. It is not the way to elect judges. If you are going to nominate them, nominate them in the method provided for in the bill—I have no objection to that—but after you have done that nominate them long enough before the primary election to put their names on the judicial ballot at the primary, and then provide if any one or two or possible number get a clear majority of all votes cast on the judicial election, you are electing them then, and the ones who do not get a majority, then you will vote on them at the general election, and then a man who is elected will feel he has a majority of the electorate of the state back of him.

MR. HAWLEY: I must apologize for coming in at this rather unseemly hour, but due to the rather mild boom we have been having for the last two years I haven't been able to buy a new car, and my car didn't work, and the distinguished chief justice and his associate who were with me reminded me

of that fact very often during the time we were proceeding from Boise early this morning, and I am sorry, indeed, that I couldn't be here to hear the discussion by my fellow members of the Judicial Council.

I feel the Judicial Council is sort of on trial. I thought we were doing a pretty good job. I knew we were trying to do one. Being the junior member of the Council I suppose I could tell you all about it. The fundamental idea, I think, that was back of the building of the Bar Association, making it a legally recognized bar, that this profession is a profession, that it is not a business, and that as a profession we stand in the capacity of public servants, that we owe a duty to the public, and that that duty may be performed best through our profession performing its function as a profession. That was the fundamental underlying idea of the actions of the men who succeeded in putting this bar bill through. One thought further: We succeeded in getting the legislature to recognize that the profession is a profession, that it has a profound relationship and a duty to the people, and that it should perform that duty, and one of the practical things that caused it to have this opinion was the fact that the people were beginning to get tired of lawyers and wanted some people to be professional men, that is, the lawyers were not in as good repute with the people as the profession justified, and demands that they be. This act of the legislature, I think, recognized that it was a decided uplift of our profession in the eyes of the people, for the people though their legislature said that the supreme court and the legislature may request an investigation and study on any matter relating to the courts' practice and procedure, practice of the law and administration of justice, recognizing that the judiciary is one of the three coordinate equal branches of government, and we, as attorneys, were vested by the people of this state with the duty of investigating and studying and contributing as a profession, some good things from the profession to the general good of the public and of the people.

Now, that is fundamentally the notion which justified the appointment of a Judicial Council. That was the act of this body several years ago.

The Judicial Council has gone at its job with the thought in mind that it is representing the profession of law and that it should give to the people such suggestions as may be for the best interests of the procedure of law, for the best interests of the administration of justice. Now, that is the thought upon which we proceeded. Now I am frank to confess, and it has been amazingly forced upon my attention by the first speech I have heard here, that we didn't consider the political phases of it. We didn't consider the bill of rights; we didn't consider the high status and the high place in the love and affection of the people that the humble and lowly justice of the peace had, and we didn't consider that when we were proposing to give the judges, the highest type of our profession, and who occupy the highest places in the profession, we weren't thinking we were giving to those men a great deal of patronage which would be the subject of barter, and which would be the subject of disgraceful conduct of one sort or another on the part of the judges. We frankly never even thought of that. It never even occurred to us that that would be a matter of dispute.

Now, I think that probably if this Bar feels we haven't done our work, that the hours and days and weeks, and on the part of some even months, of labor they have put in in studying this question and the reports of the judicial councils of other states, I think if you gentlemen feel that work is for naught and should be rejected on a minute's thought or a minute's debate, why we are certainly not going to get it enacted by the legislature. I think you should consider it very seriously before you turn down the whole scheme and the whole plan presented to you. If it has defects from the standpoint of depriving the people of some mythical, or some real, rights, the people will eventually turn it down. I don't think we should here talk for the people. I don't think we should here make our political views paramount. I don't think we should be here as politicians—and I say that with due apologies, and I humbly say this, that we should be here as lawyers, as representatives of the profession seeking to offer to the public some good thought by which we can increase the efficiency of our bench, bring better men on the bench, which means giving them better pay, put the matter of all court procedure, including the appointment of that very important man, the clerk, put that appointment where it belongs, in the hands, not of the people, but in the hands of the judges on whose work they must to a great extent depend.

I think, viewed in that light, we were simply presenting to you something that would better the system. That was our only thought, and I don't know why you as lawyers shouldn't say—this is, of course, not a perfect bill. It is impossible for anybody, even the Supreme Court, to give a perfect opinion, it is always only half perfect, but it is not a perfect opinion. This at least is a contribution of the profession. It shows we are trying to think of something beside our own political standing, besides our own pocket books; it shows we are trying to perform a duty, that we are lifting ourselves into the place the profession should occupy, and then bringing it to the minds of the people that law is a profession which can be trusted, which is honorable, and can be looked up to.

If the people themselves do not want these justices of the peace appointed by the courts, and want the power of electing them, that is all right, but you know, I am positive, that a judge can appoint better men, men who will do a better job as justice of the peace than the men who are now elected and hold that office. Frankly, I don't believe there is a half dozen men here who honestly disagree with that statement. Take any district judge, particularly one who has been on the job more than one term, and I tell you those men can appoint better men to the place, so why should we, as lawyers, say they can't? Let the people say, "No, we don't want the justices of the peace appointed by the judges. You lawyers may think it is the sane thing to do, and it may be the best thing. You may get a better class of men, but we as people want the privilege of selecting the worst possible men that come up for the office," if they want to, and they sometimes do that. But that is the business of the people. The same argument prevails as to the clerk of the court. The practicability of the thing is one question. Is it practicable to get these appointments of the district court clerks? Well, now, you ask any district judge if he wouldn't rather appoint some man in the treasurer's office, or in the office of the recorder, some man—and we generally find men that stay on year after year, and I don't believe you would ever have any trouble getting a man of that type to act as clerk. Pay him a small salary in those counties where the work will be small, and a good salary where the work is heavy, in other words, regulate the salary according to the amount of work. We particularly

wrote in here that he can hold other jobs, for the purpose of letting the judges appoint some man in these offices in each county, and the judge certainly will appoint one who can do the work, and the judge can train him, the judge can instruct him, the judge can tell him what to do in probate matters. That would not be giving him any judicial power, and I quite agree with the speaker that we couldn't give the clerk any judicial powers at all, but the proposition of the practicability I think I am answering, and it is practical to get such a man. The political question which has crept in very largely has an element of the right of the people, or the wisdom of the people to select by ballot their own clerk of the court. That is a question that is up to the people, but as lawyers that is not up to us in convention to say that. Let's put the bill through, and then the legislature will take action on it, maybe improve it, eliminate different things, emasculate the bill probably, but it will get the idea across that we want a better judicial system.

Now, so far as redistricting the state and having twelve judges is concerned, it is our thought—and we didn't think, Mr. James, and Mr. Hall, and Mr. Heist, and Mr. Loofbourrow, and you gentlemen who spoke here from what they call the smaller counties, which, by the way, furnish many many times the best brains in the courts, in the legislature and in the offices, these smaller counties we didn't think were being overlooked and we didn't think people would refuse to select good men simply because they might come from the so-called smaller counties. We didn't think about that. Honestly we didn't. I give you my word we didn't intend to discriminate against the smaller counties. We just figured that there were a lot of counties where there were only two or three lawyers, maybe one, and when it is up to the governor to appoint a judge—Judge Morgan knows this as well as anybody—he is hard put sometimes to get a man of real caliber as judge in some of the very small communities. So far as that feature of it is concerned in redistricting, I don't know how we could meet it. I really feel you gentlemen from what you call the small counties, I think you ought to subordinate what is—I think you will see it clearly as your political opinion and desire to have somebody in your own county as judge, and I think you should subordinate that feeling, and feel satisfied when you have a good man as judge who is chosen on his merits. This gentleman said the best of the lawyers in the big cities are small town men, and I agree with him, but why, then, are you afraid, if you are afraid, why, then, are you afraid if you are a small town man and want to run for judge, why are you afraid to go out and test your mettle and be elected by the people of the district. They will recognize merit, and you have your chance. But, again, that is political. The thing for the profession to do is to do what it thinks best for the profession, and for administration of law, as a separate branch of the government.

So far as redistricting is concerned my friends from Twin Falls naturally want another judge, and I assume cutting it down to twelve judges, I think they will want another judge, and I think we will have trouble there, but that is again up to the people. You know, you men practicing law, you know twelve judges can handle the business as we have had it here for the past four or five years. Twelve judges can handle the business if they have it to do, and if they have the work to do twelve good men can handle all of the judicial business in this state and have time enough to go fishing if they want to. That is my judgment. Litigation is going down, down, down. That is the history of the courts.

Gentlemen, I apologize for making a long speech here, but I wanted to give you the viewpoint of the Judicial Council. We are acting merely as professional men and not as citizens who would look on the political side, and I ask you gentlemen to consider the fact that we did what we considered best for the profession, and these bills we ask you to approve will permit our legislative committee to introduce these bills, and put over the thought that we should as a profession offer this, or something like this, and this is the best that can be given in this short time, at least. I don't think you can change it to make it any better. Then let the people pass on the political questions through their representatives and senators, emasculate it, amend it, add to it, but, gentlemen, as a profession, let us act as a profession.

THE VICE PRESIDENT: Is there any further discussion on this report?

MR. HEIST: Just one word, if I may have a minute. It occurs to me this: If that proposed measure could be redrafted so that it would have the approval of this association, and not a part of the association, that when the legislature meets we could get somewhere. Frankly, if we submit up there something that a part of the state is fighting, especially the smaller counties, it will be defeated and we will be worse off than we were before, and I believe now is the time for consideration of such matters, if we feel we can present and be successful in obtaining satisfactory legislation.

MR. McDEVITT: I would like to know if the recommendations of the Judicial Council are in the form of bills for presentation to the legislature, or whether the council has in mind the drafting of bills in accordance with the recommendations made by this meeting at some later time for submission to the legislature. We apparently are dealing with it as a legislative bill, and I was wondering whether it was the idea that the proposed bills are in form to be submitted to the legislature.

THE VICE PRESIDENT: Will you answer the gentleman, Mr. Merrill?

MR. MERRILL: Yes. For the most part, Mr. McDevitt, the proposed legislation is drafted and appears in the report of the Judicial Council heretofore sent to the members of the bar, but not all of the statutory legislation that will be necessary if the entire plan is followed out has as yet been drafted. For instance, with respect to justices of the peace and clerks, the Judicial Council has seen fit to prepare constitutional amendments but it is very probable that in order for those provisions to be carried into effect statutory enactments might follow. To clear up some of the matter to which you have reference, with respect to the redistricting of the state and the unified court system, and another limiting the number of judges for the time being to twelve instead of sixteen, that is in the form of a bill already drafted and submitted.

MR. HART: I think it would be a good thing if this matter could be referred back to the committee after they hear the objections that have been raised. Probably it could be redrafted so as to carry out the wishes generally of the people in the state.

Now, there are quite a number of counties about the size of Franklin county, and that is one of the smallest counties. That is classed among the smallest.

