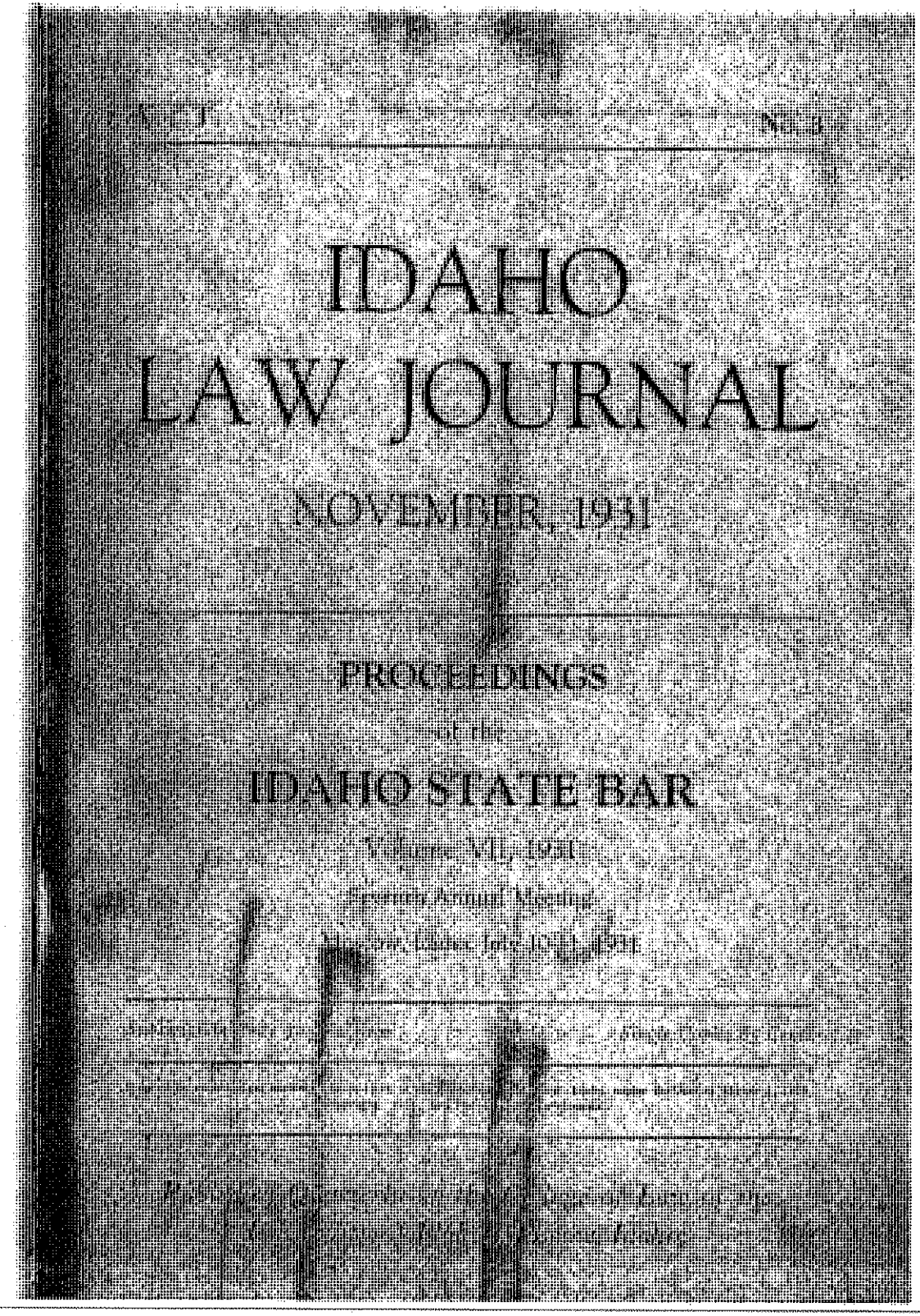
IDAHO
LAW JOURNAL
NOVEMBER, 1931
PROCEEDINGS
of the
IDAHO STATE BAR

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.

COMMISSIONERS OF THE IDAHO STATE BAR

JOHN C. RICE, Caldwell, Western Division.....1923-25
N. D. JACKSON, St. Anthony, Eastern Division.....1923-25
ROBT. D. LEEPER, Lewiston, Northern Division.....1923-26
FRANK MARTIN, Boise, Western Division.....1925-27
A. L. MERRILL, Pocatello, Eastern Division.....1925-28
C. H. POTTS, Coeur d'Alene, Northern Division.....1926-29
JESS HAWLEY, Boise, Western Division.....1927-30
E. A. OWEN, Idaho Falls, Eastern Division.....1928-
WARREN TRUITT, Moscow, Northern Division.....1929-32
WILLIAM HEALY, Boise, Western Division.....1930-33

OFFICERS OF THE IDAHO STATE BAR

JOHN C. RICE, Caldwell, President.....1923-25
ROBT. D. LEEPER, Lewiston, President.....1925-26
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A. L. MERRILL, Pocatello, President.....1927-28
C. H. POTTS, Coeur d'Alene, President.....1927-28
JESS HAWLEY, Boise.....1929-30
E. A. OWEN, Idaho Falls.....1930-31
WARREN TRUITT, Moscow.....1931-32
SAM S. GRIFFIN, Boise, Secretary.....1923-

JUDICIAL COUNCIL

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Miles S. Johnson, Judge, District Court, Lewiston
Ralph Adair, Judge, District Court, Blackfoot
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James R. Bothwell, Twin Falls
Jess Hawley, Boise
A. L. Merrill, Pocatello
Eugene A. Cox, Lewiston

OFFICES OF THE COMMISSION

217 Federal Building, Boise, Idaho

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 Western Divisions will hold Division meetings in 1932 at times and places to be fixed, respectively, by Commissioners Truitt and Healy.

Annual meeting of the Idaho State Bar will be held in the Eastern Division in 1932, at a time to be announced later.

An election of a commissioner for the Northern Division will be held in 1932.

IDAHO LAW JOURNAL

VOL. I NOVEMBER, 1931 No. 3

PROCEEDINGS OF IDAHO STATE BAR

HELD AT MOSCOW, IDAHO, JULY 10th and 11th, 1931.

Friday, July 10th, 1931
10:00 o'clock A.M.

The meeting of the Idaho State Bar was called to order at 10:00 o'clock A.M., in the Federal Court Room, in the Postoffice at Moscow, Idaho, by Hon. E. A. Owen, of Idaho Falls, President.

PRESIDENT OWEN: Gentlemen, the hour set for the annual meeting of the Idaho State Bar is here. It devolves upon the President of the Association to give an address at this time. The address that I will give I trust will not be burdensome. It is a rather disjointed affair, drawn not from any research but from my experience as an attorney in this state and as Bar Commissioner of the State. I have taken for my subject "Legal Reform."

LEGAL REFORM

Natural science and machinery have set a complex and intricate stage for the operation of democratic government in this twentieth century. From a very simple, almost crude, relationship or order of farmers, traders and merchants there has been evolved a highly specialized order of society, composed of engineers, electricians, physicians, surgeons, lawyers, merchants, farmers, chemists, bacteriologists and the masters of a thousand or more professions and arts. Inventions are continually introducing new and unexpected complications, confusions and conflicts into society. Efficient instruments for the distribution of information and propaganda, such as the telephone, telegraph, the radio, television, the talking pictures and rapid printing presses, mould public opinion almost over night.

Science also brings new perils in its train, in the form of fast driven automobiles, trains, aircraft, dangerous explosives, pollution of streams and the like. It also makes possible and more common all the vicious forms of law violation, such as safe blowing, machine gun banditry, illlicit manufacture and transportation, wire tapping and submarine smuggling. It is likewise accompaned by hazardous industries which increase the number of injured and defective for whom provision must be made. The products from all sorts of chemicals and machines make more numerous the various aspects of taxation and sources of revenue for governmental purposes. It offers to government striking and innumerable opportunities to serve the common good.

Railways, telegraph lines, airplanes and the radio, have all but annihilated distances and obliterated old historic political boundaries and welded this country of ours into a gigantic economic organism. Then, too, whether we like it or not, they steadily weave this nation into the web of world civilization and national isolation has become a matter of history.

It is clearly evident to the most casual observer that this highly scientific age has revolutionized conditions and multiplied the burdens of government. Figuratively speaking the social environment of the government has undergone a tremendous change in the last quarter of the century. Indeed, civilization has produced a highly complex organization of interrelated social groups. Above all, under all and through all this technological advancement it is gov-

ernment that must maintain our social equilibrium. And in order to accomplish this it is imperative that our government, both state and national, have an adequate and efficient system of justice. For upon the effective and impartial administration of the law rests the security of the state. And in the last analysis, our courts of justice are the ultimate and only guaranty of civil liberty.

New economic conditions and facts produce new political facts and sometimes new national alignments. These new facts evolve new and sometimes novel concepts. There must be new ideas relative to political science in all of its modern phases or variant application of old ideas. A close analysis of the situation leads one to believe that it is not so much new ideas that are needed but a more positive and firmer application of old ideas to our modern problems of government. The fundamental and primary principles of good government, and the basic factors underlying the administration of justice, are the same today as when our nation was founded. We may legislate to expedite justice. We may legislate to remove technicalities, and should do so when proper legislation will bring the desired result. However, there should be no radical departure from well defined and time honored principles. Let us move with caution. It is not criticism, it is commendation, when we say that this highly scientific age has not made a single important or far-reaching contribution to the philosophy of government. Ours is not the task of pioneering in democracy; that work has been done. But it is our bounden duty to protect and preserve our heritage.

Economic leagues, chambers of commerce, judicature societies, reform organizations and many other public-spirited societies, prompted by unselfish interests, acting in good faith, have been bold to advocate legal reform and seem to be almost unanimous in their contention that the paramount problem confronting our government today is the Administration of Justice. It is contended that we must have a more adequate system of justice. That the administration of justice is lost in a maze of highly technical refinements. That it has not attained that high state of perfection to which it is by the very nature of things entitled. That it has not kept pace with scientific, political, and social advancement but is trailing far behind in the onward march of civilization.

Gentlemen of the legal profession, I ask you, why this agitation? Why this almost universal demand for legal reform? Has the legal profession through disintegration failed to sense this demand? Will it neglect or fail to lead the way to reform when it is ascertained that reform is the way out?

At a recent meeting of the National Economic League, the apparent trend of thought toward legal reform, and the administration of justice in particular, is evidenced by a vote on this question.

"Do you think this is a subject which only the legal profession is competent to deal with?" Yes 115. No 635.

There you have it. The verdict is so plain that he who runs may read. An organization of highly intelligent and representative men arriving at such a verdict. Some of them were members of the legal profession. That fact is doubtless shown by the affirmative vote on the question.

And again, the committee on law reform of the Chamber of Commerce of the State of New York, in a recently issued report says, "We believe that it is time for business associations and organizations of laymen to want to assume their own responsibility in this matter. The law exists for his benefit. If he wants to change it, he has the right and the duty to see that changes are made." It seems to be apparent, if one can read the signs of the times correctly, that the great mass of the people are demanding some sort of a reform in the present legal structure touching upon the administration of justice. And to

this end, some of the questions considered of major importance in the solution of the problem may be briefly stated as follows:

Improved methods of selecting judges.
Increased power to courts in instructing juries.
Giving less than twelve men power to return verdicts.
Higher requirements for admission to the Bar.
Small juries for misdemeanor cases.
Giving defendant the right to waive trial by jury.
Establishment of Judicial Council.
Unification of Judicial System.
Reclassification of crimes.
Increased power to the clerical side of the Court.
Providing for public defenders.

It is of peculiar interest to the legal profession that a special committee of the Economic League, composed of some of the nation's leading lawyers and judges, particularly well informed on all subjects submitted to them for consideration, should place particular emphasis on the subject of higher qualifications for admission to the Bar, the question of requirements for admission to the Bar being considered one of the four major questions of greatest importance in dealing with the essential features of this problem. Idaho has kept well in the front on character and educational requirements for admission to the Bar. Certificates to entitle the applicant to take the examinations are issued only after thorough investigation and the examinations given compare most favorably in all particulars with those given by any of the other states. The Supreme Court and the State Bar Commission are in accord on this question. And it can be said that the members of the State Bar of Idaho are for anything in the way of reform that will help the profession. Likewise, if more exacting requirements for admission to the Bar will in any way help to further the administration of justice in the State of Idaho, those vested with the authority to increase those requirements should not fail to act.

Self Disciplinary Bar

In 1922 Congress itself took action and formed the present "Federal Judicial Council" or "Conference of Senior Circuit Court Judges" which meets annually with the Chief Justice of the United States, studies the condition of the Federal Court dockets, analyzes facts and statistics, and thereupon makes necessary recommendations to Congress. Recommendations made by such an experienced group touching upon legislation affecting the judicial machinery carry much weight. Since the inauguration of that system by our National Congress, there has been a noticeable and increasing trend toward the establishment of Judicial Councils in the several states. The legal profession in Idaho was well aware what little relation the State Courts have to each other; how there was no central voice to make Court wants known to the legislature. The profession sensed the need for an organization of highly trained and experienced experts to whom all questions touching upon the administration of justice, etc., could be referred with safety. A central body so to speak, of permanent character from which shall radiate advice and information upon these matters. So moved by a desire to do all within its power to promote and foster a searching and scientific study of jurisprudence it has created and financed a State Judicial Council. This Judicial Council has done, and is capable of doing, a wonderful work for the people of Idaho. It has sought and gathered valuable information that should be of incalculable help to coming sessions of our State Legislature. Under the Judicial Council theory the direct and primary responsibility for the functioning of all of the judicial machinery is placed squarely on those charged with the duty of operating that machinery, namely, the Courts themselves.