If this were adopted, down there it would affect us in many ways. It would affect us very much as to the justice of the peace, because, as a matter of fact, during the last four years there hasn't been a case tried by a justice of the peace. The county attorney usually regulates that, and he brings his cases before the probate judge, except there has been a few in the city of Preston. Well, now, there has always been a clamor down there among the people that we ought to do away with the probate judge, for the reason that you can't elect a lawyer to be probate judge down there. The people won't vote for a lawyer as against somebody else, and when a lawyer has run for the office of probate judge he has always been defeated. Now, if we should do away, we will say, with the probate judge, we would have a great deal better system so far as the records are concerned, and that is something we ought to look to. On the other hand, if we should do away with the probate judge, it would be necessary for somebody to be down there, some judge with judicial powers, to be there quite often, for the reason that there is scarcely a day passes but there is some person brought in among the juvenile delinquents, and of course, the probate judge looks after that. Now, if we should do away with the probate judge and depend entirely on one of the traveling district judges, when they couldn't possibly get around there possibly more than once a week, I don't know. I live right across the state line, and I practice down in Utah as well as in Idaho, and down there in Utah, in Logan, they have abolished the office of probate judge. They used to have it like we do now, but in place of the probate judge they have the clerk, like has been suggested here. The clerk, however, is also the auditor, so he has a double function to perform, and down there they have found it necessary to have at least two other courts. They have a juvenile court, which is absolutely necessary. They can't get away from that. Then they have to have a judge for these small claims. Of course, the justices of the peace, if there are one or two elected for the whole county, and if they reside at the county seat, that would take care of that. But I wouldn't be in favor of the appointment of the justices of the peace. I think the people could, if they have only one or two to select, they would be pretty careful and select right good judges.

So I believe if we take this report of the committee, and if it were referred back, after listening to all these complaints and objections and criticism, favorable or unfavorable, I believe we could get a bill out that would be in the right direction, something better than we now have.

MR. OVERSMITH: As I started to suggest a little bit ago, I think we had better confine ourselves from this point on to merely the legislative enactments of the Thirty-third Legislature. The other matters which you will find on pages 19 and 20 are merely matters which will require a constitutional amendment. Now, it occurs to me we have had sufficient general discussion on this matter, and that we ought to take up the particular statutory amendments which have been suggested by the Judicial Council. The first is Exhibit A, the proposed statutory amendment which creates four judicial districts in the state of Idaho. Now, there isn't any question in my mind whatever but what the people of this state are thoroughly of the opinion that the judicial business of the state of Idaho can be carried on with a less number of judges. Now, are we as lawyers going to prohibit a hearing almost before ourselves on that one question? If this isn't a proper measure, if anybody has a better suggestion as to redistricting the state than the Judicial Council has suggested, let's bring it before the meeting.

MR. HAWLEY: I move, Mr. Chairman, we refer the matter of the report of the Judicial Council to the resolutions committee, and that they report in the morning.

MR. JAMES: I second that motion.

THE VICE PRESIDENT: If there is no further discussion of that motion, all those in favor of the same will vote by saying "Aye"; contrary, the same. The motion is carried.

Gentlemen, the chair would be of the opinion the report of the Judicial Council is open for discussion before the meeting, if you care to discuss it further, unless you desire to adjourn.

JUDGE AILSHIE: I move, Mr. Chairman, that the report of the resolutions committee, assuming that the report will be on file when we meet in the morning, that it be made a special order on the convening of the body in the morning.

MR. HAWLEY: I second the motion.

THE VICE PRESIDENT: It has been moved and seconded that the report of the committee on resolutions be made a special order of business when we convene in the morning. All in favor of the motion will say "Aye", contrary the same. The motion is carried.

MR. MEEK: The prosecuting attorneys will meet out on this porch after adjournment, across the dance hall. It is a little cooler out there.

MR. PETERSON: Where will the resolutions committee meet?

THE VICE PRESIDENT: If you will get in touch with Mr. Jones, Mr. Peterson, he will advise you.

MR. JONES: We will meet here for the present but after the banquet, we haven't determined that. We will let you know during the banquet.

THE VICE PRESIDENT: We will adjourn until ten o'clock tomorrow morning.

THIRD SESSION

Saturday, July 16th, 1932

10:15 A.M.

THE VICE PRESIDENT: The committee on resolutions seems to be still engaged in its deliberations. It makes me think of the story of the court which empaneled a jury of lawyers one time as an experiment to try a simple case, and after the case had been concluded and submitted to the jury, they were out about three hours and the court became impatient and summoned the jury back into the courtroom and asked them what was delaying them in rendering the verdict. They said they had just concluded making the nomination speeches for the foreman of the jury.

While we are waiting for the committee to complete its work we want to dispose of one or two matters that are on the program and which might be overlooked. One is the report of the committee who canvassed the election for the commissioner of the northern district. Is that committee present?

MR. ANDERSON: We didn't make a formal report, Mr. Chairman. The tabulation is on the back of an envelope of the votes we found.

THE VICE PRESIDENT: The tabulation discloses that most of the members of the northern division have evidently voted for themselves. I think there are fourteen gentlemen who have received votes, the result, however, is that J. F. Ailshie of Coeur d'Alene is elected Commissioner for the Northern Division.

Now, as was announced by the secretary in his report of the meeting of the western division, the western division asked that the subject of the status of the College of Law of the University of Idaho be taken up at this meeting, and if there are any gentlemen present from the western division who desire to bring that matter before the Bar at this time, this would be a good opportunity to do so. I think Mr. Graham was one of the leading spirits in that movement at Twin Falls, and we would be glad to hear from him.

MR. GRAHAM: Gentlemen: I realize the fact that this is not a very favorable subject to discuss. I see Dean Masterson is here with all of his cohorts, the alumni of the College of Law, and I presume they are loaded.

The subject was suggested by me at the meeting of the western division at Twin Falls, and I want to correct a statement I made at that time, which was made possibly flippantly rather than possibly with a full knowledge of the facts. I said it was estimated that the cost of the College of Law was about seventy-five thousand dollars. I hadn't taken time to look the matter up, and I will correct the statement. Since then I have gotten a statement from Commissioner Vincent showing the estimate for the biennium is $35,000, which would mean $17,500 a year.

I still maintain the subject is possibly of sufficient importance to justify a little discussion. Of course, I realize the fact that Bill Morgan used to live at Moscow, that my friend Oversmith came all the way down for this purpose and that he is going to be opposed to any suggestion I am going to make, but I am glad to see all of the gentlemen here. Then, of course, down here at Pocatello they have another university, and anything that touches upon the university or other educational institutions is rather a delicate proposition.

What I have asked for and have not yet received from Dean Masterson, is the enrollment for the last two years, and the number of graduates for each year in the last two years, and the number that were residents of the State of Idaho. Have you got that information, Dean Masterson, the enrollment for the year 1931.

DEAN MASTERSON: In 1931-32, there were forty-two students enrolled in the college of law at the University of Idaho. We gave instruction in the college of law to fifty-seven students, there being some fifteen students from other colleges of the university taking instruction in the college of law, so that the college of law gave instruction to some fifty-seven students during the last year.

I will give you the figures for the last four years, Mr. Graham: In 1928-29, the enrollment was 22; in 1929-30, the enrollment was 27; in 1930-31, the enrollment was 37; and for 1931-32 were the figures I have just given you—42 regularly enrolled with instruction to some fifteen additional, making a total of 57 that we gave instruction to. This would be an increase of over one hundred per cent during the last three years.

MR. GRAHAM: Will you now give me the number of graduates?

DEAN MASTERSON: I can give you that only for the last two year: We graduated ten men this June, and I think there were seven or eight th previous June.

MR. GRAHAM: How many of those were Idaho residents?

DEAN MASTERSON: I cannot give you those figures.

MR. GRAHAM: What is you best guess?

DEAN MASTERSON: If I had anticipated that would be material would have been glad to have the information for you.

MR. GRAHAM: In regard to the institution, it has become material.

DEAN MASTERSON: I recall off hand we had at least two seniors th year who were non-residents. That number comes to my mind at this mc ment. If I should give it further thought I might discover that there ar more than two.

MR. GRAHAM: Suppose there are ten students—

DEAN MASTERSON: Out of this fifty-seven enrolled in the law schoc this year, Mr. Graham, there were some ten who were non-resident student: Would you like some comparative statistics in this connection, Mr. Graham

MR. GRAHAM: Upon what?

DEAN MASTERSON: Some comparative statistics from other depart ments as to the number of non-resident students.

MR. GRAHAM: Yes, if it would throw any light on this particular sub ject.

DEAN MASTERSON: I will give you some if you like: Out of th fifty-seven enrolled to do work in the law school, there were ten non-residen students, or twenty-four per cent of them; in the school of mines, out o seventy-eight enrolled, twenty-six were non-residents, or thirty-three per cent in the school of forestry out of one hundred twenty-one enrolled, there wer fifty-nine non-residents, or forty-eight per cent non-residents; out of the en tire school, the entire enrollment at the university, 1948, 322 were non-resi dents or sixteen per cent.

And I would like to correct Mr. Graham's figures as to costs again. He i not quite as much off this time as he was in Twin Falls. Instead of it bein $17,500, it is $17,130, or a fraction of one per cent off here, whereas, he wa some five hundred per cent off at Twin Falls. I don't know just what M Graham's evidence was, but doubtless it would not be admissible. It was nc even the type of evidence that would be admissible before a justice of th peace court. Mr. President, I didn't intend to make a speech, I just wante to give Mr. Graham the figures.

THE VICE PRESIDENT: I anticipate the real reason for this mov was to get the Dean to attend our annual meeting.

DEAN MASTERSON: I have been attending the meetings before. am glad my efforts to remain obscure have borne such luscious fruit.

THE VICE PRESIDENT: There is nothing really before the house; w are simply waiting for Mr. Jones' committee to report.

MR. OVERSMITH: I might say in response to Mr. Graham that I had planned to come to the meeting before he made his famous speech.

MR. GRAHAM: I will say it is the first time the gentleman has even been here down in south Idaho to a convention of lawyers, so he must have some ulterior motive.

MR. OVERSMITH: I attended every other bar association since you have inagurated the bar meetings, excepting one, so I think I have done pretty well. That is as well as you have done.

MR. GRAHAM: In answer to the Dean I might suggest that his sarcasm is entirely out of place, because it was not my motive to make any particular issue in regard to the law school, or any other department, and I was fair enough and frank enough to admit the figures I gave were given to me by some person, and fair enough and frank enough to admit I took the figures that were given to me by W. D. Vincent, Commissioner of Education, and I am only too glad to correct any mistake I did make. However, the subject is of sufficient importance to at least receive some consideration. At the present time the great howl is in regards to taxation. That is not a matter that can be overlooked. That is a darned cinch. If we don't take charge of the matter over which we have jurisdiction somebody else will. If this College of Law, or any other department of the University of Idaho, is too expensive for us to operate, let us have guts enough to say so, and dispense with it.

Now, the question arises: Here we have ten students who graduated in the year 1932, an average cost per student of $1750 figured in that way. Is that too high a price to pay? Is that too high a price? I am speaking now as a tax payer. I don't want to do the institution any harm—far be that from me—but if the institution is a burden on the tax payers, then now is the time for some person to take up the laboring oar. If this Bar Association hasn't got the guts to clean house, somebody else is going to clean it for us, and I don't know of anybody that ought to be more keenly interested in the College of Law than the Bar Association of this state. It is fostered by the Bar Association, but if it is too expensive to operate, for God's sake let's have the courage and the manhood to say so. I am not going to pass judgment on it. I simply brought it up for discussion, and there certainly shouldn't be any objection on the part of anybody to bringing the facts into the light, and if they can't stand on the facts then they should fall, and the question is, can they stand on the facts? I have no recommendation to make. I don't care what the College of Law does, or what the College of Mines does, but the citizens of the state of Idaho can't afford to maintain an institution here for the purpose of educating citizens on the outside of the state. Our taxes for educational purposes in the last ten years have run rampant. The question is, when and where are we going to call a halt?

If you don't feel the time is ripe to act on this matter, it is perfectly agreeable to me to pass it up, but there shouldn't be any objection on the part of the Dean or anybody else to bringing the facts out into the light today and letting us see them. I haven't any recommendations to make in regard to the College of Law, other than the fact I made the motion down at Twin Falls for the purpose of bringing the matter up for discussion, and it has succeeded in bringing out some interested members of the Bar who are interested in the College of Law. I don't care. But I have said we should have the manhood that if our institutions are running wild to call a halt, and if we can't take charge of the College of Law, who can? If we haven't the nerve to say it is too expensive, if it is too expensive, who is going to say it? Somebody else will.

JUDGE MORGAN: I do not desire to lift up my voice in favor of anything which is unnecessarily burdensome to the taxpayers of the state of Idaho. I am for what Mr. Graham has said about that. I believe that in public affairs true economy is just as essential certainly as in private affairs. True economy consists of giving up something we would like to keep. Undoubtedly, real economy cannot be practiced without sacrifice. If it had been true that the College of Law was as extravagantly expensive as was represented at the Twin Falls meeting by Mr. Graham, it ought to have been abolished. It probably is as economical, as economically administered—I haven't the figures—as any other school in the university, and this thing of speaking without figures I find usually leads to disagreeable consequences. An unfortunate, disagreeable consequence in this case was that the statement that was made at Twin Falls, and which later appeared to be without foundation in fact, was broadcast all over the country, greatly to the detriment of the College of Law of the University of Idaho, giving the public to understand that the College of Law was a pitiably little, diminutive, simple-minded, idiotic off-shot of the university, which undoubtedly would require considerable correction before it could function in a way that it would be of any assistance to anyone who attended it. That is unfortunate, and I hope the truth of the matter will be given as broad publicity as the statement which turned out not to have been the truth of the matter. The unfortunate statement reminds me of what somebody said about me in a law suit. The person said, "That man Morgan has a most remarkable memory; he remembers everything that ever happened, and two-thirds of the things he remembers never happened at all." I remember when I was a member of the Supreme Court that some one, evidently a member of the bar, recommended to one of the leading correspondence schools of law of this country that each of the members of the court be sent literature of that correspondence school. In any event Judge Sullivan, Judge Budge and myself each got a catalogue of the institution with a letter stating that we had been recommended to take the course. I wonder if, Mr. Graham, you were the man who did that?

JUDGE AILSHIE: It didn't do any good, did it?

JUDGE MORGAN: No, it didn't do any good, Judge Ailshie. I couldn't get either one of those other fellows to subscribe to the course.

MR. MERRILL: I think if we would observe these figures for just a moment, we would find there isn't anything very alarming about them—$17,-120.

MR. GRAHAM: And thirty-four cents.

MR. MERRILL: Yes. That was the expense last year. If you will divide that by the number of students you will readily observe the cost per student to the state is considerably less than the tuition in many of the law schools. I know of several law schools where the tuition charged a student on entrance is in excess of the entire cost per student to the state of Idaho

for those who attend the College of Law at Idaho, and, therefore, I think the suggestion that it is extravagantly handled is far from the fact when considered in the light of the cost of similar education in other schools. But it seems to me, gentlemen, that there is another thing here. True, the bar is interested, or should be interested, in the College of Law at the University of Idaho, and in legal education generally, but for us to discuss, or to take action adverse to the school would certainly leave us open to a suggestion from the laity that here we are at least attempting to close the profession, and to prevent additional members from entering it. I think perhaps it becomes a political question, or a question more properly to be considered by another group than the Bar Association. I rather feel, myself, that it is a matter that we ought not to discuss with the aim of arriving at any conclusion.

MR. JAMES: I do not come from that section of the state, and I have no immediate interest in the institution, but if as has been suggested here this report of the cost of maintaining the college of law has been spread over the state, there should come from the bar association some statement as to the facts. At least, we should do that. There are some figures here which have been very enlightening, and some report of those statements ought to go from this bar association as to the facts, and some effort should be made to disseminate that over the state.

THE VICE PRESIDENT: Do you have any suggestion, Mr. James?

MR. JAMES: I was pondering over that. I don't know how far we should go in that respect. At least there should be a motion along this line—I think it could be redrafted by someone later—that we find that the expenses are not as has been reported in the past, and that it is only so much, and giving the number of students in the college, and the fact that the percentage of non-residents in that department is less than the percentage in the other departments. Is that true?

DEAN MASTERSON: Yes.

MR. JAMES: It seems those were the high spots of the statement given by the Dean. A motion of that kind, or a report of that kind, ought to be carefully worked out, but, if the chair prefers, I would put that in a motion of that kind subject to any amendments or modifications that any of those here may see fit to make.

MR. RAY. Why couldn't the matter be handled in this way: Just have the president, through the secretary, give the facts to the AP man when he comes around, and in that way the facts will be generally circulated.

THE VICE PRESIDENT: This matter, gentlemen, is in your hands.

MR. RAY: That is merely a suggestion on my part.

MR. JAMES: I accept that as a substitute motion.

MR. RAY: I don't think a motion is necessary.

THE VICE PRESIDENT: Do you have any suggestion in that connection, Dean Masterson?

DEAN MASTERSON: Not unless it might be referred to the resolutions committee. It doesn't matter to me.

COMMISSIONER OWEN: Mr. Chairman.

THE VICE PRESIDENT: Mr. Owen.

MR. OWEN: Members of the Bar: It seems as though it would be the better part of wisdom to let the matter drop where it is. Why keep the thing before the public? Why put it in the press where it will go to the laity? They will be glad to take it up, and the law school may be involved before it is through. I think that we should keep quiet on it so far as the press and public is concerned.

THE VICE PRESIDENT: Is the committee on resolutions ready to report? The chair will recognize Mr. Jones.

MR. JONES: And gentlemen of the Bar Association: Your committee on resolutions is now ready to report, and I shall at this time read its report.

"We, your committee on resolutions, respectfully submit the following report:

"1. That the Idaho State Bar hereby expresses its appreciation and gratitude to the Judicial Council of Idaho and to each of the members thereof for their faithful, sincere and constructive efforts to improve the judiciary of this state and to expedite and simplify the administration of justice. We further commend them for their earnest effort to effect a reduction in the cost to the tax payers and litigants of this state of the administration of justice.

"2. We recommend that the plan of judicial reorganization, unified courts and redistricting of the State as included in the report, and the non-political election of judges of the Supreme Court and District Judges, be approved, with the following exceptions:

"We recommend that the proposed Third Judicial District, as defined in Exhibit "A" annexed to said report, be made to provide for the selection of three District Judges therein, in lieu of the two as provided in said report.

"3. We submit, without recommendation, the proposal contained in the report of said Judicial Council providing for the appointment of Clerks of the Court and the appointment of Justices of the Peace.

"4. We recommend that the suggestions of the report of said Judicial Council as to criminal precedure which provides for the requirement of the defendant in the criminal prosecution to produce the names of his witnesses and imposing the duty upon the trial court to examine prospective jurors, and the proposal for objections and exceptions to instructions to jurors, and also conferring the right upon trial courts to comment upon the evidence and credibility of witnesses be disapproved, as contrary to the spirit and policy of our institutions.

"5. In addition to the plan proposed by the Judicial Council, we recommend the following amendment to Section 6446 of the Idaho Compiled Statutes, the original statute which reads as follows:

> 'Disposition of appeals. The court may reverse, affirm or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further procceedings to be had. Its judgment must be remitted to the court from which the appeal was taken. The decisions of the court shall be given in writing; and in giving a decision, if a new trial be granted, the court shall pass upon and determine all the questions of law involved in the case presented upon such appeal, and necessary to the final determination of the case.'

The amendment thereto shall read as follows:

'Provided, however, that in no cause shall the court render a decision upon any legal question not raised by either of the parties to the appeal without first submitting such question to the parties and requiring typewritten briefs or oral argument, or both, thereon, under such rules as the court may adopt.'

"6. We further recommend that the plan as hereinabove approved, or as finally adopted by this Bar Association, be referred and submitted to a legislative committee to be appointed by the Idaho State Bar Commission for the purpose of preparing the proper and necessary legislative bills and proposed constitutional amendments and that such legislative committee be authorized and directed to submit and present such proposed bills and amendments to the 1933 session of the Idaho legislature and to actively urge and promote the adoption thereof.

Respectfully Submitted,
T. D. JONES,
Chariman,
A. L. MORGAN,
J. L. EBERLE,
EDWIN M. HOLDEN,
W. ORR CHAPMAN,
Committee."

MR. JONES: Mr. Chairman, I now move the adoption of the resolutions as read.

MR. CHAPMAN: I second the motion, Mr. Chairman.

THE VICE PRESIDENT: It has been moved and seconded that the report of the committee on resolutions be adopted as read.

MR. MEEK: Is that all of the report of the resolutions committee?

THE VICE PRESIDENT: This is the entire report of the committee, as I understand it.

MR. MEEK: I had understood from talking to some of that committee that they were going to take some action on the matter of permitting the charging of more than one offense in an information, and I didn't hear that mentioned in the report of the resolutions committee.

MR. JONES: If you will notice the report, we adopt the report of the judicial council as written, with the exceptions as indicated.

MR. MEEK: It is understood then, that is a part of the report?

MR. JONES: Yes, that is a part of it.

THE VICE PRESIDENT: Is there any discussion of this report?

JUDGE AILSHIE: I desire to ask the chairman of the committee if I am correct in my understanding that the committee makes no recommendation on that part of the report which applies to the appointing of clerks of the court and justices of the peace?

MR. JONES: That is correct.

JUDGE AILSHIE: And the committee recommends the adoption of the recommendation of the Council abolishing the probate courts, and conferring entire jurisdiction in the district court?

MR. JONES: Correct.

MR. GRIFFIN: In one of your exceptions, the exception noted as "3", you submit without recommendation the matter of the appointment of clerks of the court and of the justices of the peace. Does that mean simply the method of the selection, or do you disapprove of the power they are given, that is, the powers that are given to the clerk, and also the two justices of the peace with county wide jurisdiction? Is that disapproved?

MR. JONES: It was the intention—it may not be clear there—but it was the intention of the committee to let the association pass upon whether or not the courts should have that power.

MR. GRIFFIN: Do you disapprove of the two county-wide justices of the peace, or merely of the way in which they are to be selected?

MR. JONES: No, we don't disapprove.

MR. GRIFFIN: I mean, submit without recommendation, the question of how they are to be selected, or do you submit without recommendation the whole question of having two county-wide justices of the peace and having a clerk with the powers defined in the proposed legislation?

MR. JONES: I can only express my own individual views on that, but my understanding was that we adopted the report, which provided for the selection, or enlarging the scope of power, or territory of the justices of the peace, but as to their election—as to their appointment or election, we leave that open to the convention. In other words, this convention, according to the report, must pass upon the question of whether or not the courts will have the right to appoint the clerks of the court, and whether or not they shall have the right to appoint the justices of the peace. That matter we leave open for the convention.

JUDGE AILSHIE: What I understand Mr. Griffin to be getting at is this: Is whether or not you mean by making this report to approve the suggestion in the council's report of reducing the number of justices of the peace to two in each county?

MR. JONES: Yes, we do.

MR. MERRILL: If you will examine the report on page twenty, Section 22 reads: "Section 22. Jurisdiction of Justices of the Peace: In each county of this state there shall be appointed by the judges of the Distrcit Court not less than two justices of the peace with jurisdiction throughout the county." There is no limitation there, no provision that two only shall be appointed. They can appoint as many as needed. As I take it, the report says that each county shall have not less than two, that they must appoint two, but there is nothing there to prevent them from appointing more, if necessary.

MR. OVERSMITH: Does that require a constitutional amendment?

MR. MERRILL: Yes.