The Judicial Council merits support. It will serve as a sort of clearing house for proposed measures of legal reform. At the same time it acts as a compass or weather vane pointing the way to a more unified action on the part of the legal profession.

There is more or less criticism of the present day jury system. Some of the criticism comes from within the ranks of the legal profession. With its beginning shrouded in antiquity the jury system has developed into one of the most striking and effective features of our modern day system of justice. It is not without its faults. It is a product of human ingenuity and social development. That which is of human origin must indeed be imperfect. It is the one leavening influence in the administration of justice and any move to undermine it should be carefully scrutinized. It is urged that no organization will depend upon untrained, prejudiced and often ignorant men for a decision except the Courts. A great American Statesman who was always in touch with the common people, once exclaimed, "State a moral cause to a plowman and a professor. The former will decide it as well, and often better than the latter, because he has not been led estray by artificial rules." This rule might well apply to any question of fact presented to a jury. The jury system is not alone in its limitations. Men of great logical powers and wide information often arrive at opposite conclusions respecting the meaning of a given state of facts. Witness the split decisions of our Courts of last resort. Mr. Justice Sutherland of the United States Supreme Court, in a recent address before a gathering of members of the legal profession, defended the jury system and expressed the opinion that criticism directed toward it is due, not to a weakness of the system but to the fact that we do not adhere to it. "I believe," he said, "that the jury system is excellent. I know of no one more competent to act on the facts in a case than eight or twelve ordinary citizens. The trouble is that we do not adhere to the jury system, which is predicated on the principle that the jury should be thoroughly informed on the facts and then pass judgment." Such a statement coming from an outstanding jurist, possessed of deep knowledge and long judicial experience demands the most careful consideration.

The very careful and comprehensive survey made by our Judicial Council reveals some very interesting facts relative to criminal actions filed in our District Courts. It shows, among other things, that the number of criminal cases before our District Courts are steadily decreasing. This no doubt is due to two causes. First, our Probate Courts have been given jurisdiction of certain misdemeanors that were formerly indictable and consequently found their way into the District Courts. Second, there is a tendency to compromise criminal actions and let the defendant plead guilty to a lesser offense than the one originally charged. This is a dangerous practice. It cheapens the law. It breeds contempt for all law and encourages crime. There should never be any compromise with crime. A vigorous and relentless prosecution for a major offense, although falling short of conviction, is much more desirable in many ways than a plea of guilty to a lesser offense. There should be less fixing and more fighting of crime if we are to make any headway against law violations.

The speaker is firmly convinced that the old system of having district attorneys instead of prosecuting attorneys in each county, with the districts coextensive with those of the District Judges, is much to be preferred. The qualifications for candidates for the office of district attorney to be fixed on the basis of so many years experience in the practice of the law. The office to be commensurate with that of District Judge, thus attracting the best talent in the profession.

There has been a widespread indifference toward law enforcement. Consequently enforcement has been lax in many sections of this great nation. Crime has increased, especially in the large industrial centers, and is now strongly

entrenched in our social system, creating a situation that calls for action. Let us not become confused. The ills from which we are suffering as a body politic are not from want of legal reform, they are from lack of law enforcement. If that all-consuming desire for law reform could be quenched and all of our energies directed toward the enforcement of the laws we now have, wonders could be accomplished. Working to that end the first step should be to declare a moratorium on legislation.

In a very famous case that attracted wide publicity and provoked much comment, it was demonstrated beyond any reasonable doubt that incomes from unlawful sources can be traced to a nicety by the government. Then does it not follow, just as the night follows the day, and as a matter of common sense, that the very activities of those parties deriving incomes from such sources are equally subject to official scrutiny and disclosure? Surely if the government has the ability to collect income tax on unlawful pursuits it has the ability to prosecute those violations which are the source of such incomes. To the casual observer it only emphasizes the responsibility of the police power. It indicates plainly that the law, regardless of the offender, can be enforced at any time that the proper enforcement agencies place the same value upon morals and law observance that the government does upon incomes.

The State has insisted upon keeping control of the mechanism for administering justice, and rightly so. It has pursued the policy of rigidly prescribing rules to govern the practice of the courts. But some one has said that "it is not good business arrangement to leave the study of the Judicial System and the formation and formulation of suggestions for its development almost entirely to the casual interest and initiative of individuals." The profession may not be able to control, and does not care to control, the enactment of the laws, but it can help to shape them, and it most certainly is in a position, in a great measure, to control the operation of the law. The profession must, therefore, assume some responsibility in the movement to correct the weakness in law enforcement. I for one, am perfectly willing to follow any suggestions made by our Judicial Council looking toward the enactment of reforms that will improve the practice of our Courts.

Why, then, is it, that the legal profession has not made itself felt in this 20th century as in the days of the founding period of our government. It seems to be in the doldrums so to speak, waiting for some revolutionizing and unforeseen force or condition to arouse it to sense of appreciation of its inherent and latent power.

Gentlemen, there is no reason at all why the legal profession should not be a highly unified group. The members thereof are compelled to use the same tools. True, some members may use them more skillfully than others, but they are the same tools nevertheless. The profession is bound by a standardized technique, and none can escape it in the practice.

There is no other group in the entire social structure of our present day civilization possessed of such potential power for good, and for unselfish service, as the legal profession. It contacts every other group of society. It functions as no other group or profession functions. It helps to shape public opinion. It furnishes leadership in public life as no other profession does. The respect for law and order entertained by every community is measured to a certain extent by the respect which the legal profession has for those things. No other group is so much before the public and therefore no other group is so much open to criticism. From the viewpoint of the layman the sharp practices of the least ethical of the profession fix his measure of the general membership of the profession. It is asserted as a psychological fact that the intelligence of the mob is the intelligence of the least intelligent of the mob. Does the same rule obtain that the ethics of the least ethical of the profession is

the ethics of the profession. That is apt to be the test applied by the layman. It behooves us to gnard well the conduct of our membership. Let us strive for a deeper reverence for the law on the part of those who administer the law, and a more sincere regard, on the part of the members of the legal profession, for that high calling that has been so enriched by tradition and enobled by almost countless examples of deep devotion to public trust and service.

The chair will proceed with the next order of business—the appointment of committees. On the committee on resolutions the chair will appoint Frank Meek, Adrian Nelson and O. C. Wilson.

As canvassing committee to canvass the votes for Commissioner from the Eastern division, I will name Elbert Stellmon, Lincoln Shropshire and Z. Reed Millar.

We have come to that part of the program which is always interesting and instructive to the members of the Bar, the report of the Secretary, Sam S. Griffin.

REPORT OF SECRETARY

At the Annual Meeting of the Bar held at Boise, July 11, 1930, Wm. Healy of Boise was appointed Commissioner from the Western Division, succeeding Jess Hawley, Boise, whose term expired. The Board met at that time and selected E. A. Owen, Idaho Falls, as President, Warren Truitt, Moscow, Vice President and Sam S. Griffin, Secretary.

Six meetings of the Board have been held since the last report, five at Boise and one at Moscow. Consideration of complaints against members of the Bar, and of applications and examinations for admission to the Bar, continues to occupy the greater portion of the time of these meetings, although business of the Judicial Council, and legislative matters also were prominent in this year's activities. In July, three complaints and one application received attention, as well as members delinquent in payment of annual license fees. In September six applications and five complaints were considered, a legislative committee to formulate, introduce and urge the passage of legislation recommended by the Bar, was appointed with Hon. Frank Martin, of Boise, as Chairman. Also was discussed the establishment of the Idaho Law Journal; financial backing was found impossible because of the burden of suporting the Judicial Council, and it was hoped the Legislature would appropriate funds for that work so that some support could be given to a Journal. The Legislature, however, failed to realize that hope. Members of the Bar should call to the attention of the members of the Legislature the importance of the Judicial Council and seek financial assistance from the State for its continuance inasmuch as its labors and investigations are solely for the general benefit of the State and improvement of any economy in the dispatch of judicial business.

The Board, at this meeting, met also with the Judicial Council.

In November, the Board considered one complaint; graded examination papers, after which it rejected two applicants and recommended two for admission to practice.

In January, 1931, seven complaints were considered, appointed an advisory Board for the Idaho Law Journal, and consulted with the Governor of Idaho, and the Bar Legislative Committee and the House and Senate Judiciary Committees, relative to legislation in which the Bar was interested; a formal report of the Bar's work and investigations through its Judicial Council in improving administration of justice, and the Bar's recommendations, was drafted and delivered to the Governor and members of the Legislature.

Later in January, the Board again met and heard a disciplinary proceeding, after which a recommendation was made to the Supreme Court that the attorney complained against, C. H. Edwards, of Boise, be publicly reprimanded; this was afterward adopted by the Supreme Court at its judgment, and reprimand was administered in open court on March 9, 1931. The Board also considered and passed upon a question of ethics submitted by a member of the Bar, and met with the Legislative Committee of the Bar.

In April, ten complaints and eleven applications for admission were considered; of the latter, seven were granted permission to take examination, three were rejected, and one was recommended for admission upon certificate. Arrangements were made for examination of applicants, and for this and Division Bar meetings; vacancies on the Judicial Council resulting from the death of James Harris of Weiser and the resignation of Hon. Dana E. Brinck, former District Judge of the 3d Judicial District, were filled by the appointment of Jess Hawley, Boise, and Hon. John C. Rice, District Judge of the 7th Judicial District.

During the year, nineteen separate formal complaints received attention; six were adjusted or withdrawn and dismissed; two were dismissed as involving only a dispute over reasonableness of attorneys' fees charged; three were dismissed because no cause of complaint appeared; one was dismissed after a hearing and review thereof by the Board; in one, after hearing by the Board, reprimand was recommended and adminstered; one did not involve an attorney and hence was beyond the Board's jurisdiction; in one, committees were appointed and trial will be had in July; and four remain pending.

Twenty-one applications for admision were considered; of these, twelve were granted permission to take examination; four were examined, of whom two passed and two failed; three were denied permission to take examination; three who applied for admission on certificates from other states were rejectd and three were recommended for admission on certificate. Two examinations, at five places in the State, were conducted.

The condition of the appropriation, and expenses incurred from July 1, 1930, to July 2, 1931, are:

Balance appropriation reported 7/11/30		$3,698.78
Receipts from Licenses		3,015.00
		$6,713.78
Office expense		$1,229.35
Secretary	$900.00	
Stenographers	161.70	
Stamps, Supplies, etc	167.65	
Travel		610.77
Meeting		461.80
Printing and Distribution of 1930 Proceedings		456.10
Examinations		6.10
Discipline		50.50
Judicial Council		361.76
Miscellaneous		10.00
		$3,186.38
Balance in appropriation 7/2/1931		$3,527.40

MEMBERSHIP

Divisions	6/30/31	6/30/30
Northern	137	142
Eastern	138	139
Western	269	283
Out of State	26	25
Total	570	589

SECRETARY: In that connection you might be interested in last year's figures. They showed a total of 589, or a net loss during the year of 19. I don't know whether you ought to applaud that loss or not. Perhaps you had.

Upon motion, the report was adopted.

THE PRESIDENT: Coming to the report of the division meetings, we have with us this morning the Commissioner from the Western Division, who will at this time report on the division meeting held in Nampa sometime last month. Mr. William Healy.

MR. HEALY: I haven't any formal report to make of the meeting of the Western Division. The meeting was held on the 18th of June. It lasted only during one day and the session was very interesting and very encouraging from the standpoint of the members of the Commission.

The main discussion revolved around the re-districting of the State, General Martin giving an outline of the work that the Judicial Council was doing along that line. There was no formal action taken as no concrete recommendations were made by the Council.

A motion was made and carried by a small majority that the dues of the members of the Bar, the annual license fee, be increased from $5.00 to $7.50, the extra $2.50 to go toward the support of the Idaho Law Journal, and each member of the Bar to obtain the Journal without charge. Only a very small fraction of the members of the Bar of the State have subscribed to the Law Journal. This is a matter that might, with benefit to the members of the Bar, be discussed here, particularly in view of the fact that this meeting is being held in Moscow where the Law Journal is published. It was the opinion of the Commission last fall at a meeting we held that possibly support from the funds of the Commission might be extended to the Law Journal. We did arrange to have the proceedings of the Bar at this meeting published in one issue of the Law Journal thus giving a considerable measure of support during the current year without any drain on our resources. The Commission is of the opinion that in the present state of our finances we cannot make any appropriation for that work. We have, as Mr. Owen pointed out to you in his very excellent address, the Judicial Council on our hands and we must maintain that Council. We feel that we must do so in the absence of any state appropriation for that purpose and that takes about all the money we can spend outside of the routine business of the Association. This matter of the Law Journal was extensively discussed at the meeting, attended by some seventy-five lawyers and by a majority vote of those voting on the subject it was agreed that the fees of the lawyers should be increased and the excess used to support the Journal.

We had Senator Borah present at that meeting and he, as usual, delivered a very interesting talk. Aside from this resolution which was adopted with respect to the increase of lawyers' fees there was no formal action taken.

Judge Lee of the Supreme Court made a very interesting report on the work of the American Law Institute at Washington, which he had just attended.

Personally, I felt very much encouraged as to the interest taken in the work of the Bar as manifested by the attendance at that divisional meeting. The members of the Commission try to keep up the morale and spirit of the Bar and they always feel encouraged when the lawyers in considerable numbers turn out at these meetings, and these divisional meetings, of course, are always somewhat more difficult to arouse enthusiasm over than state meetings.

THE PRESIDENT: There was a splendid attendance of attorneys at the meeting in the Eastern Division. I will read the minutes that were taken of this meeting showing what action was finally taken by the members of the Bar at that meeting.

MINUTES OF MEETING OF EASTERN DIVISION OF IDAHO STATE BAR.

Held in the Federal Building at Pocatello, Idaho, on June 19, 1931, at 1:30 p.m.

The meeting was opened by Tom Jones, president of the Pocatello Bar Association, who introduced Mayor T. C. Coffin of Pocatello, who gave a brief address of welcome. The meeting was then turned over to E. A. Owen, president of the Idaho State Bar, who presided. The president thereupon appointed Alvin Denman secretary.

W. H. Anderson, of the Pocatello Bar, addressed the meeting on the subject of "Disregard of the Corporate Fiction"; A. L. Merrill, of the Pocatello Bar, gave a report of the work of the Judicial Council, and H. B. Thompson, of the Pocatello Bar, delivered an address on the jury system.

Upon motion made, seconded and adopted, recommendation was made that a study be made of the jury system by the Judicial Council, and some improvement of the jury system in Idaho attempted.

Upon motion made, seconded, and adopted, it was recommended that the Bar Association funds should not be used for the University of Idaho Law Journal.

Upon motion duly seconded and adopted, it was recommended that the Judicial Council be continued.

Upon motion seconded and adopted, the secretary was instructed to show by the minutes that this association extended a word of thanks to the Judicial Council for its splendid work.

Upon motion seconded and adopted, the report of the Judicial Council was adopted.

A motion, made and seconded, that the State Bar Association fee be raised to ten dollars, was a viva voce vote, declared lost.

F. E. Tydeman, of the Pocatello Bar Association, announced that there would be a banquet at the Hotel Bannock at 6:00 p.m., and Tom Jones announced that W. H. Anderson would address those attending the banquet on activities of the last legislature.

There being no further business to come before the meeting, the meeting adjourned sine die.

ALVIN DENMAN,
Secretary.

That in brief presents to you the action taken by the members of the Eastern Division upon some of these questions that have been considered of interest to the Bar of the State.

We are ready at this time for any communication from the Prosecuting Attorneys' Association. We are always glad to hear from them, and especially last year at the Boise meeting they threw some questions at us that caused considerable discussion and we actually got up a very heated debate on one or two of the questions.

MR. GOFF: There are no recommendations ready at this time.

THE PRESIDENT: I think it might be proper, and certainly in keeping with the good procedure, to read the report of the Judicial Council so that we will be familiar with the recomendations of that body. Mr. Griffin.

MR. GRIFFIN: Last year, as you recall, the report of the Judicial Council was printed and distributed before these meetings. This year, unfortunately, the report was not prepared in time to do that. The Commission had hoped that the Legislature would appropriate $1,000.00 or $1,500.00 a year, that is, a total of perhaps two or three thousand dollars, for this Council and would relieve the Bar from that expense. Last year we spent almost $900.00 for the Council's work and it is going to cramp us considerably to keep that up. This year when the Legislature failed to do anything about finances we advised the Council that it would have to keep down its expense and accordingly, it hadn't

had a meeting. It had been trying to do its work by correspondence as much as it could and finally it did have one meeting late in June and formulated a report, and that is the report that we have here. Phases of that report are on this afternoon's program and the reasons for some of these matters will appear there, but it might be informative to give this report now so that when the discussion comes up you will at least have some ideas of what it is working on. This is the report of the Judicial Council on June 29th, 1931.

REPORT OF THE JUDICIAL COUNCIL, JUNE 29, 1931

To the Commissioners of the Idaho State Bar:

The Judicial Council of Idaho herewith presents its second annual report.

ALFRED BUDGE,
Chairman.

FRANK MARTIN,
Secretary.

FORMER REPORT

The first report of the Judicial Council of Idaho was transmitted to the Board of Commissioners of the Idaho State Bar, May 5, 1930, and was distributed in printed form to the members of the bar, for action at the annual meetings of the different divisions and of the state bar. The annual meeting of the state bar was held at Boise, July 11-12, 1930, and the report of the Judicial Council formed an important part of the discussions.

STATUTORY CHANGES

A number of recommendations made to the bar for statutory amendments by which to improve court procedure were approved by the bar. The Bar Commission was asked to appoint a legislative committee for the purpose of drafting suitable measures in this behalf, and, acting on this request, such committee was appointed, with Hon. Frank Martin as chairman. The committee was successful in having enacted, at the 1931 session of the Legislature, most of its proposals, among them being:

Authorization of motions for and entry of judgments non obstante veredicto;

Fixing a definite time (sixty days) within which motions for new trial must be brought to hearing;

Enlarging the powers of the trial court in ruling upon a motion for new trial to include changing the findings, modifying the judgment, and, in lieu of granting a new trial, vacating the judgment and reopening the case for further proceedings;

Providing a method of disposing of a plea in abatement prior to the trial upon the merits;

Authorizing a trial court to direct a written instrument, relied upon in a pleading which is demurred to for uncertainty, to be set out in haec verba;

Amending the statute (C. S. sec. 6830) governing when an action may be dismissed or judgment of nonsuit entered, to provide that such disposition may be had when, before resting his case in chief the plaintiff abandons it, or when, upon the trial, the plaintiff fails to prove a sufficient case to entitle him to a verdict or judgment; and that a dismissal under these provisions shall operate as a bar to another action upon the same cause of action.

An outstanding accomplishment was securing the enactment of a bill for the recodification of the statutes. The contract for this work has been let, and it is probable that a little over a year hence the work may be completed and that it will contain an expert and complete annotation and indexing of the laws and decisions thereon up to date.

Suggested Statutory Changes

Recommended for consideration by the bar, deemed by the Judicial Council as worthy of enactment, are the proposals following with reference to statutory changes:

Inheritance Taxes

An act to establish a limitation to the lien and collection of inheritance taxes, so as to exempt inheritances between husband and wife of community property, on the death of one spouse, from inheritance and transfer taxes.

Opposition to Probate of Will

A new section of the Compiled Statutes, similar to sec 7452 (which outlines procedure in will contests), by which anyone opposing the admission of a will to probate should be required to file in the probate court written grounds of opposition and serve a copy thereof on the petitioner, who may have such time, to be fixed by the court and not exceeding 10 days, within which to demur thereto.

C. S. sec. 7441 provides for the petition for probate of a will and the following section prescribes the contents of the petition. There is nothing in the code providing for the filing of an answer to this petition. Subsequent sections, however, clearly indicate the right on the part of any person interested to oppose the admission of the will to probate. It is to be observed that the opposition to the probate of a will is not the same as a contest of a will and, accordingly, it is thought that the sections of the statute relating to written onposition in case of contests may not apply in case of the petition for probate of a will. In other words, as the law now is, the petition for the probate of a will is filed, notices are given, and on the date of the hearing apparently anybody who desires may come in and question the sufficiency of the petition or the authenticity of the will, etc., and thus the matter is tried without a pleading. If any party appeals to the district court, we are met with the law, as evidenced in Re McBay, 14 Idaho 56, and other similar cases, which hold that on appeals from the probate court in probate matters the jurisdiction of the district court is limited to a trial upon the issues framed in the probate court. Having no issues framed upon this point in the probate court, it becomes a very entangled and difficult situation. The matter comes up in a case like this: Application to probate a will is made and authenticity of the will is challenged. The parties do not care to contest the will, they simply take the position there is no will. The proponent of the will is at a decided disadvantage in not knowing where he will be attacked at the hearing. The statutes cover the point with respect to will contests, by C. S. sec. 7452. And sec. 7496 covers the point with respect to a petition for the issuance of letters of administration. It is thought that if a new section be enacted, such as that proposed, requiring written grounds of opposition to the petition to probate a will, the present defect would be cured.

Appeals From Probate Court

That C. S. sec. 7173 be amended by the insertion of the italicized words following, so as to make the section read:

§7173. Appealable judgments and orders. An appeal may be taken to the district court of the county from a judgment or order of the probate court in probate matters:

1. Granting, refusing or revoking *or refusing to revoke* letters testamentary or of administration, or of guardianship.
2. Admitting, or refusing to admit, a will to probate.
3. Against or in favor of the validity of a will, or revoking *or refusing to revoke* the probate thereof.

4. Against or in favor of setting apart property, or making an allowance for a widow or child.

5. Against or in favor of directing the partition, sale, *mortgaging, leasing* or conveyance of real property.

6. Settling an account of an executor, administrator or guardian.

7. Refusing, allowing or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy or distributive share.

8. Confirming report of appraiser setting apart the homestead.

This section was taken from the California code, and in that state the statute has been construed to mean that no appeal could be taken from a judgment of the probate court refusing to revoke the probate of a will. To cover the possibility of a similar situation, the amendment of the section (subdivisions 1 and 3) is suggested. Formerly the probate court was not authorized to mortgage or lease real property, but this is now permitted and it is thought the statute should be amended to permit an appeal from an order so doing, by the amendment of subdivision 5 of sec. 7173 of the Compiled Statutes.

Matters Referred Back to Council by Bar

The first report of the Judicial Council contained suggestions by the Survey Committee with reference to (1) election of judges on non-partisan tickets; (2) transfer of probate court work to the district court; and (3) redistricting the state. These matters were referred back to the Council by the bar for further study. The second annual report of the Survey Committee, which has been approved and adopted by the Judicial Council, is hereinafter appended, and contains further comment on each of these subjects.

Non-partisan Election of Judges

At its meeting June 16, 1931, considering the question of the manner and method of electing judges on non-partisan tickets, the Judicial Council was of opinion that, inasmuch as the accomplishment of such a plan will require submission to the Legislature of a suitable proposal and the fact that the Legislature will not convene in regular session until after the annual meeting of the state bar a year hence, the Council should withhold a definite recommendation on this matter at the forthcoming meeting of the bar so as to enable it to make a more comprehensive study of the manner and means of effecting the change. A special committee, composed of the members of the Survey Committee and Hon. Frank Martin, has been named to devote particular attention to this subject and to prepare a suitable measure by which the plan may be brought into operation. The Council will of course submit its recommendations to the bar.

Transfer of Probate Work to District Courts

The bar approved the idea of the transfer of probate work to the district court, as suggested by the Survey Committee. This matter has been given further consideration by the Council. The abolition of probate courts and transfer to the district courts of jurisdiction in probate matters would be advantageous in many ways. It would effect a considerable saving in the way of salaries paid to probate judges and expense of maintenance of their office. While imposing some additional labor upon district judges, it would remove the criticism that some district judges do not have enough to do, and if the work of the district judges be more equally distributed by a proper redistricting of the state, it ought not to be found that enlarging the jurisdiction of district courts in this respect would be greatly burdensome. Much of the probate business is routine work and can be handled with dispatch. If the powers of the clerks of the district courts should be enlarged, as recommended in the report of the Survey Committee, following, the clerks would make all necessary

orders in uncontested probate matters under the supervision of the court and subject to review by the court at the instance of any aggrieved party.

For the convenient, efficient and effective handling of probate business there should be an amendment to the Constitution abolishing probate courts and vesting in the district courts, probate jurisdiction (including special proceedings for the determination of heirship), guardianship matters and insanity hearings and commitments, and jurisdiction in proceedings for the adoption of children. Such amendment should provide for creation by the Legislature of the office of county justice of the peace with county-wide jurisdiction compensated by fees to handle all matters now handled by the probate courts except those transferred to the district courts.

Redistricting the State

It is the recommendation of the Survey Committee, approved by the Judicial Council, that the state be divided into not less than three nor more than four districts with not less than three judges in each district, the selection of one judge in each district as the presiding judge to coordinate the work and oversee the administration of the district, and the designation of resident chambers of each judge elected.

This plan does not necessarily involve the lessening in number of the district judges of the state, nor the removal of any of them from their present locations. In its practical effect it would be a grouping of the districts, apportioning the work of the various judges on a more equal basis than now maintains, and would prevent congestion.

TO THE JUDICIAL COUNCIL OF THE STATE OF IDAHO SECOND ANNUAL REPORT OF THE SURVEY COMMITTEE

The first report of the Survey Committee covered the ten year period from 1920 to 1929, inclusive. The present report covers the year 1930 and brings the data down to date.

Litigation Declining

The reports of the Clerks of the Courts show the continuance through 1930 of the same trends displayed by the first report of this committee. By the end of 1929 civil litigation in district courts had decreased 39 per cent below the peak of 1921. At the end of 1930 civil litigation had decreased 47 per cent below the 1921 peak.

Crime Decreases

At the end of 1929 the number of criminal cases filed in the district courts had decreased 39 per cent below the peak of 1921. At the end of the last year the number of criminal cases filed in the district courts had decreased 41 per cent below the 1921 peak.

In two counties in the state, Caribou and Oneida, no criminal cases were filed in the district court. In Butte, Clark and Minidoka Counties only one criminal case was filed in the district court, and in Bear Lake, Camas and Power Counties only two cases were filed in the district court.