THE VICE PRESIDENT: May I suggest this; There may be many of you who in large part are in favor of the adoption of this motion. Some of you may have minor objections, and still those objections may be of sufficient importance to move you to vote against the adoption of the report as a whole. Would it not be well, if I may make the suggestion—I don't want to direct your

order of procedure—if we take the recommendations up one at a time. The way is open for further discussion on that proposition.

MR. JAMES: I take it now that Exhibit "A", the proposed bill, has been approved in its entirety by the committee with one exception, and that is that the proposed third district be given three judges instead of two. Is that correct?

MR. JONES: Yes.

MR. JAMES: Then we revert to the same argument, the same objections that were made yesterday, many of which I will not repeat, but I do want to call the attention of the attorneys gathered here to this situation: In reference to these subdivisions, "the various judicial districts provided for in this Act may"—not "must"—"may be divided by the Council of Judges into divisions and at least one district judge shall maintain resident chambers in each division so created by the said Council of Judges." We have these large districts created with the right given to the Council of Judges, if they see fit to exercise it, to create subdivisions. It may, or may not, be done.

If this proposed bill stands all of the judges of the district can, and may, be elected by the people in the centers of population. The judges who are elected may all come from those centers, and the only thing that is required of them is that they maintain resident chambers some place in the subdivisions, which may, or may not, be created. If subdivisions are created, then they must maintain resident chambers in the subdivision. I don't know whether you people in the larger centers realize what you are doing to the outlying sections, or not. Is it fair to give to the center of population in the Twin Falls Section, where they have two votes to our one across the river, the right to elect all three of those judges, and merely to require the men elected to go over to Gooding, to Shoshone or some place else and maintain resident chambers there, whatever that means? It isn't fair at all; it is depriving these outlying sections, virtually denying them of their right of electing their district judge; it is disfranchising them. As I indicated to some of the attorneys yesterday, or last night, those who are—several of those whom I have talked to are not opposed to this general scheme, provided each subdivision be arbitrarily created, that is, that duty be mandatory, and each subdivision elect its own judge. But when you take this right away from the outlying sections and give it to the centers of population you must expect the people of those sections to fight, and, gentlemen, that fight will not stop here if this is approved. The entire bar of the state will be circularized. I don't mean to make that as a threat, but can you expect the people in the outlying districts to sit by quietly and take that situation and be satisfied with it?

JUDGE AILSHIE: Would you be satisfied if it should be amended to read that the districts shall be divided into divisions and a judge shall be elected from each division, and the judge so elected shall be a resident of that division?

MR. JAMES: Personally, I would be, there is some objection among some of the boys here, but personally I see no reason why that would not be acceptable. That would leave us with the working organization that some of you are interested in here, but, on the other hand, it would not deprive the people of the right to elect the judge who is to handle their cases in that

territory. For instance, in our territory we have one judge across the river, north; they have one in the south, and there is one at Jerome. We have one in our district; they have two in their district. That would mean our judge will be trying cases in our subdivision, if the four counties of which Gooding is one should be that subdivision, that judge will, I presume, try the cases there, as he has in the past, with practically no opportunity to hear cases across the river, and no opportunity to get acquainted with the people over there, and yet when the campaign comes around he must go over and submit himself to the voters—

MR. HAWLEY: Would you mind making an amendment along the lines you suggest? For one, I think the members of the judicial council who are here would probably second the amendment..

MR. JAMES: Would it be possible, I am asking you, Mr. Hawley, would it be possible to designate the counties in each subdivision in any proposed amendment?

MR. GRIFFIN: You make it rather inelastic if you do that, don't you, if conditions change?

MR. HAWLEY: Do you insist on it that far, Mr. James?

MR. JAMES: I don't know, Mr. Hawley.

MR. HAWLEY: Judge Ailshie's suggestion here—I am not entitled to do any thinking in this matter for you at all—but I should think that would rather come close to what you want, Judge Ailshie's motion that they must divide the district into subdivisions. We must, of course, assume a little fairness in those judges in your division. There are three judges in your division. It is hardly probable that they would divide it so as not to give you a judge on the north side.

MR. JAMES: There is an element of uncertainty about that, Mr. Hawley. I hardly know how to answer that question offhand. If I may become personal to this extent, and speak on behalf of Judge Sutphen here? He is the judge of that district. If we were made a part of the proposed third district I suppose it would be practically impossible for him to be called out over the state as he has been in the past. He has been called out over the state to quite a large extent in trying cases, as some of you gentlement know. Personally, that is—if I may be pardoned in making this statement—personally, I think that is more satisfactory to the judge than to be confined to the territory within the proposed third district, and at least two judges I have talked to have said this: They rather resent the idea of one judge in their district being a presiding judge and sending them over here and over there. I don't know whether that is the feeling that is prevalent among the judges or not, but I have heard it expressed twice.

I wondered this—I am departing from Mr. Hawley's question, but I will get back to it in a moment. In the proposed fourth district you will have four judges. The presiding judge is named by the four with no provisions of what shall be done in the case of a tie.

Now, getting back to Mr. Hawley's question: The thing I am particularly interested in, Mr. Hawley, is the right of suffrage of the territory in which one judge is elected, the right to name that judge, rather than giving that right to a larger number of people at a longer distance. In our district down

there for a great many years we had Judge Ensign, and now we have Judge Sutphen. There have only been those two judges there for many, many years. The people in that district have become well acquainted with those two judges. Suppose at the next election someone—Judge Sutphen is a republican, I am a democrat, so it is not politics so far as I am concerned, and I am not discussing the political phase of this question. All right. Suppose some other candidate comes in and runs against the judge, and suppose our people are three to one in favor of Judge Sutphen, yet the southern people can put in a judge. Is that fair to our people? We are getting away from the fundamentals of government, it seems to me.

If the thing can be so amended as to require the judge in each subdivision to be a legal resident of that subdivision, and that he shall be elected by the voters of that subdivision only, and then if by some means or other—I don't know exactly how, Mr. Hawley, whether we can work it out or not—whether these districts can be properly subdivided without any friction, then I would be entirely satisfied. I don't know just how much trouble we might get into in attempting to divide these districts. It would seem to me to be rather easily done in our country. That is our situation. But as the report now stands—rather, as the motion now stands, recommending the adoption of that bill in its entirety, with the one modification, I am certainly opposed to it.

MR. CHAPMAN: It seems to me, gentlemen, that Mr. James is rather supersensitive about any oppression he may suffer by reason of not being in what he terms the center of population in this proposed district, and his sensitiveness is not founded upon the experience and history of the district.

The old fourth district, as you remember, comprised what is now to constitute this proposed new third district, with the addition that it included Elmore County, and it had two judges for years. When the second judgeship in that district was created Governor Hawley appointed Judge Stockslager to fill the additional judgeship, Judge Stockslager residing at Twin Falls. Judge Walters was the other judge of the district, and he resided at Shoshone, on the north side. They were the judges of that district. In 1914 they both went off the bench. Judge Babcock was elected from Twin Falls, and Judge Bothwell of Shoshone was elected. They were the two judges of the district. Judge Bothwell resigned in 1917 and Governor Alexander appointed Judge Ensign. In 1918 Judge Babcock from Twin Falls and Judge Ensign from Hailey were both re-elected in the district. The 1919 Session of the Legislature created the eleventh district, and there were two judges in the eleventh district, Judge Babcock remained as a judge of the eleventh district, and Governor Davis appointed Judge T. Bailey Lee as the other Judge of that district, Judge Lee residing at Burley, and they were both re-elected judges of the district. Finally Judge Lee was elevated to the Supreme Court and the governor appointed Judge Baker of Rupert as the judge to succeed Judge Lee, and Judge Baker and Judge Babcock were re-elected as judges of that district, only one of them residing in Twin Falls. Judge Baker finally resigned from the bench and the governor appointed Judge Barclay of Jerome as the other judge of the district, and last election Judge Babcok and Judge Barclay were both re-elected, so that there never has been any of this oppression by reason of this center of population hogging up all of the judges. Twin Falls has always had one of the judges. The remainder of the district has had the other judge, and in this arrangement I can't conceive of Twin Falls having more than the one judge, and the remainder of the district would have the other two judges. Because of the division of the work in the district, it would naturally create a spirit of fairness which would regulate the location of the judges.

It seems to me this objection is entirely supersensitive. It is not based upon any experience we have had in the district, or in the history of the district, and I know there is no spirit on the part of the bar in that district, and I am sure none on the part of the people, even if they could do so, to grasp an opportunity to elect three judges.

It seems to me that this plan is fair, fair to all the counties in the district, and that it will expedite the administration of justice in the district. It would have been manifestly unfair to have saddled the work on the judges—to saddle all the work on two judges, but it seems to me that if we have the three judges in the district the work can be very expeditiously taken care of. It is being taken care of in a highly satisfactory manner, and it will continue to be done so, and the three gentlemen who now grace our bench down there are, so far as I know, in the good graces of their constituents, and well known. I think Judge Barclay, and Judge Babcock—I know Judge Babcock is well known in all of the counties of that district because he was judge of the entire district for years. Judge Barclay has practiced in all of the counties in the district, and has a wide acquaintance, and Judge Sutphen, likewise, has held court on both sides of the river, and has a wide acquaintance.

It seems to me that these gentlemen are anticipating fears and worries that are not very likely to occur. There is not enough substance to their fears to jeopardize the carrying out of this plan by trying to first anticipate now the division of the district. The division of the work in the district itself that would be presumed to be done along the lines where the work is. It is not a question, as Mr. Graham pointed out, of population, or assessed valuation, but it is a question of where is the work.

I can appreciate occassions will probably arise in all of these proposed districts from time to time that would require the judges of the district to redivide the divisions of the district, but I have no fear at all that any of these smaller counties are going to be discriminated against in the matter of judges, or in the matter of the dispatch or the handling of their business by reason of this arrangement. It seems to me to be eminently fair. Of course there are inequalities, but they are not due to the Idaho Sate Bar, and perhaps can't be cured by it, but we must presume, as some gentleman has suggested here, that the judges are going to have some sense of fairness and reasonable intelligence which they will exercise in the matter of the subdivision of the districts, and the distribution of the work.

I think these objections are without merit.

MR. HOLDEN: The bar of Bonneville County—I wasn't present, but I am advised—went on record against many of these changes.

It has been advocated here that who would know best the kind of a man to appoint to the position of clerk of the court. I understand, however, this report leaves that to us. It doesn't recommend either way, but I know there are district judges who are not in favor of this. They know that it is un-

American to take the right away from the taxpayer and the elector to elect a man to the various offices. The clerk of the court is a political office. If you are going to give the court the power to appoint the clerk, then the sheriff—the court has a great deal to do with the sheriff—we will take that away from the people and the courts will begin to appoint the sheriff, and the first thing you know we will have our state run by the courts. Now, the courts do not want that. And I know another thing: They don't care to have any supreme court judge over them in their district to tell them when to go and when to come. We have a pretty good system here now, and if we keep on—now, this Judicial Council wanted the court to have the power to tell the jury what to do, to comment on the evidence, and the County Attorney to comment upon a man if he exercised his right to remain silent, and I think there was some discussion that the defendant would have to, when he got his witnesses, submit their testimony to the prosecuting attorney. Now, that I haven't read, but I was advised that is what they wanted.

The whole tendency is to centralize all power, which is un-American.

Now, it was stated that the judges were the parties qualified to choose the clerks. If that is true, and that is the system of our government, then let us have the Supreme Court of the United States pick the supreme court judges in the different states. They are better qualified to do that, and then to go a step further: Let the supreme court judges pick the district judges. They are better qualified to do that than the farmer, and when we get through we will have a political machine here headed by the Judicial Council and the judiciary of the state, and I, for one, am going on record against it.