These figures do not cover violations of the prohibition laws. Petty violations of the prohibition laws are usually prosecuted in the justice courts, and major violations are prosecuted in the federal court. The total number of prosecutions for violation of the prohibition laws exceeds the total number of prosecutions for all other crimes combined.

Work of the District Courts

The following table will show the work of the district courts and the trend of litigation over the eleven year period from 1920 to 1930, inclusive:

TABLE I.

Trend of Judicial Business as Shown by Number of Cases Filed in District Courts Annually From 1920 to 1930, Inclusive.

	Civil	Criminal
1920	5784	628
1921	6604	961
1922	6304	871
1923	6322	920
1924	5195	854
1925	5119	716
1926	4630	522
1927	4193	522
1928	3964	578
1929	4011	587
1930	3521	519

Decrease from 1921 peak—Civil 47%, Criminal 41%.

The following table shows the number of cases filed in each Judicial District for 1930:

TABLE II.

Number of Civil and Criminal Cases Filed in Each Judicial District During 1930

Number of District	Civil	Criminal
1st	189	39
2nd	138	46
3rd	602	48
4th	133	21
5th	310	35
6th	229	30
7th	360	73
8th	355	43
9th	412	80
10th	254	32
11th	549	72
Total	3521	519

The following table shows the average number of cases filed in each district over the ten year period from 1920 to 1929, inclusive, and indicates that the variances are not casual or accidental, but are constant.

TABLE III.

Judicial Business as Shown by Average Number of Civil and Criminal Cases Filed in Each District From 1920 to 1929, Inclusive.

First District	221
Second District	184
Third District	651
Fourth District	344
Fifth District	943
Sixth District	400
Seventh District	688
Eighth District	517
Ninth District	700
Tenth District	352
Eleventh District	1037

The following table shows the work of the district courts in each county for the year 1930:

TABLE IV.

Cases Filed

County	Criminal	Civil (Including Divorce)	Misc.	Total
*Ada	24	514		538
Adams	4	28		32
*Bannock	61	357		418
Bear Lake	2	14		16
Benewah	13	48		61
Bingham	16	110		126
Blaine	5	34	1	40
Boise	2	16		18
Bonner	7	101	5	113
Bonneville	39	167		206
Boundary	7	36		43
Butte	1	30		31
Camas	2	22	2	26
Canyon	38	148	2	188
Caribou		16		16
Cassia	14	108		122
Clark	1	5		6
Clearwater	10	48		58
Custer	5	41	2	48
Elmore	4	67		71
Franklin	4	69		75
Fremont	8	88		96
Gem	4	43	1	48
Gooding	6	44		50
Idaho	9	63	2	74
Jefferson	10	54		64
Jerome	5	84	1	90
Kootenai	16	165		181
Latah	36	90	5	131
Lemhi	8	44	2	54
Lewis	8	35		43
Lincoln	8	27	3	36
Madison	17	70	1	88
Minidoka	1	55		56
Nez Perce	25	150	4	179
Oneida		26		26
Owyhee	4	19		23
Payette	7	42	7	56
Power	2	41	6	49
Shoshone	39	189		228
Teton	5	27		32
Twin Falls	52	295	6	353
Valley	4	37		41
Washington	16	49	3	68

*1929 figures, no report having been received for 1930.

Work of Supreme Court

During 1929, 261 cases were disposed of by the Supreme Court, 164 new cases were filed during the year and 161 cases were pending at the end of the year. District court judges were employed for a total of 156 days upon Supreme Court work. The following table will show the work of the court during the year 1930.

TABLE V.

Supreme Court of Idaho Record for 1930.

Division	Boise		Northern		Pocatello		Total		
Class	Civ.	Crim.	Civ.	Crim.	Civ.	Crim.	Civ.	Crim.	Grand Total
Disposed of	121	10	27	2	61	4	207	18	225
Filed	80	7	26	4	53	2	159	13	172
Pending	63	3	7	1	34	1	104	5	109

In 1930 the supreme court was assisted by district judges as follows:

Hon. H. A. Baker	5 days
Hon. D. E. Brinck	43 days
Hon. A. H. Featherstone	2 days
Hon. Miles Johnson	3 days
Hon. C. F. Koelsch	36 days
Hon. A. O. Sutton	5 days
Hon. R. M. Terrell	2 days
Total	98 days

Probate Courts

The work of the probate courts during 1930 is shown by the following schedule:

TABLE VI.

Probate Courts

County	No. of Civil Cases Filed	No. of Criminal Cases Filed	No. of Preliminary examinations Criminal Cases.	No. of Estates Filed, Including Guardianships.	No. of Contested Estate and Guardianship Matters	Total
*Ada	89	64	4	215		372
Adams	12	28	5	9		54
Bannock	101	8		68	4	181
Bear Lake	37	16	7	25	1	86
Benewah	35	61	2	26		124
Bingham	81	122	19	69	9	300
Blaine	24	40		10		74
Boise	7	15	2	5		29
Bonner	69	130		82	1	282
Bonneville	75	215	5	57	1	353
Boundary	32	41	2	28		103
Butte	14	7	1	8		30
Camas	8	16		4		28
Canyon	89	70	11	141	24	335
Caribou	31	19		9		59
Cassia	56	106	8	39	1	210
Clark	5	9	1	4		19
Clearwater	54	143		28	1	226
Custer	13	22	5	15		55
Elmore	6			20		26
Franklin	87	39		27		153
Fremont	62	82	9	32	2	187
Gem	28	44	3	26		101
Gooding	33	40	26	17		116
Idaho	14	11	1	59	2	87
Jefferson	31	139	15	26		211
Jerome	60	56	7	26		149
Kootenai	50	77	15	103		245
Latah	105	80	19	83		287
Lemhi	55	53	5	28	2	143
Lewis	52	21	6	33	2	114
Lincoln	4	34		24		62
Madison	44	74	3	28	2	151
Minidoka	15	26		31		72
Nez Perce	57	24	10	99		190
Oneida	18	6		9		33
Owyhee	20	5	1	18		44
Payette	31	98	15	41	1	186
Power	16	11	2	8		37
Shoshone	50	168	26	80		324
Teton	24	22	4			50
Twin Falls	190	446	24	147	2	809
Valley	41	32	3	12		87
Washington	24	130	40	35	1	240
Totals	1949	2850	305	1864	56	7024

Reorganization of Judicial System

The Judicial system of the state lacks unity and coordination. Nowhere has the element of *management* been considered. Any effective reform must look toward these elements of unity, coordination and management.

In a small state like Idaho where the population is homogenous, and there are no large cities, it is not difficult to achieve an effective and economical judicial system, but in order to accomplish that result some of the haphazard devices of the past will have to be abandoned.

Summary of Plan

In its last report this committee submitted a plan for the reorganization of the judicial system which may be summarized as follows:

The essential elements in the plan for the reorganization of the judicial system are these:

1. The division of the state into not less than three nor more than four districts with not less than three judges in each district, the selection of one judge in each district as the presiding judge to coordinate the work and oversee the administration of the district, and the designation of resident chambers of each judge elected.

2. Abolition of probate courts and transfer to the district courts of probate and guardianship matters and insanity hearings and commitments.

3. The creation of the office of county justice of the peace with county-wide jurisdiction compensated by fees to handle all matters now handled by probate courts, except probate and guardianship matters and insanity hearings.

4. The appointment of clerks of the district court by the judges and the enlarging of the powers of the clerks so that they may make all necessary orders in uncontested probate matters under the supervision of the court and subject to review by the court at the instance of any aggrieved party.

5. The non-partisan election, which includes the non-partisan nomination, of judges by methods which will give greater weight to the opinion of the bar.

6. The increase of the salaries of judges of the supreme and district courts so that the judges may be adequately compensated and the best available talent may be drafted for judicial service.

Discussion of Plan:

Would Adjust Work

Under the present districting the work of the courts is badly apportioned and the judicial force of the state is not properly utilized. In some districts the work over a ten-year period has been very light and the judges have had comparatively little to do, while in other districts the work has been uniformly heavy. Obviously what is needed is a better apportionment of the work and a more flexible arrangement so that the judicial force may be available at all times wherever there is work to be done.

The presence of several judges in the district will make the organization more flexible and the proper assignment of work by the presiding judges will prevent the calendar in any county from becoming congested, without requiring the judges to be away from their homes or engaged in traveling to any burdensome extent. Selection of judges from the larger districts will, in the long run, tend to secure judges of greater ability and will free the bench from local political influences.

Never Disorganize Work

With several judges in each district it will be easier to draft a judge for service in another district or for service in the supreme court in any exigency, and the matter of necesary vacations for the judges can be handled without disorganizing the work.

Since it will he four years before the new plan can hecome effective, the question of whether the number of district judges ought to be reduced may well be left for future determination. Perhaps with the transfer of the probate business and the recovery from the present economic depression it may be found that no reduction of the judges is desirable.

The opinion of the bar, insofar as it has developed, seems favorable to the plan of re-districting.

Probate Work Transfer

The transfer of the probate work will effect a saving estimated at $100,000. This is an important consideration but it is of greater importance that contested matters in probate should be heard in courts whose judges are not only lawyers but lawyers of maturity and experience.

Ordinary uncontested matters in probate can be handled without delay and inconvenience in each county, if powers of the clerks of the court are enlarged so that the clerks may take care of these uncontested matters under the supervision of the courts and under uniform regulations approved by the bar and applicable in every county.

It is the general opinion of the bar that the records in probate matters will he vastly improved if the probate work is transferred to the district courts where competent clerks are available. The record keeping can be still further improved by the adoption of uniform regulations approved by the bar for the guidance of the clerks. At the present time the method of keeping records in most of the probate courts and in some of the district courts is antiquated and inadequate.

Would Have County Justices

In order to take care of the civil business now handled by the probate courts without creating a new salaried tribunal to add to the overhead expense of the state, it is suggested that the office of justices with countywide jurisdiction be created and that such justices maintain their offices at the county seat and that they be compensated by fees.

It is hoped that young attorneys will accept this office in most of the counties, since they will receive compensation for time actually employed and will find the office a means for acquiring both experience and acquaintance. At a later date, when the new plan has been tried out, it may be found advisable to have the county justices appointed by the district judges as court commissioners are now appointed for each county in the state of Washington. That method of selection would no doubt tend to secure more capable appointees.

Say Office Obsolete

The American Bar Association and other organizations have urged the abolishing of the office of justice of the peace on the ground that it is an obsolete mechanism, but in a state like Idaho where the area is so large and the population in many places sparse, the local justice of the peace often serves as a kind of local arbitrator and it seems advisable for the time being not to abolish the precinct justices but merely add the county justices in order that the civil business now handled in the probate courts may be cared for without cluttering the district courts with small cases and without creating a new salaried tribunal.

Non-Partisan Election

In proposing the non-partisan election of judges, which necessarily includes the non-partisan nomination of judges, the council has the support of the American Bar Association, the American Judicature Society, the American Law Institute and other competent commentators upon judicial administration. Speaking of the non-partisan election of judges, a committee of the American Bar Association in a report which was adopted by the association and approved by the American Judicature Society, said:

> "Indeed were it possible to accomplish but a single reform in the election laws of the several states, that which would provide for the separate election of judicial candidates would stand out as the most potent factor for good."

Commenting upon this suggestion, Professor W. F. Willoughby of Johns Hopkins in his "Principles of Judicial Administration," said:

> "In considering the problem (of the selection of judges) one cannot do better than follow the arguments of the committee on judicial selection in its report to the American Bar Association."

Therefore, in suggesting the non-partisan election of judges, the council feels that it has the support of both experience in other states and of authority. In order to make a really non-partisan selection it will be necessary to work out a method of nominations in which the opinion of the bar will have greater weight than it has at present or can have so long as judges are the candidates of political parties.

If the bar approves the principle of non-partisan nomination and selection of judges the council will before the next annual meeting of the bar work out a plan of nominations and submit it to the bar for discussion.

Appointment of Clerks

There is no more reason for electing the clerks of the district court than there would be for electing the clerks of the supreme court. As a matter of fact in the larger counties the men who act as cleks of the district court are not actually elected. They are usually appointed as deputies of the county auditor. Commenting upon the unwisdom of such a practice Professor Willoughby says in his "Principles of Judicial Administration":

> "The office of clerk is the center of the administrative system of the court. There is no reason why this office should not be organized and conducted with a view to the same efficiency and economy that is demanded for services of the administrative branch, in which it is well recognized that efficiency cannot be secured unless certain fundamental principles are insured. The most important of these are: that the head of the office shall be appointed and subject to removal by the head of the organization of which it is a subordinate unit, be subject to the direction, supervision, and control of such superior officer and that means shall in fact exist whereby the latter can hold him to strict accountability for the manner in which the affairs of his office are conducted; that the office itself shall be thoroughly organized so that responsibility and the line of authority are definitely located and the work so distributed that the most effective use is made of the working personnel; that the most efficient methods of business practice and procedure for the actual handling of the work are employed; and finally that where there are a number of units performing the same functions, having the same duties to perform, and belonging to the same general organization, they should have the same organization, and make use of the same methods of procedure.
>
> "Almost every one of these elementary requirements for efficiency and economy are lacking in the clerks' offices of the great majority of our courts. The movements for efficiency in the conduct of public business have almost wholly passed them by. It has been as if they were off the track and their very existence almost forgotten. It is a common thing for the clerks, of the superior courts at least, to be elected by popular vote and to occupy positions practically independent of the direction and control of the judges of the courts of which they are the administrative centers. They perform their work subject to no executive supervision or control. Each clerk organizes his office as he thinks best and makes use of such methods of procedure as he happens to find in the office or with which he may be familiar. There is no requirement for uniformity in the offices of the several courts of the same judicial system. As regards actual business methods, these offices are still in the dark ages where such modern devices as flat filing, card indexes, the use of photostat machines for the marking of copies, improved mechanical equipment, etc., are unknown."

Speaking to the same effect, the committee of the American Bar Association said:

"We have (the report reads) carried decentralization of courts to such an extent that in many jurisdictions the clerks are practically independent functionaries over whom courts have little real control. In some jurisdictions the clerks of the supreme and appellate courts are elective officers. It is a pretty general practice to have an elective clerk of the supreme court of general jurisdiction (by whatever name called) in each county. Each clerk is not merely, to a considerable degree, independent of effective judicial control, but he is wholly independent of each other clerk. No one is charged with supervision of this important branch of the judicial system. It is no one's business to make this part of the system effective, to obviate waste and needless expense and to promote improvement."

Select Capable Clerks

Under the new plan, the clerks will be appointed by the judges of the district and will be selected solely for their fitness for the particular work with which they are charged. In the larger counties this will involve no appreciable increase in expense. In the smaller counties some increase in salaries may be necessary and it may be necessary for the clerk to serve also as a deputy of the county auditor. But in such cases the judges will have control of the situation and the working out of economic arrangements in special cases may be left to the discretion and sound sense of the judges.

Clerk Records

General and uniform regulations with reference to the making, filing and keeping of clerk's records should be formulated by the judicial council and approved by the bar. Thereafter the presiding judge in each district should see that the records are made and kept uniformly in every county. This can only be accomplished when the courts have more competent clerical assistance and more complete control over the clerk's office than they now have in some counties.

In like manner, uniform regulations should be formulated for the guidance of clerks in handling uncontested probate matters and probate records and files, and the judges should see that these regulations are observed in every county.

Judicial Statistics

Without adequate statistical information it is impossible to regulate the working of any machinery so vast and complicated as the judicial machinery. Up to the present time there are no adequate judicial statistics in Idaho. The council has made a crude beginning in the assembling of such statistics. Everything was done which the limited time and funds available made possible, but it is at best merely a beginning.

The main difficulty is that no judicial statistics have been kept. That is a matter which with competent clerks and some assistance from the bar can be easily regulated in the future.

If the general plan submitted to the bar is approved, then it is proposed to work out brief and not too complicated forms of records and reports for the clerks. Each month the clerks can make out a report of business transacted and of the condition of the calendar and transmit one copy to the presiding judge of the district and the other copy to the chief justice of the supreme court. The chief justice will in this way be always advised as to the condition of calendars over the whole state and the presiding judge in each district will be advised as to the condition of the calendar in each county in his jurisdiction. The judicial force can thus be applied wherever the pressure of business requires and delays can be eliminated.

The clerk's reports can without too much trouble briefly indicate the character of each case, the condition of the pleadings and the length of time that the case has been pending, so that the judges charged with judicial administration may be advised as to the particular cases in which delays are occurring and may require the cases to be disposed of unless some satisfactory reason for delay is shown.

Increase of Salaries

Since 1922 the people of Idaho have not enjoyed prosperity but they have retained the illusion of prosperity almost until the beginning of the last year. It is now everywhere admitted that the people are not prosperous. The reported income of individual citizens in Idaho has declined forty per cent since 1922. It is probable therefore that the next legislature and possibly succeeding legislatures will react to the psychology of hard times.

For that reason it is advisable to forego the creation of special courts such as exist in some other states for the handling of particular kinds of judicial business and to transact all the judicial business through the established courts. Administration in some cases will not be as efficient as would be the case if special courts manned by experts in each particular line could be provided, but the necessities of the people must be considered in this matter and the court machinery must be adapted to the special conditions prevailing in Idaho.

With these conditions in mind, it is clear that however desirable it may be to increase judicial salaries no adequate increases can be secured unless the whole system can be revised so as to effect economies which will offset the increases in salaries. This is a consideration which cannot be too strongly stressed, and in considering the plan suggested by the council the bar should bear in mind that the program combines both economy and efficiency.

Unified Courts

From the foregoing discussion it is apparent that the plan submitted to the bar contemplates a unified court system. To effect such unification it is only necessary to constitute the chief justice and the presiding judges in each district a judicial administrative board. The whole work of administration in the several districts and of the state will then be centered in the hands of a compact administrative body.

Judicial Council

In the plan which has been submitted the continuance and development of the judicial council has been assumed. The next legislature should make such specific provision for the judicial council and should provide some small fund which may be used in carrying on the work of investigation.

If in the future, the council shall be composed of the chief justice, the presiding judge in each district, the president of the state bar association and one lawyer elected by the members of the bar in each district, the council will be completely representative of the bench and bar of the state.

Forum of Discussion

The council will not only afford a forum for free and informal discussion of all problems affecting judicial administration, but it will also be an invaluable agency in research and in formulating for submission to the bar uniform rules, regulations, methods and practices. The method of investigation, formulation and submission to the bar for criticism insures the continuous conservative development of the administrative law and the judicial system.

Such a method will enable the bar to exercise a tremendous influence in guiding the growth and development of the administrative law and the judicial system. The bar alone is competent to do this, and most of our difficulties today have resulted from the failure to achieve a compact organization and to develop adequate machinery through which the bar might function.

Uniform Practice

Because of lack of contact and coordination diverse practices have developed in different districts of the state, a condition which the American Bar Association found quite common. The plan now submitted assures the development and maintenance of a uniform practice for the whole state.

Difficulty of Adoption

It has been suggested that the proposed program will be difficult of adoption. That depends upon the attitude of the bar as a whole and the course taken by individual members of the bar. The people and the legislature will welcome any genuine program of efficiency and economy. If the organized bar approves the program and the members of the bar refrain from urging their individual opinion in opposition to the organized opinion of the bar, progress should not be difficult. But the program necessarily involves technical adjustments about which the people may easily be confused, and if the bar speaks with a divided voice, progress will be slow.

This work is a labor for the well-being of the people of Idaho. No lawyer will assume the responsibility for setting up his own opinion in opposition to the considered and deliberate opinion of the bar unless he is able to justify himself by a firm conviction founded in reason and reached after deliberate and careful investigation. Even then if his reason fails to convince the competent members of his own profession he will hesitate to seek the less qualified judgment of laymen.

Respectfully submitted,
EUGENE A. COX,
JAMES R. BOTHWELL,
A. L. MERRILL,
Survey Committee of State Judicial Council.

Change in Personnel of Judicial Council

The untimely death of the Honorable James Harris removed from the Judicial Council one of its most valued members. One of the State's most promising young men, his capabilities and popularity were attested by his election last November as Judge of the Seventh Judicial District, but he did not survive to assume the duties of that position. An able lawyer, earnest and sincere in every undertaking, his wise counsel and active interest in the activities of the Council will be greatly missed.

Judge Brinck has removed from the former center of his activities, to reengage in the practice, at Spokane. The Judicial Council and the people of the state are indebted to Judge Brinck for his splendid service. While it is regrettable that he has left the state, he has nothing but well-wishes for his continued success in the new field of his endeavor.

Hon. John C. Rice, Judge of the Seventh Judicial District, has been named a member of the Judicial Council, as has Mr. Jess B. Hawley. The abilities of these gentlemen are well known, and they will be of much assistance in carrying on the work of this organization.

THE PRESIDENT: Gentlemen, in listening to the report of the Judicial Council we should appreciate the really valuable work that has been done by that body in gathering this information and making the suggestions looking toward judicial reform in the State of Idaho. Is there anything else to come before the meeting this morning?

Whereupon, the meeting was adjourned until two o'clock of this day.

AFTERNOON SESSION, 2 o'clock P.M. FRIDAY, JULY 10th, 1931.

The meeting was called to order by President Owen.

THE PRESIDENT: Proceeding with the program as it has been outlined, at this time we will hear from one of the members of the Bar from the North who has been assigned the subject "Reshaping Idaho's Judicial Districts." R. D. Leeper, of Lewiston. (Applause).

MR. LEEPER: I was asked to present this subject by Mr. Cox, who was unable to be present and who is a member of the Survey Committee of the Judicial Council which has presented this matter to you for your action.

This morning you heard the complete report read and, Mr. Cox informs me, it is the wish of the Judicial Council that this meeting of the State Bar Association express its opinion as to each of the various matters which are presented in that report. Other members of the Council are to take up other matters, that is, the abolishing of the Probate Courts is to be considered and, likewise, the matter of bar influence in the selection of judges.

My obligation now is to present to you and ask for your action upon this phase of the report—the question of whether or not the judicial structure of the state shall be reshaped in accordance with the suggestions of the Judicial Council. I think probably that in order to get this before you, it being a very important matter, I shall again read the two pages devoted to this particular phase of the work in order that you may see clearly just what the Judicial Council has in mind and what they are asking you to endorse or reject at this time.

Before proceeding, I take it also that the entire matter relative to this report of the Judicial Council will be passed upon by this meeting and the Report submitted back so that those gentlemen will know how to proceed during the coming year.

Reorganization of Judicial System. The Judicial system of the State lacks unity and coordination. Nowhere has the element of management been considered. Any effective reform must look towards these elements of unity, coordination and management.

In a small state like Idaho where the population is homegenous, and there are no large cities, it is not difficult to achieve an effective and economical judicial system, but in order to accomplish that result some of the haphazard devices of the past will have to be abandoned.

Summary of the Plan. My part of this is this. The division of the state into not less than three nor more than four districts with not less than three judges in each district, the selection of one judge in each district as the presiding judge to coordinate the work and oversee the administration of the district, and the designation of resident chambers of each judge elected.

Now, of course, this report can't be considered alone. As Mr. Cox expresses it, you can't take one timber out of a house and put it in another one and expect to have a new structure. In connection with the reorganization of the districts, of course, will come the change in the manner of the appointment of the clerk and the carrying out of his duties, the abolishing of the Probate Court, the increase of salaries, and the creation of the county-wide Justice of the Peace. All of those, of course, come into the picture.

Now, I'll just finish their discussion of the plan before I go into it. The Survey Committee reports this: "Under the present districting the work of the courts is badly apportioned and the judicial force of the state is not properly utilized. In some districts the work over a ten year period has been very light, and the judges have had comparatively little to do, while in other districts the work has been uniformly heavy. Obviously, what is needed is a better apportionment of the work and a more flexible arrangement so that the judicial force may be available at all times wherever there is work to be done. The presence of several judges in the district will make the organization more flexible and the proper assignment of work by the presiding judges will pre-

vent the calendar in any county from becoming congested, without requiring the judges to be away from their homes or engaged in traveling to any burdensome extent. Selection of judges in the larger districts will, in the long run, tend to secure judges of greater ability and will free the bench from local political influences.

With several judges in each district it will be easier to draft a judge for service in another district or for service in the Supeme Court in any exigency, and the matter of necessary vacations for the judges can be handled without disorganizing the work. Since it will be four years before the new plan can become effective, the question of whether the number of district judges ought to be reduced may well be left for future determination. Perhaps with the transfer of the probate business and the recovery from the present economic depression it may be found that no reduction of the judges is desirable. The opinion of the Bar, insofar as it has developed, seems favorable to the plan of re-districting."

Now, I take it that my duty here is to express to you the thoughts that this Survey Committee had in mind. They recommend that the change be made. If you will refer to these statistics which have been presented you can see that there is very little reason, aside from geographical, for the formation of many of these districts. There are eleven districts in the state. Each district has at least one judge and some districts have two. However, if you will consider the statistics you can see that, with reference to business handled, there is no reason in the division. In the Eleventh district, for instance, the average number of cases is 1,037, while in the First district it is 221. Take it by counties. Ada and Canyon counties, and some of the larger counties, carry a great volume of business with one or two judges, whereas, in some of the smaller districts, for instance, take Latah and Clearwater counties, the judge has but very very little work to do. In considering the number of cases and the kind of cases that are filed, in some of the districts very heavy litigation is produced whereas, in other districts, the litigation is entirely particular and is small. In the Twin Falls district there have been many large irrigation cases and in some of the other districts where that form of activity prevails. In the rural districts the cases only involve small money matters, foreclosures, and things like that. That was one consideration that the Survey Committee had in mind. I won't trouble to go into all those figures because you can read them yourselves and I think perhaps a more profitable discussion can be had.

In the system which we now have the judges are elected from the districts in which they reside. They are elected politically, on political tickets, just the same as any other county officer is elected. If these larger districts are created, three districts or four whichever might be found advisable, the thought is that a sufficient number of judges will be elected at large from each district, and that one of those judges will be the presiding judge, and that under such a system the presiding judge could have the power of appointment of his clerks throughout the district and would route the business as it required and would route the judges through that district as the business required, sending them to whatever places the necessities of the calendar required, and that by such a means a complete checkup and survey of all the business could be kept at all times and that it would expedite the transaction of legal business.