MR. GLENNON: It seems to me we are discussing the political phases of this matter altogether, rather than discussing the merits of the matter that have been recommended by the Judicial Council, and the matter on which we are to take action. I have been waiting here now—this is the second day—for somebody to discuss the merits of this proposition, to point out wherein we will be benefitted if this change is adopted, wherein the expenses will be reduced, and the efficiency of the judiciary will be increased. So far it is a question of what the political effect will be, or rather the political views that have been discussed almost entirely. I have heard this matter discussed for the past three years on numerous occasions. This is the first time that I have ever had anything to say about it. I have been trying to keep my mind open, because I appreciate the fact that our Judicial Council is composed of men of ability, men who take their work seriously, and I know they have devoted a great deal of time to the study of the question, and I took it for granted that they had worked out something that would be beneficial if adopted, although I am frank to say it didn't appeal very strongly to me, and I am just about in the same state of mind at the present time.

There are some things in connection with it that I think may be an improvement. I am still doubtful as to the wisdom of this proposed redistricting of the state. I can't see where it is going to accomplish any good except to reduce the number of district judges. Now, as to that feature, I favor it. I think we have more district judges at the present time than are required to carry on the judicial work of the state. Whether or not it is necessary to redistrict the state in order to reduce the number of judges is a question. If it is, then I say, "Go ahead." In other words, I am ready to vote for the proposed redistricting of the state. I am absolutely and unalterably opposed to the judges having the appointive power either of the clerks of the court or of the justices of the peace.

One of the things that we attempt to accomplish here obviously is to take the judiciary out of politics by electing them, or voting for them, on a separate ballot. I doubt whether there is anything beneficial in that or not, but I am willing to try it, but I am not willing, after we have done that—gone to the trouble of doing that, then to throw them right back into politics by giving them certain appointive powers, which is the worst kind of politics. Anyone who has ever exercised the appointive power knows that that is the greatest curse entering into political life. I am opposed, gentlemen, seriously to the abolition of the probate courts. So far I haven't heard any objection to that. It is taken for granted, it appears, that this should be done. Now, let's look at that situation: It is true that most of the states have abolished the probate courts, but if you will investigate the matter you will find that that has taken place in states where they can easily place the work in the hands of another court. In fact, in most of the states they have the county court system. In each county they have a court called the county court, or some similar name that takes control of the probate work and certain civil matters. Now, it is not possible to set up that kind of a system in this state, or, at least, we are getting entirely away from that. We are going in the other direction. Instead of creating more judicial positions and districts, we are proposing to cut the entire state up into four judicial districts. Now, the work of the probate court is not only the handling of probate matters, as you all know. There are a lot of other duties of the probate court; lots of other functions the probate court performs. You will have to set up some other machinery to take care of those functions. For instance, you don't propose, certainly, for the district court to have charge of the juvenile work, or to have charge of the granting of widows' pensions, and the granting of charity, and things of that kind. You have to provide for that. You can't discard all that stuff. If you provide another official for that purpose, you certainly are not going to reduce any of the expense. I don't think it is advisable, and I am quite sure it is not practicable, to do away with the probate court.

Now, as to the handling of the probate business out in the smaller counties, you propose, as I understand it, to take that away from the probate judge, and put it in the hands of the clerk of the district court. Well, now, that is going to require just as much time of the clerk of the district court as it requires of the probate judge, and if you demand that additional time and work you will have to pay him for it. So, where are you going to cut down the expenses? I think our probate judges generally are handling their part of the work quite satisfactorily. True, in the smaller counties they don't always elect competent men as probate judges, but the same thing is true of the clerk of the court, and that holds true some times in the larger centers of population, but if you get a competent man it doesn't make any difference whether you call him the clerk of the court or the probate judge, you are going to have to pay for his services. You are not going to reduce expenses, in my opinion, by doing that, and you are going to just tear up a system that

has been established even before statehood. I do not see any sense in tearing down an established system and trying to put something in its place that it is apparent will not serve the purpose any better, if it serves it as well.

And then I would like, in this connection, to point out the difficulty of doing away with the probate court and establishing some substitute organization. It is going to require at least three constitutional amendments. Those have to be submitted as three separate and distinct questions. Now there is going to be considerable objection to this. It is possible one of those amendments might carry, or two might carry, and the rest fail. Then maybe you have abolished the probate court and you haven't any authority to establish any substitute organization. So you are going to a lot of effort, and you are taking a lot of chances, without any hope of improving the situation, as I look at it.

I am not clear as to what position we are in here, in view of the report of the resolutions committee, but unless it is permissible in some way to vote separately on these propositions, I will certainly have to vote against the entire proposition.

MR. OVERSMITH: I wonder if the resolutions committee, the chairman of that committee, wouldn't withdraw his motion to adopt the resolutions as a whole, and limit it to the redistricting of the state and the election of the judges on a non-political basis. It seems to me that is the main point here. We are discussing matters here that can't come up for two years any way, on account of the fact it is necessary to have constitutional amendments. The appointment of the clerk by the court, and all that, are premature.

MR. JONES: I shall, with the consent of the second, withdraw my motion heretofore made that the report of the resolutions committee be adopted.

I shall now move, Mr. Chairman, the adoption of paragraph one of the resolutions committee's report, which reads as follows: "We recommend that the Idaho State Bar Association hereby expresses its appreciation and gratitude of the Judicial Council of Idaho and to each of the members thereof for their faithful, sincere and constructive efforts to improve the judiciary of this State and to expedite and simplify the administration of justice. We further commend them for their earnest effort to effect a reduction in the cost to the taxpayers and litigants of this State of the administration of justice."

MR. CHAPMAN: I second that motion, Mr. Chairman.

THE VICE PRESIDENT: It has been moved and seconded that paragraph one of the report of the resolutions committee be adopted as read. All those in favor of the motion will signify by saying "Aye." Contrary, the same. The motion is carried.

MR. JONES: I now move, Mr. Chairman, the adoption of paragraph two of the report of the resolutions committee, which reads as follows: "We recommend that the plan of judicial reorganization, unified courts and redistricting of the State as included in the report, redistricting of the State and the non-political election of judges of the supreme court and district judges, and the abolition of probate courts in the several connties of the state be approved, with the following exception: We recommend that the proposed Third Judicial District, as defined in Exhibit "A" annexed to said report, be made to provide for selection of three District Judges therein in lieu of the two as provided in said report."

MR. CHAPMAN: I second the motion.

THE VICE PRESIDENT: It has been moved and seconded that the second paragraph of the report of the resolutions committee be adopted as read. Is there any discussion?

MR. OVERSMITH: I move, Mr. Chairman, that the words "Abolition of Probate Courts" be stricken, because we can't act on that. That takes a constitutional amendment.

MR. GRIFFIN: Someone has to push it, if you favor it.

MR. OVERSMITH: You are bringing two matters in here. The main purpose, as I understand it, of all this discussion, is as to the number of district judges, and the redistricting of the state. Let's cut everything out of there of a controversial nature which is not necessary to determine that one thing.

MR. GLENNON: I second the motion of Mr. Oversmith, Mr. Chairman.

THE VICE PRESIDENT: The motion is to adopt the second recommendation of the resolutions committee.

MR. OVERSMITH: There is a substitute motion to the effect that part of that be stricken.

THE VICE PRESIDENT: Your motion is not very clear—what part?

MR. OVERSMITH: The abolition of probate courts.

MR. GLENNON: "And the abolition of the probate courts in the several counties."

MR. OVERSMITH: Yes, that is it.

THE VICE PRESIDENT: The substitute motion is that the report of the committee be adopted reading as follows: "We recommend that the plan of judicial reorganization, unified courts and redistricting of the State as included in the report, redistricting of the State and the non-political election of judicial officers of the State be approved, with the following exception: We recommend that the proposed Third Judicial District, as defined in Exhibit "A" annexed to said report, be made to provide for selection of three District Judges therein in lieu of the two as provided in said report." Are there any remarks on that substitute motion?

The motion in reality is to amend by striking out this phrase "the abolition of the probate courts in the several counties."

MR. OVERSMITH: Addressing myself to the amendment only, I want to take out of this all controversial questions. They should be submitted in a separate resolution, and that can be done during the noon hour—that the Bar Association go on record favoring a constitutional amendment to abolish the probate courts, and that will bring that one question squarely before us.

THE VICE PRESIDENT: That is the way I read it, the phrase "the abolition of the probate courts in the several counties." The amendment is that those words be stricken from the report of the resolutions committee. We will now vote on the amendment. All in favor of the amendment, say "Aye," contrary, the same. The amendment is carried. Now, that leaves

the motion on the adoption of paragraph two with this portion stricken out, and that still includes the non-political election of judicial officers.

GENERAL BLACK: If that question of the non-political election and nomination of judicial officers is to be voted on with the other, I would like to discuss it.

THE VICE PRESIDENT: As the motion now stands, that is included.

GENERAL BLACK: I think it might be better then, to move a substitute motion that the motion be further amended by eliminating the words from the original motion "of the non-political election of judicial officers."

THE VICE PRESIDENT: Is there a second to the motion of Mr. Black?

MR. HEIST: I second the motion, Mr. Chairman.

THE VICE PRESIDENT: All in favor of the motion that the original motion be amended by eliminating the words from the second paragraph "of the non-political election of judicial officers" will say "Aye;" contrary, the same. The motion is lost.

GENERAL BLACK: Then, Mr. Chairman, I want to discuss the question of the non-political election of judicial officers.

THE VICE PRESIDENT: You may have three minutes, Mr. Black.

GENERAL BLACK: This provides for the nomination by certificate. If there are three district judge to be nominated, there is no method provided here for the elimination in any primary election of any of the candidates. If there are two supreme court judges to be nominated, as there are in some elections, and one in some others, there might be eight or nine candidates submitted to the people at the general election. There would be no method provided by this system for elimination, so that one of those candidates, or the two to be elected would be receiving a majority vote. I suggest that this should be amended so that these certificates of nomination should be made and submitted for election—for nomination at the primary. They can be on a separate ballot there, just the same as at the general election. It can be non-political, just the same as the general election, then provide that the ones receiving the highest vote would be the nominees to come before the general election. To illustrate: Suppose there were nine candidates for supreme court judge. Then at the primary election they would be voted upon, and the four receiving the highest number of votes would go on the general ballot for the judiciary at the fall election. Then when two were finally elected out of those four, they would be elected by a majority of the votes cast upon the election. I believe it would be very bad to permit a system where you could have nine, or ten, or eleven or twelve men nominated for the supreme court to fill two places, to come up at the general election, by the very nature of things.

JUDGE AILSHIE: I quite agree with what you say, but would you not provide that if any candidate obtained a clear majority of all votes cast on the judicial ballot at the primary election he should be declared elected?

GENERAL BLACK: That could be done. That wouldn't be objectionable to me, but I think the idea of having a whole string of candidates up for election to the office of district judge, where a very small minority vote might elect one of them, I think that would be absolutely wrong.

MR. GRAHAM: I think we are wasting time here. The only abstract proposition involved here is the question, Are we, or are we not, in favor of the non-political election of judges? The manner and method of carrying that into execution is left to and will be provided for, by the legislative committee. We are voting abstractly on the question, Do we, or do we not wish to favor the non-political election of judges? That is the only abstract question before us. The other details can be taken care of by the legislative committee.

GENERAL BLACK: The only thought is that if the recommendation is put up to the legislature in the form this is in it would have a certain effect. I move, Mr. Chairman, an amendment to be referred to the committee that the report be amended to read "that the legislative committee shall propose an amendment so far as the nomination of judges is concerned, so as to provide that the nominations shall be made at the primary, the regular primary, and that double the number of candidates to be elected receiving the highest number of votes shall be placed upon the general election ballot."