Now, mind you, of course that has in mind the complete setup that the clerks would be changed so that they had the powers which, say, a Court Commissioner has in the State of Washington at this time, and that the probate jurisdiction would be transferred to the district court with the court having power to carry on contest proceedings. They have in mind the further thought that the presiding judge of each district, together with the Chief Justice of the Supreme Court, would form a judicial governing body for the entire state with rule making powers, and that that judicial body would make rules for the entire state and manage the judicial business of the state, and that by so doing a uniformity of practice could be introduced into the practice of law. All of the districts would operate under the same rules of court, and as matters arose which required consideration and probable change those matters would have a tribunal before which they could be considered, with power to act. They had in mind the thought that probably the rule making power could take the place of a good deal of this haphazard legislation which is taking place at each session of the legislature relative to legal procedure. There is no great object in having a legislature of laymen pass laws relative to judicial rules of procedure, and under such a system as this it would be possible to make rules of procedure by this governing body composed of the Chief Justice and the presiding judges of the districts.

I had some opportunity to look over some such a system as this in the State of Maine where I visited several times. In that state the judges are all state wide judges and the Chief Justice routes those judges throughout the state as they are needed and he rotates them from district to district so that no one judge can acquire any local color, and it seems to work quite successfully and they transact all their business and the calendars I saw were clean. I was in Rockland and Belfast and some of those places, and every time a term is set a judge is sent in there. A different judge each time transacts the term business and the local offices carry on the work the rest of the time.

One of the chief purposes which the Survey Committee has suggested in this connection is that under such a system the judges are removed from local influence. Not with the thought that our judges are corrupt at all but that, with judges taken at large from a large district and with a presiding judge routing them, and with their terms following each other, a judge would come in who would be absolutely free of the ordinary influence which surrounds a judge elected in a locality and presiding there all the time, and if ever there were a suggestion of influence which might develop as to a judge the thought is that it should not require an assault upon that judge or his integrity to get a new judge. I know in our practice that we are unwilling to file an affidavit of prejudice against a judge even though we may feel that, without attacking his integrity whatever, we don't want him to preside in that particular trial. It is necessary to file an affidavit of prejudice which most lawyers don't like to do. Under this system there would be no need of that because a mere suggestion to the presiding judge would take care of it. In the State of Washington that is possible now. The judge takes a suggestion and another judge can be called in.

Now, briefly, gentlemen, that is the proposition which is presented to you for action now. The Survey Committee has not attempted to make any formal division of the state or to define the districts or the number of judges or anything like that. The question is as to whether or not you wish to approve that in principle, and if you do wish to approve that in principle by so expressing yourselves at this meeting, that will be carried to the Survey Committee and they will attempt to work out a bill, if you pass favorably on it, for presentation to the next legislature, or a constitutional amendment, whatever is required. I suppose that the proper method to get this before you will be for me to make a motion for the approval of the suggestions of the Survey Committee in this particular, and I will make that motion, Mr. President, and if there is a second then it will be open for discussion.

MR. GRIFFIN: I second the motion and ask for a discussion.

THE PRESIDENT: Gentlemen, it has been regularly moved and seconded that this recommendation, which has been thoroughly explained to you by Mr. Leeper and presented to this organization by the Survey Committee of the Judicial Council, should be adopted. Is there any discussion?

MR. MEEK: In the event that this meeting should approve that report, would it be understood that the Survey Committee would report it at our next annual meeting of the Bar with an outline of the law that they are going to present to the Legislature?

THE PRESIDENT: That is my understanding. In other words, they want some formal action on the part of the State Bar meeting here either to encourage them or discourage them on this particular proposition.

MR. MEEK: It seems to me that the proposition is just a little bit indefinite in some major parts in that the Survey Committee haven't attempted to designate districts at this time. As I recall, last year they attempted to designate about what would be the proposed three districts and now they come before us and don't indicate what they have in mind in the way of districts. They give you a few statements there that these judges will be elected at large. Now, Mr. President, we might just as well take the facts as I believe they exist. Down in our own district—I come from Canyon county—our district would undoubtedly include Ada county, and if these judges are to be elected at large, are we going to assume that Ada county will elect all the judges for our district or not? That is what the bar of Canyon, Washington, Elmore, and the rest of those counties in that district want to know before they go into this. What we would be confronted with very shortly would be this situation, Mr. President, that our entire judicial system would be right in Boise. We aren't going to have that in our district and, speaking very frankly to you, I think that is where the Survey Committee should have outlined that a little more thoroughly. You have that same situation in Idaho Falls and Pocatello. If these judges are to be elected at large why don't we know more about it? You are asking us to adopt something that, in principle, is splendid. I will agree with this Survey Committee that in principle it is splendid, but if these judges are to be elected at large there should be some limitation. Ada county shouldn't be permitted to have more than one of those judges if we are to have three because we have just as good judicial timber in Canyon county, in Washington county, and in Adams county and the rest of the counties as Boise has. If we are confronted with that situation, which is purely political, we will be confronted with the same situation as we are confronted with when we did have a non-political judiciary. We have some splendid lawyers but we get right back into politics as far as judges are concerned. If that is the situation, I want to know about it.

MR. LEEPER: I am somewhat at a disadvantage in attempting to represent this Survey Committee, Mr. President. As I understand it, they want the question of the principle approved or disapproved and the question of detail is entirely within your control when the time comes to get down to detail. I think probably in our own district we are faced with exactly that situation, Mr. Meek, but what ever judges are elected by whatever method they will represent the entire district, and as to the matter of detail I am sure the Survey Committee has nothing in mind at all as to the method or manner of electing. That will have to be worked out in detail and presented at our next meeting. The only thing they have done is to present the principle and the detail will have to be worked out later.

MR. WILSON: I note you have me down for discussion on this proposition. While I was, frankly, not entirely clear as to what was intended by this system there is no question but what our Survey Committee has outlined a wonderful program, but whether they will accomplish the results they desire

to obtain is somewhat questionable owing to the peculiar geographic situation of our state. That is one of the important points that came to my attention. We realize, of course, that fundamentally this entire program is very important because we all feel that the judiciary is not compensated as they should be for their services and we realize that we can never obtain adequate compensation for our judiciary unless we present some plan to the people which will show a saving from some other source directly connected with our work. Under those conditions we are faced with a proposition of presenting something in order to obtain what we consider necessary. It is a shame that our judges receive the small pay they do. It is a shame that they have to go before the people and fight for election. They are all human and perhaps bound to be influenced to a certain extent in any political campaign and yet, regardless of that, we have several reasons to be proud of our judiciary in the state and, personally, I do not feel that the question of local influence is one that is a matter that should be considered serious at all.

I believe that with the present rapid change in our economic conditions our judges should come from the various communities of the state which represent different interests. What good would it do for a man from North Idaho where they don't have any irrigation—what kind of a judge would he be in the irrigation country? He could not give the service which you would expect in an irrigation case. The same is true of mining up north. What would a man familiar with agricultural conditions do presiding over a mining case? Could he give the same efficient service as a judge or a man thoroughly familiar with the mining law?

Then we have what I consider is more important than anything else. I agree with Mr. Meek on that proposition that we should know something of the detailed plan before adopting this principle. Just as a suggestion, if this state is re-districted undoubtedly one district will extend from Lewiston clear north. That would be one district. There would be three judges. Where would they be located? What would be the situation if one of them was on vacation? Suppose one of them was here in Moscow on a case and one in Lewiston and some attorney would go before the Clerk in Bonners Ferry and obtain an injunction pro forma against my client, where would I be? I would have to start out from Bonners Ferry and drive to Moscow or Lewiston, a distance of from 200 to 225 or 235 miles, and spend that time to knock that injunction out of court. One of the things we must do is to expedite trials. One of the big objections to our profession is that we are dilatory. We don't like to hurry. We like to take our time and people can't get justice and if we make any change at all in our system we must consider the public. We must not only consider the fact that we want to get adequate pay for our own judges. That is our big object in this matter coming before us. We want to save money to the people but we want to remember that when we are saving them money in taxation that we are not putting a burden on them in their actual personal litigation, and undoubtedly that burden would be placed upon them under this system. Not that the principle of the entire proposition is wrong and not that the plan proposed is wrong, but under our peculiar geographic situation and our sparsely settled communities the distance between them is going to be a very important question.

MR. ERB: I shall not say anything about the efficiency as outlined by the Survey Committee but I'll venture to say that any person taking up the matter of the economy of the thing will find that under the system proposed the taxpayers will be taxed a very material amount more to maintain a judicial system than under the present system. With three judges in the district that would be an average of fourteen counties in the district. There would be travel expenses of those judges and stenographers considerably more than

at the present time. You will pay a higher salary than is paid the probate judges at the present time. The county will be compelled to carry on the probate business through some other office and I am quite confident that it will cost a material lot more to the taxpayer than under the present system.

MR. LEEPER: The Committee has reported that they estimate the abolishing of the probate court and the transfer of his duties to the clerk will mean a saving of $100,000.00 a year to the state. That is their estimate.

MR. GRIFFIN: As I understand it, all that we are asked to do now is to favor the principle or disapprove it, that is, the principles of these five or six matters which have been set up for the reorganization of the courts, and that the details then are to be worked out by the Council and presented before the meetings next year. These matters that have been discussed, outside of the question of economy, seem to me to relate wholly to those details. It has been stated that the plan was splendid, which, I take it, approves the principle. Now, suppose we do approve the plan and send it back to the Council and next year they present it to us, and suppose a district in North Idaho such as Mr. Wilson has suggested extends from Lewiston north and suppose in that plan they say the chambers of two judges shall be at Lewiston and at Sandpoint, or at Bonners Ferry and at Coeur d'Alene. Then when that plan comes out you men in th North can discuss whether that number of judges will take care of the business or whether those locations for chambers are proper and appove or disapprove of the details, or suggest that there be four judges in this section or that the chambers be at a different place, to take care of those objections that have been raised here. The same can be done in any division that is made in the Southwest.

Then there is the question of the election of judges either in the Southwest or in any other district. It might be that the first plan presented would say that the judges were to be nominated at large and elected at large. On the other hand, the plan might say that the nominations shall come from a division of the district surrounding the place where the chambers will be and the election at large, in which case the nomination would be of a local man and the election would be general. That objection as to where the judge is to be elected from can be taken care of in the detail. If it happens that you can't work the detail the plan will have to be changed, it seems to me, because it won't be practical to work it out, but on the other hand if you can satisfactorily adjust that detail by adopting the principle now we get a chance to work at those details and when they are presented we can object to them one by one and if they are unworkable we can kick the whole thing over. For that reason it seems to me desirable to approve the principle, let the Council work out what statutory and constitutional changes are needed, work out the machinery of the act, and then an effort will be made to get this report out two or three weeks before the meeting and we can fight over the details; but now, as I understand it, we are merely discussing the desirability of it.

MR. HANNA: As I understand it, the plans are only to be worked out two or three weeks before the meeting next year. It seems to me we would need two months.

MR. GRIFFIN: An effort will be made to get it out and into the hands of every lawyer so that he can study it and have his ideas on it before that meeting is held.

MR. HANNA: There is another part of this I thought you were discussing and that is the probate judge. Judge Ailshie had a plan last year, and I think you have all gone over the plan that he had. I think that it would be much ahead of anything that we have had proposed yet and also it would not require any constitutional amendment. That could be done while this will take probably half a lifetime.

MR. HEALY: Mr. Leeper, does the report that you have presented here contemplate the designation of chambers by the presiding judge?

MR. LEEPER: He would have complete power about that although they don't know the details at all, that is, the detail about the operation of the system.

MR. MARTIN: As far as the Judicial Council has discussed it, while they have not reached any determination, the act would place the resident chambers of each judge. The act passed by the legislature would name the resident chambers of each judge in the state. In other words, the act would name where the chambers would be and the judge, of course, would have to reside there.

MR. MEEK: General, as I understand it, you say he would have to reside there. There is nothing to prevent him from being elected some place else, is there?

MR. MARTIN: Oh, no. I don't suppose you would object to have a lawyer from Boise elected judge.

MR. MEEK: We would in our district. I do not care where the chambers are so long as they put a division on the election.

MR. MARTIN: You would have to come up to Boise.

THE PRESIDENT: Gentlemen, the question is on the adoption of the recommendations of the Judicial Council for a reorganization of our present judicial system. You have heard the discussion. All those in favor of the motion as stated by Mr. Leeper will say Aye. Opposed? The motion is carried.

Before continuing the discussion relative to these recommendations made by the Judicial Council we should proceed with the program as outlined, and the addresses will more than likely bring out some of these points for consideration so that we can later on take up each one of these recommendations for adoption or rejection. The members of the bar are fortunate indeed in having with us on this occasion a man whom we all know favorably, a man who is recognized throughout the state as being one of the leaders in the profession. This gentleman will talk to us on the subject of "Bar Influence in the Selection of Judges." It is a pleasure for the chair to introduce at this time Honorable Frank Martin, Secretary of the Judicial Council.

BAR INFLUENCE IN SELECTING JUDGES

The people of a state are more intimately affected by the exercise of its judicial power than by the activities of any other of its departments.

Their property, liberty, the dearest relations of life and even life itself, are regulated, protected or destroyed by its interpretation of the law, and by the honesty, learning, probity and qualifications of judges who administer the functions of the courts.

The ideal judge must have the requisite abilities and capabilities. Those peculiar and special qualities of character and mind fitting one to judge impartially and wholesomely. These qualities are some times referred to inadequately as "judicial temperament." Not every good lawyer will be a good judge. Nor will the possession of one outstanding and noble trait or characteristic be a sufficient basis. Certainly the qualities of being a good jolly fellow, a good mixer, a ready handshaker, and an astute politician are not those making the "ideal judge." Yet these are the qualities which usually count in the popular selection of our judges.

The ideal judge must have both basic and cultivated honesty, a healthy human sympathy, a natural sense of justice, a liberal education, a comprehensive knowledge of the law, mental and moral stamina, adaptability, breadth

and grasp of intellect and quickness and certainty of perception.

When we have a judge, nearly approaching the possession of these qualities, who enjoys the service, even at the inadequate compensation usually provided, we should strive to surround him with conditions, which will secure his continuance on the bench.

Some of the discouraging conditions which now confront him are the uncertainty of his term of office, the necessity of cultivating, if not pandering to, political organizations, political groups or factions, to vital political interests and to prominent political minded lawyers and other politicians. The disturbance of frequent elections interrupting his judicial work, creating an unwarranted strain upon his often already too meager financial resources, the necessity of depending upon some already organized body to manage his campaign for election, or else creating a personal organization for that purpose. These things often create embarrassing situations, and raise questions of improper influences in the public mind. These are offensive and disquieting to the upright judge, lessens his ardor for his work and the consequent inspiration leading to higher aims and greater efforts. He begins to lose faith in the dignity of his position, or in his own power, to remove these obstacles and to function according to his high ideals, and with a feeling akin to disgust leaves the bench for more congenial and usually more lucrative fields of endeavor.

These remarks apply to the high minded and qualified judge. Too often the present system leads to the bench the weak and unqualified judge, who sometimes is an active politician, learned in political trickery and devoted to the interests of his party or political group. These judges have no proper conception of the dignity of the position to which they are called or of the sacredness of its responsibilities. This judge is usually continued in office by the power and influence which first placed him, misfit though he was, in the place of power.

The cure for these ills is more intelligence, and more independence of political influence, in the selection of judges. A longer term of office and greater financial remuneration. These four things are necessary in any satisfying reform of our judicial system. They may be accomplished by a greater influence of the organized bar in the selection of judges. A more vigilant and sustained effort of the organized bar in the support and protection of courts and the administration of justice. You will note, that with reference to these matters I say "Organized Bar." I do this advisedly to distinguish it from the action of the lawyer as an individual, whose efforts to influence the selection of a judge though usually well meant, is also usually injurious.

TENURE OF OFFICE: The term for both district and Supreme Court judges should be not less than twelve years. The present short term, involving frequent elections with its distasteful campaign methods, deters many of the best qualified men, from seeking or accepting judicial office. The qualities that bring popularity to a candidate are often the very qualities that render his services on the bench valueless. The independence created by life terms is one of the greatest values in the Federal judicial system. The longer tenure in office and exemption from frequent elections would measureably lessen the ills of inadequate compensation.

INCREASED REMUNERATION: The present compensation of judges is niggardly, and entirely inadequate to give them an independent financial status, even upon a modest plan of living, and a reasonable training and education for their children.

These salaries should be increased until sufficient to meet their reasonable current requirements and enable them to lay by sufficient for the necessities

of age, or else such increase as will meet their reasonable current needs while on the bench, with proper provision for retirement on pay.

BAR INFLUENCE IN SELECTING JUDGES: While we have knowledge that selfish interests do sometimes seek to influence the selection of judges for sinister purposes, it will not be questioned that voters generally have no interest in such selection other than to secure the best qualified person willing to accept the office of judge. In view of the technical and peculiar qualifications required, it may be admitted the average voter is not able to pass upon the relative merits of candidates for judicial office, nor are they able, in the ordinary election campaign to secure such information. Thus through lack of information, and in blindly following party direction unworthy and unqualified judges are often elected, rather than from design or ill purpose.

The bar alone has the information and the facilities for determining the relative merit of candidates as well as detecting an improper motive, should such exist. Therefore it may be urged that it is the duty of the bar to advise voters in regard to the qualifications of candidates for judicial office, and that, by so doing a great public service may be rendered. But before this service can be reasonably successful, it must be apparent that judicial offices must be removed from the sphere of party activity and influence.

This public service can obviously only be rendered by the bar in its organized capacity.

Bad conditions and results in some places, especially in the larger cities, have led the bar to organize for this purpose, and make strenuous efforts to influence the selection of judges.

The most encouraging feature of the matter is that whenever the bar has made a well directed effort for that purpose it has received the support of the press and a generous approval of the voters, in most cases resulting in victory.

The most noted examples have been in the cities of Cleveland, Los Angeles, Denver and St. Louis, also Chicago and Detroit as to municipal judges.

The bar of Cleveland was a pioneer in this work and the plan of activities adopted by it for the election of qualified men as judges has been largely copied and adopted for use in the other cities. Briefly outlined the plan is as follows:

1. The creation of a standing committee of the bar to be known as the "Committee on Judicial Candidates and Campaigns," with duties and powers as follows:
   a. To keep itself constantly informed of prospective candidates and their qualifications for judicial positions.
   b. To induce qualified lawyers to become candidates for these positions.
   c. Prior to the poll of the bar, recommending a list of candidates as qualified for judicial offices to be filled at the next election. The list together with a list of all other candidates shall be submitted to the members of the bar for an expression.
   d. When advisable to exact from all candidates submitting themselves to a bar poll, a pledge that they will abide by the results of the poll, will not permit individual campaign committees to be organized in their behalf, and will not conduct individual campaigns, and to take such action as the committee may desire in respect to candidates declining to make such pledges or to abide thereby.
   e. To have complete charge of the raising of money and the conduct of campaigns for the election of the judges recommended by the vote of the members.

f. Such other duties and powers as the executive committee of the bar may from time to time confer upon it.

2. After the list of candidates has been submitted to a poll of the members of the bar the duties of the committee, as far as feasible are as follows:
   a. To give the result of the poll of the association wide publicity and carry on an active campaign for their election.
   b. To notify all judicial candidates that the bar will not support any candidate for judicial office who directly or through a committee solicits or receives funds to pay campaign expenses.
   c. In order to eliminate the personal element always attached to a contribution given either to a judge or his campaign committee, and to make these contributions as impersonal as possible, all contributions for such purposes shall be made to the bar association for the use of its campaign committee.
   d. To have printed on the referendum ballot only the names of candidates who have pledged themselves not to solicit or receive funds for campaign purposes.
   e. To promptly withdraw the support of the bar from any candidate endorsed who fails to give the pledge required of him, or having given it, violates it.
   f. To advise candidates endorsed that it is the judgment of the bar that they ought not to address political meetings, but may deliver proper addresses before civic organizations, women's clubs, men's clubs and cosmopolitan groups who have a personal interest in civic affairs.

In the first campaign after the Cleveland Bar organized for this purpose those opposed to the action of the bar raised and expended in an attempt to uphold and elect the opposing candidates, the sum of $50,000. To meet this condition the bar raised and expended $4,600 in support of its candidates. There were eight judges to be elected and the eight endorsed by the bar association were all elected. The bar, however, realized that such large expenditures of money would prejudice the efforts of the bar and lead to public scandal. The bar, therefore, went before the legislature and secured the passage of a corrupt practice act limiting expenditures for election to judicial office to small sums in both primary and general elections, the money so raised to be used only for advertising in periodicals having an established circulation, for literature and for public addresses, over the radio or otherwise. This effectively prevented unendorsed candidates and their backers from raising and expending large sums of money to secure their election. That the efforts of the Cleveland bar have been of public benefit is proven by the strong support and endorsement of the press of the city and the success of its endorsed candidates at the polls. Its candidates have uniformly been successful in the elections and last year nine out of ten of its candidates were elected. The results in other cities have been equally satisfactory.

In the city and county of Los Angeles, the result of the organized bar seems at least reasonably satisfactory. Between the years 1920 and 1929 out of one hundred seven candidates endorsed ninety-eight were elected.

In 1928 eighteen candidates were endorsed and sixteen of them elected. In 1930 there were eleven judges to be elected. There were ten candidates endorsed by the bar, four of these were elected in the primary election, five received primary nominations and one was eliminated in the primary. Of the five nominated in the primary three were elected at the general election. These results tend to show the favor with which the efforts of an organized bar to influence judicial elections have been received by the people. It is evident that the efforts of the Cleveland bar in Ohio and the Los Angeles bar in California is attracting state wide attention. In Ohio a proposal is being discussed in advance of the next constitutional convention for a complete revolution in the selection of judges in which the judges of the higher courts successively will select the judges in the courts next below. Under this plan responsibility is narrowed down to a small body well fitted to judge of the qualifications of the men being selected for the judicial places and there could be no problem growing out of gratitude for the distinction conferred.

In California the question is attracting much attention, in fact, it may be said that the necessity of a different plan of electing judges in which the bar will have a larger influence is attracting wide spread attention in many of the states. In California the plan now attracting the widest discussion is the one suggested by the Commonwealth Club. This club though composed mainly of citizens who are not lawyers, has for many years concerned itself with the larger problems of the administration of justice. After several years study it has evolved what is known as "The Commonwealth Club Plan" which is brief is this:— "That a considerable part of the political factors involved in choosing judges be obviated by saving judicial incumbents from competition at the polls with candidates who are virtually self-selected under the primary system." This is the gist of the proposal. It deems it logical to reserve popular choice to the question as to whether the sitting judge is entitled to an additional term of office. Under our accustomed system this is commonly impossible. The ballot requires the voter to pass upon the relative fitness of the incumbent when compared with one or more candidates who are free to make a vigorous campaign. Under this plan at the conclusion of a judge's term the voters are required to say by their votes whether they deem him worthy on his record of re-election. This plan has the obvious advantage of freeing the judge from the necessity of devoting time, worry and money to campaigns and should result in a higher devotion to the duties of office and longer average terms of service.

If the sitting judge fails of endorsement in the election there are two plans being advocated for filling the vacancy until the next election. The Commonwealth Club plan is that the Governor should appoint and the appointee named be submitted at the next election thereafter for confirmation. While others advocate that the vacancy should be filled by a referendum vote of the bar.

Chief Justice Hughes recently said:

> "The proper choice of judges is the special concern of the bar, not because of any desire that the community should be restricted in its power of choice, but that it should choose well with the knowledge of the professional rating of candidates. A lawyer may be successful in deceiving his clients or the community as to his attainments, but he is known to his professional brethren and their assay is a needed warning of the lack of valuable content in much that may fascinate with its glitter the public gaze."

That the present system of selecting judges is unsatisfactory is proven by the widespread discussion of a better way. There is no proof that any perfect way has, or will be found, but it is certain that a better way will be evolved and the trend now is toward a larger participation in this selection by the organized bar.

We are fortunate in Idaho in having an integrated bar by legislative enactment and an uncomplicated field in which to act. It is certain that the best results in the selection of judges cannot be attained by nominations made by party conventions and equally certain that selections of judges under the pre-

sent primary affords no improvement. Under our primary law any man, regardless of his character or qualifications, may nominate himself for a Supreme Court Justice or a District Judge and by securing the endorsement of any two hundred of the qualified voters of his party in the state, or district, may become a candidate. A plan more detrimental to the securing of well qualified judges cannot be imagined. It may be said that an unworthy or unqualified person, even if nominated in the primaries, could not win in the general election. The answer is that it has happened.

The situation calls for a strong move to remedy this condition and the organized bar are the ones who are best fitted and in the best position to direct the movement.

The Idaho Bar has been a leader in the progressive movement for organization and the rendering of greater public service. No higher public service can be rendered than the securing of worthy, well qualified judges to administer justice to our people.

The bar since its legislative organization has done much in the public interest. It has taken upon itself the burden and expense of the examination and recommending for admission, to the bar. It has also assumed the burden and expense of disciplining the members of the bar who are lax or recreant in the discharge of their duties and trusts. It has created a Judicial Council and through its recommendations has considered and recommended to the state legislature many improvements in court procedure and is now studying and evolving a plan for the improvement of the judicial system of the state which will bring about effective reforms embracing the elements of unity, coordination and management in the judicial system. This will result in a more expeditious and economical handling of judicial business. The coming activity of the bar will be to lend its efforts to place in the judicial offices the highest type of judges. The work which we have done has attracted the attention of those interested in improved judicial conditions. We may do much more to aid this movement.

I may not be expected to suggest a plan but will hazard at least a tentative suggestion. The bar of the state should present to the next legislature the following:

a. A constitutional amendment fixing the term of Supreme Court and District Court judges at not less than twelve years.

b. A small increase in salary with proper provision for retirement on pay of not less than sixty per cent of the salaries fixed.

c. A plan for the nomination and election of judges free from party control or participation and in which the bar will have a directing influence.

In regard to the nominations and elections of judges the following plan is suggested:

a. That the election laws be amended so that judges will be both nominated and elected upon a judicial ticket or ballot without party designation, the names of all candidates appearing on the same ballot.

b. That the law give the bar association the right to nominate candidates by referendum vote of its members; or,

c. Candidates be nominated by petition of legal voters of which legal voters for Supreme Court justices not less than one-half shall be licensed attorneys, and for District judges not less than forty per cent of the lawyers of the district shall so petition.

d. That provision be made for a referendum vote of the members of the bar on the candidates nominated.

Either plan of primary nomination would be effective and I believe can be secured from the legislature.

e. That candidates for judges and their friends be limited in the money which may be raised or expended for a judicial election.