(Which motion was duly seconded.)

MR. GRAHAM: If you do that, you might as well cut out all provisions for the so-called nominations by part of the bar. You might as well let them run in the primaries as you do now. Why not go back to the old system? If you are in favor of this method of trying to get competent candidates, you are defeating it by your own proposition. I think Judge Ailshie's proposition is better than yours. We are trying to get nominees for judges without having to go to the expense of two elections. Now they have to campaign an entire year, their last year in office. They have to do their campaigning for the primary in May, and then they have to do it again in the fall election. You are going to have those nine or ten candidates that you speak of out fighting for the nomination in the primary election, and then you are going to have four, say, in the general election. You are entirely destroying the suggestion for non-political election of judges.

JUDGE AILSHIE: Here is the trouble—and I am quite in favor of Mr. Black's amendment—it would be utterly rediculous to run five or six, or a dozen, men for justice of the supreme court, and let the highest man be elected with fifteen or twenty per cent of the votes cast, for a six year term, so that this method ought to be adopted, but we ought to add to it that if anyone gets a clear majority of votes cast at the judicial election he should be declared elected, and for this reason: It is not fair to him, or to the people, to have him go through an election again. He has demonstrated in face of all of the candidates in the field that he is clearly the choice of the majority. If you make him run again there is a good chance for other factions to combine against him and beat the high man at the general election by some story, or by some kind of campaign manouevers. If he receives a clear majority at the nominating election he should be declared elected.

JUDGE MORGAN: The difficulty with the Judge's suggestion is that the primary election is not patronized as fully as it should be. The fact of the matter is, we have elections to give a majority of the people to express their choice.

JUDGE AILSHIE: Why should the majority express their choice twice?

JUDGE MORGAN: Why not appoint them as Federal judges are appointed?

JUDGE AILSHIE: I say that.

JUDGE MORGAN: I don't. I happen to be in accord with the principle that the people should elect their own judges.

JUDGE AILSHIE: There is one place I agree with you.

JUDGE MORGAN: My notion is that we want a judge who has been elected by the largest available number of people. I am going to ask to amend your amendment, that instead of referring to judges there—or as the report now states "the judicial officers," which would include the clerk of the court and Judges, including justices of the peace and probate judges, have your amendment read "justices of the supreme court and district judges."

GENERAL BLACK: That is what I had in mind—justices of the supreme court and district judges.

MR. OVERSMITH: It seems to me we are haggling over little things that can be worked out by the legislative committee. We can't perfect a bill here. The one submitted by the Judicial Council—it is not pretended it is a complete bill. Why not have the Bar Commission get a legislative committee as early as possible and have it draft the laws and submit them?

I think the number of lawyers signing a petition should be a certain percentage of lawyers in the district, rather than an arbitrary percentage. I do not take it that the report itself contemplates that the recommendations as made by the Judicial Council are going through, because your resolutions committee has taken a very careful attitude to the effect that this all must be referred to the legislative committee. It strikes me we can vote on this question just in the situation it is in, and if it is necessary, and if the Bar Commission finds it is advisable, we can call district meetings for the purpose of determining whether or not the report of the legislative committee must be approved by the Bar generally throughout the state.

We only represent here a very few members of the Bar. For instance, in the northern section of the state, your proposed new first judicial district, I believe there is only something like five of the members of the Bar here. I don't feel like committing the rest of the Bar up there upon any attitude we take here, and if we can leave this with the legislative committee, let's quit haggling over this term, or over that term. That can be worked out to the satisfaction of the Bar generally if we approve of the principle of the four judicial districts and of the non-political election of judges. That is as far as I want to go, and if I understand the report of the resolutions committee correctly that is all we are voting on—just that one thing, with the abolition of the probate courts eliminated.

THE VICE PRESIDENT: All in favor of the motion to amend the original motion will please say "Aye." All opposed, the same. The motion is lost.

The question now recurs to the original motion. If you want that read, I will have it read by the reporter. All in favor of the original motion—the motion is to adopt this portion of paragraph two of the report of the resolutions committee: "We recommend that the plan of judicial reorganization, unified courts and redistricting of the State as included in the report, redistricting of the state and the non-political election of judicial officers, be approved, with the following exception: We recommend that the proposed Third Judicial District as defined in Exhibit "A" annexed to said report, be made to provide for selection of three District Judges in lieu of the two as provided in said report." All in favor of the adoption of this resolution will—

MR. MORGAN: I had moved to amend by substituting for "judicial officers" the words "justices of the supreme court and district judges."

THE VICE PRESIDENT: It has been moved that the words "judicial officers" be changed to read "justices of the supreme court and district judges." All in favor of that amendment will please say "Aye." Contrary, the same. The motion is carried.

The question now recurs on the original motion. All in favor of the original motion will please say "Aye"—

JUDGE MORGAN: We have to vote now for both—

MR. HEIST: We want it separate.

THE VICE PRESIDENT: The motion has been made to separate, and has been lost. The motion was made to strike the portion of the motion having to do with the non-political election of judges, and that motion was lost. All those in favor of the adoption of the resolution will say "Aye"; opposed, the same, The motion is carried.

MR. JAMES: Mr. Chairman, I would like to have a rising vote.

THE VICE PRESIDENT: All in favor of the motion will please rise.

MR. JAMES: May I ask that the reporter make the count.

THE VICE PRESIDENT: There are twenty-eight in favor of the motion. Those opposed will now please rise. There are nine opposed to the motion. The motion is carried.

Now the chair will entertain a motion with respect to subdivision 3 of the report of the resolutions committee.

MR. JONES: Subdivision 3, I move, Mr. Chairman that we submit without recommendation, the proposal contained in the report of the said Judicial Council providing for the appointment of clerks of the district court and justices of the peace.

THE VICE PRESIDENT: The motion is that the third paragraph of the report of the committee be adopted—that is, we submit without recommendation the proposal contained in the report of the Judicial Council providing for the appointment of clerks of the court and justices of the peace.

MR. MERRILL: There are two problems tied up in one here that might best be separated. One is with respect to the appointment, or election, of clerks of the district court, and the other is with reference to changing the present law touching the justices of the peace. Now, it may be that we can get by with this matter by leaving the law with reference to the clerks of the district court precisely as it is, for the time being, and then we might consider with effect, it seems to me, the question of the justices of the peace in connection with the abolition of the probate court. It would be unfortunate, it seems to me, to tie these two up in the present matter and defeat both of them, and then consider the other question, the abolition of the probate court.

MR. HAWLEY: I move, Mr. Chairman, that we consider the two questions separately. I think we made a mistake by combining the two questions. I think we should consider first the question of the appointment of a district court clerk, and then consider the second question, which is entirely different, and puts into consideration the justices of the peace.

JUDGE AILSHIE: I second that motion, Mr. Chairman.

MR. CHAPMAN: I move, Mr. Chairman, we consider the first angle of the proposition, as to the district court clerks and pass on that.

(Which motion was duly seconded.)

THE VICE PRESIDENT: All in favor of this motion will say "Aye"; contrary, the same. The motion is carried. The matter is now open for any consideration you desire to take, gentlemen.

JUDGE AILSHIE: I move that we disapprove the recommendation of the Judicial Council with reference to the selection of clerks of the district court.

MR. GRAHAM: I move as a substitute, that all matters relating to the clerks of the court and justices of the peace be deferred for one year. We will get over that hurdle at this time. We are not going to agree here, that is a cinch.

MR. TURNER: I second that motion.

THE VICE PRESIDENT: It has been moved as a substitute to Judge Ailshie's motion the consideration of this matter of the appointment of clerks of the district court, or their manner of selection, be deferred until the next annual meeting of the Bar Association.

MR. OVERSMITH: That would be a substitute for what motion?

THE VICE PRESIDENT: That is a substitute for the motion just made. All in favor of the substitute motion say "Aye"; contrary, the same. The motion seems to be lost to substitute. The question now recurs to the motion of Judge Ailshie with reference to the matter of the appointment of clerks of the district court be disapproved. Are you ready for the question? All in favor, say "Aye"; contrary, the same. The motion is lost.

MR. HAWLEY: I move you, Mr. Chairman, that it be the sense of this meeting that Article V, of Exhibit D, referring to clerks of the district court, shall be approved with the exception that the method of their selection be disapproved.

JUDGE MORGAN: Then what would be the method of selection?

MR. HAWLEY: Leave the matter of their selection up to the legislature itself.

JUDGE AILSHIE: Then what have you left?

MR. HAWLEY: We have left the very important provision, gentlemen, that "in uncontested actions, applications and proceedings he may make all such orders, judgments and decrees as may be authorized by law which shall be deemed to be the orders, judgments and decrees of the court and shall be subject to revision by the court or judge thereof and shall perform such other business connected with the administration of justice as may be prescribed by law." That, in my opinion, will be of the utmost assistance in connection with the new type of probate procedure, the new type of administration of probate matters. We wanted the clerk to have the powers to make more or less perfunctory orders. If the probate court is abolished, undoubtedly the legislature should pass some laws to give the clerks some powers to make unimportant orders, orders as to publication, orders and matters of that kind; and I therefore consider that this is important in connection with the consideration of the abolition of the probate courts.

JUDGE AILSHIE: Do you consider you are conferring any judicial powers on the clerk by this bill?

MR. HAWLEY: Yes, I would consider you are conferring on the legislature the power to give the clerk of the district court such judicial powers as may be desired.

JUDGE AILSHIE: Then you are creating forty-four new judicial officers.

MR. HAWLEY: I don't believe you are doing anything there that is serious. You are expediting the performance of probate matters; you are expediting the probating of estates, appointments of guardians, and if the clerk of the court makes a mistake and tries to go beyond what a clerk should go, then his order will be immediately reviewed by the district court.

JUDGE AILSHIE: Isn't that what you do with the probate judge now?

MR. HAWLEY: All orders, judgments and decrees—I think Judge Ailshie is right, that is what we do, but it is subject to the control of the courts, and it probably will be limited by the legislature to ministerial duties.

(Which motion of Mr. Hawley's was duly seconded.)

MR. OVERSMITH: In regard to that, Washington has a somewhat similar practice. The clerk of the court is court commissioner—they call him "court commissioner." He has power to sign decrees of distribution, and matters of that kind where uncontested, and it works out very successfully. If you are going to do away with the probate courts you will have to have something of that kind in your law, and you don't need to be afraid of that.

THE VICE PRESIDENT: The motion now pending is that that portion of Exhibit D, which is article V, of the report of the Judicial Council, having to do with the manner of the appointment of clerks of the district court, be disapproved, and that the balance of the recommendation contained in that exhibit be approved.

THE VICE PRESIDENT: All in favor of the motion will says "Aye;" contrary the same. The motion is carried.

Now, gentlemen, may I call your attention to the fact that in paragraph two of the report of the resolutions committee, the abolition of the probate courts, which is recommended, has never been formally passed upon.

MR. MERRILL: The matter of the justices of the peace should come first, I think, Mr. Chairman.

MR. CHAIRMAN: Very well.

MR. MERRILL: I move the report be amended by amending Exhibit E, which is a proposed constitutional amendment, Article V, so that there will be eliminated from the proposed amendment the words "be appointed by judges of the district court," and insert in lieu thereof, the word "elected," and by striking the last sentence of the proposed amendment, the same reading "They

shall hold office during the will of the court," and thus provide for the election of the justices of the peace.

MR. HAWLEY: I second the motion, Mr. Chairman.

JUDGE AILSHIE: What page is that, Mr. Merrill?

MR. MERRILL: Page twenty, Exhibit "E".

THE VICE PRESIDENT: The substance of the motion is that the recommendation of the Judicial Council which is embodied in Section 22, a portion of Exhibit E, on page 20 of the report of the Judicial Council, be approved, with the exception of the language which Mr. Merrill has referred to— that the words "shall be appointed by the judges of the district court" be stricken, and "He shall hold office during the will of the court," be stricken.

JUDGE MORGAN: May I ask, Mr. Merrill, what is left, if you strike that?

MR. MERRILL: County-wide jurisdiction.

JUDGE MORGAN: That is already the law. The board of county commissioners of any county under the law as it now is can create county-wide jurisdiction to justices of the peace, and they do it in Ada county.

JUDGE AILSHIE: If you make that amendment without inserting something, won't you leave it uncertain as to the number? Who is going to fix the number? Shouldn't you say that is to be determined by the board of county commissioners?

MR. MERRILL: That will be determined by the district judge, and they are the ones who should be able to determine that.

JUDGE AILSHIE: You are still going to leave that to the district judges?

MR. HALL: I will say, for your information, that in Jerome county the board of county commissioners have created one—that is, they have created the whole county in one justice precinct. Now we have a very good arrangement there, electing one justice in the east end of the county, and one justice in the west end of the county. I believe the law now reads that any number of election precincts can be combined into a justice precinct by an order of the board of county commissioners.

MR. MERRILL: May I call attention to the fact, furthermore, that this proposed amendment, as it now stands, increases the jurisdiction of the justice of the peace from three hundred dollars to five hundred dollars, and enables the legislature to confer upon justices of the peace additional duties that may be necessary if we abolish the probate courts.

THE VICE PRESIDENT: The motion is, gentlemen, to approve the recommendation of the Judicial Council as embodied in Exhibit "E", with the proviso that is shall read as follows: "In each county of this state there shall be elected not less than two justices of the peace with jurisdiction throughout the county. Such justices shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of property, or the amount in controversy exceeds the sum of $500, exclusive of interest, nor where the boundaries or title to any real property shall be called in question," and disapproving the remainder of the paragraph. All in favor of the motion say "Aye"; contrary, the same. The motion is carried.

MR. JONES: I move, Mr. Chairman, that the Association adopt the report of the Judicial Council providing for the abolition of the probate courts.

MR. CHAPMAN: I second the motion, Mr. Chairman.

THE VICE PRESIDENT: It has been moved and seconded that this meeting adopt the report of the Judicial Council providing for the abolition of the probate courts. All in favor of the motion will signify by saying "Aye"; contrary, the same. The motion is carried.

MR. GRIFFIN: Mr. Chairman, I move we recess at this time until one-thirty this afternoon.

MR. GLENNON: I second the motion.

THE VICE PRESIDENT: All in favor of the motion will please say "Aye"; contrary, the same.

The motion is carried. The meeting will stand adjourned until one-thirty this afternoon.

FOURTH SESSION

July 16, 1932

1:30 P. M.

THE VICE PRESIDENT: The next order of business is the consideration of the fourth recommendation of the committee.

MR. JONES: I move the adoption of paragraph four of the report of the resolutions committee, which is: We recommend that the suggestions of the report of said Judicial Council as to criminal procedure which provides for the requirement of the defendant in criminal prosecutions to produce the names of his witnesses and imposing the duty upon the trial court to examine prospective jurors, and the proposal for objections and exceptions to instructions to juries, and also conferring the right upon trial courts to comment upon the evidence and credibility of witnesses be disapproved as contrary to the spirit and policy of our institutions.

(Whereupon the motion was seconded.)

THE VICE PRESIDENT: It has been moved and seconded that this portion of the report of the resolutions committee be approved, is there any argument on this. The subject matter of this is of particular interest to the prosecuting attorneys association, I think that it might be advisable to defer any action on this until they come, and we can proceed with the next.

MR. JONES: I move the adoption of paragraph five of the report of the resolutions committee which reads: In addition to the plan proposed by the Judicial Council we recommend the following amendment to Section 6446 ICS., the original statute which reads as follows:

"Disposition of appeals. The court may reverse, affirm or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. Its judgment must be remitted to the court from which the appeal was taken. The decisions of the court shall be given in writing; and in giving a decision, if a new trial be granted, the court shall pass upon and determine all the questions of law involved in the case presented upon such appeal, and necessary to the final determination of the case."

The amendment thereto shall read as follows:

"Provided, however, that in no cause shall the court render a decision upon any legal question not raised by either of the parties to the appeal without first submitting such question to the parties and requiring typewritten briefs or oral argument, or both, thereon, under such rules as the court may adopt."

Whereupon the said motion was seconded.

THE VICE PRESIDENT: Are there any remarks?

MR. MORGAN: I don't know that any explanation is necessary. The amendment is proposed for the purpose of avoiding having the appellate court pass upon matters which have not been raised by counsel without giving counsel an opportunity to be heard. I take it that the appellate court is almost human. There are times when the court feels that a certain question is determinative of a lawsuit, a question which has not been raised, and if they wander away from the issues raised without giving counsel an opportunity to be heard, then the only remedy is for an application for rehearing. It is much better to give the attorneys a chance to be heard before than after the court has made up its mind on the question to be heard.

Whereupon the motion was put and carried.

MR. JONES: Now, I move the adoption of paragraph six of the report of the committee on resolutions, which reads: We further recommend that the plan as hereinabove approved or as finally adopted by this Bar Association, be referred to and submitted to a legislative committee to be appointed by the Idaho State Bar Commission for the purpose of preparing the proper and necessary legislative bills and proposed constitutional amendments and that such legislative committee be authorized and directed to submit and present such proposed bills and amendments to the 1933 session of the Idaho Legislature and to actively urge and promote the adoption thereof.

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

THE VICE PRESIDENT: Mr. Soule, do you know whether the Prosecuting Attorneys have anything to report?

MR. SOULE: I can tell the sentiment of the meeting, the only one that we got behind was the one relative to uniting two offenses in the same complaint, the others we just got behind individually. If they are not here I am sure that you may proceed with the resolutions.

MR. JONES: I think we adopted the provision that two offenses may be united.

JUDGE MORGAN: That probably isn't very well worded. A man ought not be charged with two offenses charging different crimes, even if they grow out of the same transaction.

THE VICE PRESIDENT: For the purpose of simplicity, may I suggest that you make a motion embracing the recommendation of the council on page 21 of the report.

MR. SOULE: This is explanatory, I presume: "but one offense may be charged in an information or indictment, although the same offense may be set forth in different forms under different counts and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count. As the statute now stands, that more than one offense is charged in an information or indictment is ground for demurrer, and motion in arrest of judgment unless the objection has been waived by failure to demur."

California has a statute, Kerr's Penal Code, Section 954, by which it is permissable for the indictment or information to charge two or more offenses connected together in their commission. It is recommended that Section 8829 be amended so as to conform to the practice in California, as approved by the Supreme Court of that State. Such statute would provide:

"The indictment or information may charge two or more different offenses connected together in their commission, or different statements in the same offense, or two or more different offenses under separate counts, where all relate to or grow out of the same act, transaction or event, and if two or more indictments or informations be filed in such cases the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information, but the defendant may be convicted of any number of the offenses charged, and each offense upon which the defendant is convicted must be stated in the verdict; provided, that the Court in the interest of justice and for good cause shown may, in its discretion, order that the different offenses or counts set forth in the indictment or information be tried separately or divided into two or more groups and each of the said groups tried separately."

As is evident from a comparison of the proposed amendment with the present statute, the principal change would be to permit the charging of more than one offense in a single indictment or information, where the different offenses are connected together in their commission or all relate to or grow out of the same act, transaction or event. If such statute be finally enacted, it would probably reqnire a qualification to be added to Section 8870-3 whereby an indictment or information is subject to demurrer when it appears upon the face thereof that more than one offense is charged. The supreme court of Idaho but recently found it necessary to reverse a judgment of conviction for duplicity of an information in this respect.

THE VICE PRESIDENT: Your motion is to approve the recommendation of the council in this matter?

MR. SOULE: I will withdraw the motion and submit that this enactment, the proposed enactment be laid before this body for rejection or for approval.

THE VICE PRESIDENT: Do you care to make a motion?

MR. SOULE: I shall move its adoption.

MR. OVERSMITH: If we had all prosecutors of age and experience I would favor it. Any man who thinks that it is necessary for him to get a reputation by sending as many people to the penitentiary as possible would abuse this. Then we have judges of different temperament, some use the parole law, which is probably unconstitutional, and some who come to the judgeship from the prosecutor's office know only to give the maximum and raise the minimum two or three times above the minimum required. I see no necessity for any change in the criminal statute. We are sending plenty of people to the penitentiary as it is. A good many have been put on parole; they are paroling them as fast as possible at the present time. I have five young men paroled to me and they could have been paroled from the jail of Latah county just as well as from the penitentiary; they never had committed

a crime prior to the one misstep. I think the prosecutors have plenty of power as it is. Due to the fact that so many young men are elected it occurs to me that we ought not to try to amend the law to send more men to the penitentiary than we are doing now.

JUDGE MORGAN: I opposed the measure. It is being abused in the Federal Court as everyone knows. The prosecuting attorney will cause a man to be indicted for the manufacture of liquor, for the possession of means to manufacture liquor, possession of liquor and transporting liquor, and being a pretty good trader he dismisses half of the charges if the defendant pleads guilty to the other half.

The principal objection I have is more or less a technical one, as to the wording. If a man was charged with murder and burglary growing out of the same transaction. If in committing a burglary he kills someone, he could be charged with murder and burglary, a man would not be permitted to sit as a juror on both offenses, this is a qualification that cannot be waived.

MR. JAMES: If I remember right a similar measure was before this body in Boise, and I remember that it was disapproved. I am in favor of that if it has certain limitations. I realize that it is difficult to determine between embezzlement and larceny at times. I am in favor of it if it is added that the defendant may not be convicted of more than one offense.

MR. GRIFFIN: You mean sentenced for more than one offense.

MR. JAMES: I mean convicted.

THE VICE PRESIDENT: Are there any other remarks, if not, all in favor of the motion say aye. All opposed no. The chair is in doubt. All in favor of the motion will rise. The motion is lost.

We will now return to subdivision four of the report. This is the resolution that the recommendation of the council as to certain features of criminal practice, requiring that the defendant furnish the names of witnesses and so on, and also conferring the right to the court to comment on the evidence, be disapproved. The resolution favors rejection. All in favor of the resolution rejecting this. All opposed. The motion is carried.

MR. GRIFFIN: At the end of this Judicial Council report there is a resolution to make the Judicial Council an official body of the state. I move that the legislative committee of the Bar be instructed to present that to the legislature. It makes it a state organization, supported by the state.

Whereupon the motion was seconded.

MR. LOOFBOURROW: This is no time to saddle more taxation on the state by creating any boards or councils, I suppose you will pass this here, but the legislature will never pass it.

Whereupon the motion was put to a vote and carried.

JUDGE MORGAN: Does that dispose of the report?

THE VICE PRESIDENT: Yes.

JUDGE MORGAN: I want to make a motion which has to do with a matter that might be properly brought up as kindred to a resolution. I move that the Secretary be instructed to telegraph greetings to Warren Truitt, and also the hope of all members of the Bar for the speedy recovery of Mrs. Truitt. You know that President Truitt is a man of advanced years and I know that he will treasure an expression of this kind.

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

MR. OVERSMITH: This was left to the visiting members of the Idaho Bar Association, and I want to express on behalf of the visiting members their appreciation and extend their thanks to the local Bar Association for the splendid arrangement made for the entertainment of the visiting delegation, and the many courtesies shown the visiting members of the Bar while sojourning in Pocatello, especially for such a splendid place of meeting for the members of the Bar. I want to move that such resolution be put in the minutes.

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

MR. HEALY: That concludes the main part of the business. Now Judge Lee who has, I think, on two occasions attended the sessions of the American Law Institute, has kindly consented to give the members of the Bar here some of his observations on the work of the Law Institute; it has only been within the last two or three days that he has had any notice of this.

JUDGE LEE: Mr. President, and fellow members of the Idaho Bar: In view of the excessive temperature this afternoon I shall not enter into any entensive remarks other than to give you a resume of the contact with the Law Institute which is financed by the Rockefeller Foundation, the ultimate goal being that of harmonization of the substantive law of the different states in the United States.

You can easily see how this has become compellingly necessary. Here in Idaho we have a rule in criminal prosecutions that the possession of recently stolen property is not, in itself, sufficient to support a presumption of guilt. In the state of North Carolina that is all that the state has to prove. If you have lost your watch and it is found in the next ten minutes in my pocket, unless I can clear my skirts, off to the penitentiary I go.

Just to give you an idea of the time necessary for discussion and analysis of these matters, we spent one morning discussing the rights of mortgagors. The law of foreclosure raises so many questions that even the Philadelphia lawyers were perplexed. We had the body from New England clashing with the representatives from the middlewest and the Rocky Mountains. Of course, out here a mortgage is just a plaster, but back there it is a serious thing.

They have gone through title by title and letter by letter and they hope to get to "Z" finally, so that a man from the state of Washington can speak intelligently to a man from the state of Maine, on these subjects. Their work on the Criminal Law is nearly complete, and I will say that, to my great satisfaction, they have adopted many of the Idaho Statutes.

From a personal standpoint, it was an extreme privilege to meet all the representatives from the appellate courts of the States. I found that the Rocky Mountain group and the Central and Western groups were very close in their fraternization, and in that group came, also the South. The New England group went by themselves.

The heads of the different law schools met there with the active members of the Institute, the representatives of the different courts.

I was particularly intereested in the discussion of the matter of these mortgages which went on, Wickersham and Rose of Arkansas—they were masters in their field, and had several clashes.

I think I have undertaken now to show you what the purpose is and the amount of time and effort necessary to work these problems out.

About ten days ago the Secretary of State was delivered about two hundred volumes of the first volume of the new code. Some of you have examined it and I trust that others will. The hope of our members has been to give each member of the Bar working implements to save all lost motion. I know that you have had the same experience that I have, after looking through the compiled statutes and a dozen or so volumes of the session laws, cold chills run up your back for fear that you have overlooked some little statute. Under the new system everything under one subject is together. The notations have been greatly extended by a system of cross reference that cannot be completed until volume four is off the press. This is the result of much research and correspondence. I personally carried on considerable correspondence with Bobbs Merrill Company. We have had only North Dakota and California cited heretofore, and in this new code you will find in some sections as many as seventeen sections set out by number and sometimes citations of the Supreme Courts construing particular sections which will give us a wealth of information. The method of numbering the statute will be new to you but the moment you become familiar with it you will have no trouble whatsoever. The first figure is the key figure, which is that of the title, then there is attached a number of figures, three or four figures, the first will be the number of the title, and, following, the chapter and section. You don't have to jump from volume to volume to find all that has been announced on the subject. We tried to avoid everything that we considered unnecessary and it has been due to the work of a set of experts in Indianapolis that we have been able to produce what, we hope, will be in your hands by the middle of September. I thank you.

(Applause.)

THE VICE PRESIDENT: I think that it has been announced that copies of the Idaho Law Journal are here for your examination. The next and final portion of the program is an address by Mr. Hawley:

MR. HAWLEY: "Address" is very much of a misnomer. I did not assume that I would be called on at all, but if you can stand some very poor extemporization I can attempt it.

I feel that we have been organized long enough to have a background as an organization, a history that we may scan to see whether we made a mistake in forming the Bar Association and by law forcing each man to become a member of it. I believe that any of you who has followed the action of the legislature, high officials of the state, and judges, and read editorials of the press agree that the Bar has grown in the estimation and confidence of the people. Sad to relate, but nevertheless a fact, the profession was not held in the highest esteem ten years ago, nor has it yet reached the place in the confidence of the people that it deserves.

We, in Idaho, live in small communities, widely scattered, each one practicing law as he thought best, and the result was a lack of uniformity in concept of the lawyer's duty to his state, his profession, to the courts and his clients. There was no unity in the Bar. The practice of law was encroached upon by people who thought themselves well qualified and capable of drawing contracts, of drawing conveyances and of trying minor cases. The office practice, which seems to be the principal source of livelihood was no longer in the hands of the lawyers. The whole situation, prior to the enactment of the law presented a confused and weakened Bar, and to me it seemed that the elements of disintegration were so apparent that if we did not have such an organization as would enforce unity or enforce meetings from which unity would result so that we could regulate our profession that we would be regulated by the legislature and we would be forced to practice law in competition with laymen.

I think one of the signal accomplishments was to get the lawyers behind the thought that the man who did not exercise honesty with his clients and was not ethical should be reprimanded, possibly disbarred. I think the creation of the Bar Commission has been a good thing in getting a cleaner Bar, in establishing or making a higher and better profession, I believe that the people of the State think that we are trying to clean up the Bar and make it a higher and better profession more than we ever tried before.

I, yesterday, read the act passed by the legislature in 1929, an act which stands alone in legislation in all the States of the Union, an act which recognized this Bar as adviser of the state with respect to matters pertaining to the administration of justice in the largest sense.

I assume that there will be an ebb and flow in the opinion of people, and in our own interest in ethics and against offending members, but I believe that we are past the place where a man thinks the right to practice is his own right and that he owes nothing to the people.

I think one of the evils, one of the shortcomings of our Bar system is the lack of connection between the Bar body and the Board of Commissioners. I think the Commissioners want the Bar to know what they are doing, and want to get in touch with the profession, so that there could result more contact, more benefit and more unity. I believe that if the Bar Commission and the attorneys will work along the lines of strengthening the local organization it will be well worth while. I think that the early belief of the Bar Commissioners that local organizations should not be strong because they would tend to weaken the State Bar was true, but I think it cannot be urged now, therefore, the time is right for the individual Bars to begin to operate and to meet frequently, to think more of the problems of the profession and keep in touch with the Bar officers. I think the Commission has in mind to foster the formation of county Bar Associations and establish close connection between the local Bar Associations and this Commission. I would plead with you to support your own Bar Association, to come in contact with the men you have as friends and friendly rivals in the towns and communities. Many counties have strong Bar Associations even though there are no large towns in the county. Even now the result of activity in local associations is a better feeling in the Bar—a feeling of kindness, friendliness among lawyers, not so much bitterness, not so many disagreable features as existed prior to the organization. I am satisfied that we can build that spirit. We are rivals, bitter enemies for a day in the trial of a lawsuit, but we can be friendly outside. Birds of a feather flock together and naturally our friends are in the profession. I think we should encourage frequent contacts to the end that we may know the man who practices law and foster the notion that when in the practice of law a lawyer can feel that he is in the company of gentle-

men. This idea of bringing closer harmony and obtaining more unity presupposes strong county organizations. May we have them?

A little more practical suggestion—I know that there are men who think it is quite unethical to talk or discuss or act upon the minimum fee requirement. I believe however, that our practical everyday, work-a-day lives require that we give some consideration to the charges to be made. A problem that confronts the younger men is what to charge, what is fair and reasonable, this is a real problem that we may help solve by the adoption of minimum fee schedule. I think Ada, Canyon, Bonneville and Bannock counties have adopted such schedule but I don't know whether any of the northern associations have done so.

MR. OVERSMITH: Latah County has.

MR. HAWLEY: How many times in the past have you had a man stop you on the street and ask you for advice on a simple proposition in law, or come to your office and talk to you for ten minutes or a half hour, talking about a legal proposition, for which you make no charge, or when he asked you what the fee was you said "that's all right." We don't give enough consideration to the fact that what he wants to know is alone known to us. If we make a mistake we are hurt in our reputation and it is a serious matter. There are a few lawyers who have money, although I see none here today, but if we do have money and make a mistake, that might also be a serious matter.

In many cases the seeker after information does not want to get it for nothing. The things we do get for nothing we don't think so much of, the blue sky, the air, the sun are the greatest things we have and we don't think much about them. If we were charged a dollar a day to look at the sun we would think a great deal more of it.

I think in Ada County we make a minimum charge of $3.50 for advice. No man may talk to you about his law problem unless he pays that fee. When he pays three dollars and fifty cents he thinks he is getting something worth three dollars and fifty cents, he is much more pleased to pay than to get it for nothing. The matter of shopping, that comes up in the practice with the probate of estates and in divorce cases. We should not be bidding against each other, just as soon as we do that, we get into a business and out of a profession. We have no business to say we will bid five hundred dollars to carry on the law work in an estate, or we will take this divorce case for fifty or a hundred or a hundred and fifty or a thousand dollars; we are then bidding for business commercially and that is unethical. If there is a minimum requirement that gentlemen in the profession—and I think most in the profession are that—if there is a minimum requirement that we will observe then there will be none of this bidding and shopping will be discouraged and we will get a fair price, fair compensation for knowledge and our time.

I would therefore urge upon the members of the Bar that they pay attention to the local Bars; that they give attention to the work of the local Bars, form and foster a strong local organization. One of the first things that a local Bar should do is to establish—to enter into a discussion, it will take you several weeks, and maybe months to do this—but finally, however, establish a minimum fee schedule.

I desire to compliment the President, the Vice President of the Commission and the Secretary for the practical thought they had in their program, I believe this has been more enjoyable and more profitable than any I have known. It resulted from the fact that no one felt that there was any set program, possibly with one exception, yet we have discussed to our hearts content the problems of our profession that we should discuss. I feel that this meeting of the Bar will go down as inaugurating a new thought in programs and will be one of the most successful ones we have had in the history of the Bar.

MR. OVERSMITH: What would you do when you had two or three members, or rather lawyers who would not come in?

MR. HAWLEY: Well, I think you should invite them as we invited the Elmore County lawyers.

MR. MERRILL: How would you deal with the shoppers, the clients who are shoppers?

MR. HAWLEY: As John Graham said he did, "I am not interested in the business, if you want me to handle it, if you want my services I shall be glad to do the best I can, but I am not interested in bidding."

JUDGE AILSHIE: What success do you have in getting the minimum fee?

MR. HAWLEY: You send a bill and you will be surprised. It really is very successful, clients appreciate you better if you place a value on advice. If you give it free they think that is about what it is worth—nothing.

MR. MORGAN: What can you do in the case of a man who refuses to live up to it after he signs?

MR. HAWLEY: We had the same problem in Boise. We just figure that the fellow who does that, sooner or later will have a bad reputation in the Bar and the people will get from the Bar itself the knowledge that he gets a bad reputation. There was the thought that a committee would visit them and tell them they were violating their word of honor and we were going to bring it up in Bar meeting and discuss it in the Bar meeting.

MR. PAUL PETERSON: If you had two or three that would not be members of the Association who charged fees as scheduled, would you go ahead anyway?

MR. HAWLEY: Yes sir, the few lawyers who don't follow that should not be permitted to balk the majority from adopting and following a fair schedule—one fair to the public and the Bar.

(Applause)

THE VICE PRESIDENT: This concludes all the work of this session. Is there any member of the Bar who has anything to bring before this body?

MR. OWEN: Gentlemen of the Bar, at a meeting of the Bar Commission Mr. Healy was elected President of the Bar for the coming year. Behold your President for the coming year.

(Applause.)

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