FILLING VACANCIES: Vacancies have frequently occurred in judicial offices in the past and will if present conditions are not changed, continue to frequently occur in the future. However, should conditions be so that changes do not so frequently occur the question of filling vacancies is of equal importance as the selection of judges in the first place. Section 19, Article V of the Constitution creating the judicial department is as follows:

"All vacancies occurring in the offices provided for by this article of the constitution shall be filled as provided by law."

Section 6, Article IV creating the executive department, is in part as follows:

"If the office of a justice of the Supreme or District Court, ****** shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law."

The Supreme Court of this state has held that these provisions of Section 6 created an absolute grant of appointive power to the governor and does not depend upon legislative action or legislative sanction. Further that this grant of power is not limited or controlled in any manner by the provisions of Section 19, Article V of the constitution. Under these provisions of the constitution, as intrepreted, the power of the governor to fill such vacancy cannot be limited or modified by legislative enactment. To do so will require an amendment to Section 6, Article IV of the constitution.

In discussing this question, the February 1930 Journal of the American Judicature Society said:

"Our governors in many states hold office for only short periods; almost universally they are politicians pure and simple; they generally hold out little promise for responsible action in choosing judges."

This statement is too severe when applied to a great majority of the past governors of Idaho, though in some cases there has been strong and widespread belief that appointments were made for political purposes or by reason of political obligations. The statement above, however, paints a condition that can easily exist in Idaho or any other state. It should be the purpose of the bar to secure such plan of procedure as will make it impossible for any governor to inflict our judicial system with unfit appointees.

If the bar is carefully organized for that purpose with an alert committee to look after the matter and upon the occurring of a vacancy immediately present the matter to the governor, in most cases, this assistance and unselfish advice will be welcomed and will have a controlling influence in the selection of the person to fill the vacancy.

This has been tried in the Third Judicial District of this state with splendid success. When a vacancy occurred during the term of Governor Hawley he requested an expression of the bar of that district and followed the recommendation. Since that time upon the occurrence of a vacancy the bar of that district through its officers, have suggested to the governor their willingness to make a recommendation and assist him in making a selection if he desired to avail himself of that help. In every case since that time the governor has gladly accepted the assistance of the bar and acquiesced in their recommendation.

While the action of the governor may not be controlled in such matters by any organization or group, it is quite certain that a governor would always pay heed to advice given if suggested by legislative enactment. I therefore suggest:

a. That the provisions of Section 6, Article V of the constitution be amended so that the governor before filling a vacancy shall request in case of a Justice of the Supreme Court that the State Bar submit a recommendation of not more than three persons for appointment, and in the case of a vacancy in the office of District Judge that the bar of the district submit a like recommendation; or

b. In lieu of such constitutional amendment the legislature pass an act requiring the governor, before filling any such vacancy to request such recommendation from the state or district bar.

c. That provision be made for taking and registering the expression of the bar upon such recommendations and certifying the same to the governor.

All the foregoing suggestions are submitted in the hope that they may lead to a wider discussion and consideration of the matter involved and that the bar will thus reach a conclusion and will evolve a plan which will bring to the judicial offices of the state the best qualified members of the profession.

THE PRESIDENT: Proceeding with the program the next address will be made by one whom we all know and who needs no introduction. He will speak to us on the subject of "Transfer of Probate Jurisdiction to District Courts." I refer to Honorable John G. Rice, District Judge and member of the Judicial Council.

JUDGE RICE: The very short and almost outline address which I have prepared I find has been probably covered by the report of the Judicial Council which has been read so that it is almost unnecessary for me to take any time at all, Mr. President. But I presume a restatement of the ideas that have already been advanced may not be amiss at this time.

Let me say in opening, that I have lately been appointed a member of the Judicial Council, consequently my remarks should not be understood as embodying necessarily the conclusions of the Judicial Council.

There are certain considerations which point to the advisability of transferring probate jurisdiction from our Probate Courts, as at present constituted to the District Court. The recommendation of the Judicial Council is as follows:

I would suggest the following reasons for such transfer as worthy of consideration.

First: *Efficiency*:

Uuder our present system it is not required that a Probate Judge should he a lawyer. Any elector apparently is qualified to be elected and hold the position of Probate Judge. I do not wish to be understood as criticizing the probate judges of our state. Some of the offices are filled by men who are in every way competent and capable. Others are filled by good men but without the qualification of having been previously trained in the law. While it is true that quite a large part of the procedure in the probating of estates and in the handling of guardianship matters follows a regular routine, it is equally true that many errors do appear in such routine matters. Whenever a contest is had in the course of probate proceedings, I think it may be said that usually such contests involve questions more than ordinarily intricate. Certain features of probate law are probably as intricate as any branch the law affords. When such contests occur under our present organization, almost invariably after a trial in the Probate Court an appeal is taken to the District Court, where the whole matter is tried anew. It would be better to have the trial originally in a court better prepared to handle such cases. One trial would then suffice, with the right of appeal directly to the Supreme Court.

It is believed that in the District Court fewer errors would occur in the regular routine of probating estates and there would be much more satisfaction in handling contested matter.

Second: *Keeping of Records*:

The keeping of the record of estates should be improved if kept by clerks of our District Courts. In the District Court such records would doubtless be kept by some one person in the office of the District Court clerk, who would become expert, and who, if a deputy, would be subject to the supervision of the clerk, and in turn to the supervision of the District Judge.

Personally I have not had much experience in searching probate records outside of my own county. I have, however, heard many criticisms of the condition of the probate records in different counties of the state. How much such criticism may be deserved I do not know, but I do know that it is highly important that the records of the probation of an estate should be in proper form and carefully preserved for the benefit of land titles which rests upon probate decree. The older a state grows the more increasingly important it will become.

Third: *Feasibility*:

It is believed the transfer can be made under our present District Court system and without the necessity of adopting the Superior Court system of California and Washington. The routine matters of accepting petitions, making orders fixing the date and place of hearing for the same, and in fact all orders which do not involve the exercise of judicial power, may be made by the Clerk. It would be necessary to bring to the attention of the District Court, or Judge, only the matter of making orders and decrees which are judicial in their nature. These would not tax the time of the district judges unduly. It is recognized that probate proceedings should not be liable to too much delay, but I think it would not be difficult to arrange for a district judge to be present in each county on a stated day each month, or oftener where the business required it. I believe it is recognized that even without the probate jurisdiction being in the district court, it is necessary that Rule days, or Motion days be held frequently in the various counties of the state. Probably adding the probate jurisdiction would not make very much change in that respect.

Fourth: *Economy*:

The Judicial Council I believe has estimated that by transferring the probate jurisdiction to the District Court a saving could be made to the taxpayers of the state of approximately $100,000.00 a year. Unfortunately I do not know the details upon which this estimate is based. Probably the larger part of it is salaries of probate judges. The county Justice of the Peace, which the Council advocates, would receive his pay in fees from the litigants. For myself I do not think that the handling of juvenile matters permit the use of the fee system as compensation for services rendered, but there is no doubt, taking the state over, that a large saving could be made. Should it be desired to go further into the question of economy, doubtless some of my colleagues on the Council can give you more information than I can.

On the whole, it would seem to be quite desirable to transfer probate jurisdiction to the District Court as recommended by the Judicial Council.

I might add that personally I have been of that opinion for many years. If the system could be arranged I have thought that we could handle all probate estates more satisfactorily in the courts of general jurisdiction, preserve our records in better order and find ouselves in much better situations whenever we do want to contest any probate matter. I thank you.

MR. HEALY: In order that these very excellent addresses be not lost I move that they be referred to the Committee on Resolutions for appropriate action.

The motion was seconded and unanimously carried.

THE PRESIDENT: Gentlemen, what is your pleasure with reference to the other matters that have been referred to this meeting by the Judicial Council?

MR. LEEPER: Mr. President, I would suggest that each separate item be submitted individually here. They are rather distinct and it won't take much longer.

THE PRESIDENT: As I understood it, the motion made by Mr. Leeper which was adopted by the meeting was with reference solely to the reorganization of the judicial system by re-districting. Am I right?

MR. LEEPER: That is correct.

MR. HEALY: Would that include, Mr. Chairman, the subsidiary recommendations for the appointment of clerks by the district judges and the transfer of probate court jurisdiction?

THE PRESIDENT: I take it that it would not.

MR. MEEK: It was to be endorsed in principle?

THE PRESIDENT: As I understand it, yes. There are six distinct propositions or recommendations made by the Judicial Council that should come before this meeting for consideration. We have disposed of one of those.

MR. LEEPER: Now, Mr. President, I move that this body approve the recommendation of the Judicial Council relative to the abolition of the probate courts and the transfer to the district courts of the business of the probate courts, all official business.

Whereupon, the motion having been regularly seconded and put, it was unanimously carried.

MR. LEEPER: I move, Mr. President, that the recommendation of the Judicial Council relative to the creation of a Justice of the Peace with county wide jurisdiction and compensated by fees to handle the civil business of the probate court be adopted.

MR. SHROPSHIRE: I second the motion.

MR. MILLAR: Does that include also the abolition of the precinct justice of the peace, or does it leave them as they are at the present time?

MR. LEEPER: It leaves them intact and just as they are.

MR. ERB: It seems to me that that would be very much more satisfactory if they also created in this county justice of the peace jurisdiction over the county in criminal matters. In many of our counties today the probate judge is practically saving the county all the fees by reason of examinations in criminal matters and why shouldn't this county wide justice of the peace have also county wide jurisdiction in criminal matters?

JUDGE RICE: I think that it is understood that the criminal jurisdiction will be such as the law now confers and the civil jurisdiction is only mentioned there because of the fact that we are dealing with the subject of probate court matters.

THE PRESIDENT: Permit me to read the recommendation. The creation of county justice of the peace with county wide jurisdiction compensated by fees to handle all matters now handled by probate courts, except probate and guardianship matters and insanity hearings.

MR. NELSON: Would that include the very important question, the matter referred to by Judge Rice, of the juvenile question? That the justice of the peace would also take charge of juvenile matters now handled under the probate court?

THE PRESIDENT: Judge Rice, will you answer?

JUDGE RICE: According to the wording of that recommendation it undoubtedly would do so. I wonder in working out the details whether that would finally result or whether some other provision might be made for the handling of juvenile matters but, according to the wording of that motion, it undoubtedly would include juvenile matters.

MR. HEALY: It strikes me that the handling of juvenile matters, especially in some of the larger counties, is a matter of such very great concern that the Bar ought not to pass over this matter too lightly. It would seem to me that this is a subject that might very well be referred back to the Judicial Council for further consideration. I have seen no evidence that the Judicial Council has given that phase of the matter any great consideration. I do not know whether that is true or not, but I am sure from the language of Judge Rice that he has not. I would like to move that the matter of the proper handling of juvenile matters be referred to the Council for further recommendation and report.

MR. MARTIN: It was not intended that any of these matters should be final as to detail. They are just taken to get the expression of the Bar for the guidance of the Judicial Council in working them out, as to whether particular things should be dropped in their entirety or whether we should try to develop them so as to get them in proper shape to submit them to the Bar Association at a future meeting. The question of juvenile delinquency is one of great importance in some of the counties and not of such importance in other counties of the state, and doubtless the legislature dropped it onto the probate courts because they didn't take time to give it careful consideration themselves, just as they dropped old age pensions and widow's pensions and every other kind of a thing on the probate court. There is every reason that this pension business, old age pensions, widow's pensions, and all those things should be handled through the Board of County Commissioners themselves. They are the men who collect the money and spend the money and who are the general business managers of the county, and things of that kind should be passed on directly that are now handled by the probate courts. Matters of that kind the legislature would doubtless put where they would be best served and the same would be true of juvenile delinquents. Both the probate and district courts have jurisdiction over juveniles and the juveniles may be handled directly by the district court in the first instance. Now, under the present law, the legislature would doubtless give that matter more thought. It is a very important question and, of course, the Bar and the Judicial Council would assist the legislature as that is possible, but these matters, as I understand them, all go back to the Council to work out the details if they are endorsed in principle.

MR. MILLAR: In the report of the Judicial Council on this matter do they give the statistics or figures as to where this $100,000,000 could be saved? It appears to my mind that if the particular items that the probate court now has jurisdiction over would be filed with the district court and a county wide justice appointed whose compensation is paid by those fees that you are getting nowhere. The particular reason that the fees to the probate judge under matters of that sort that he already has jurisdiction over goes to some extent to apply on his salary. If the precinct justices of the peace are left intact as they are they have county wide criminal jurisdiction as they now have. They would have jurisdiction over civil cases within their precinct paid by the fees that they might receive. Therefore, it seems to me that there is no

necessity of the adoption of this county wide justice of the peace or county justice of the peace, and it is only an additional burden or additional expense which would prevent the saving in a financial sense of this transfer of probate work to the district court.

MR. GRIFFIN: Those fees would go to the district court, wouldn't they, under the new system? The probate court fees would go to the district court. They would be received just the same.

MR. MILLAR: That is the only distinction I see.

MR. GRIFFIN: I imagine that the legislature would state those cases which would be cognizable by the justice court. Those wouldn't be transferred into the district court. The county justice of the peace would handle that, which would amount to, as I say, a great majority of the cases now handled by the probate court, while probate matters and the fees that come from that source would be paid into the district court. The only difference then would be the amount of fees that are paid in on probate matters. The civil matters would remain about the same.

MR. ERB: On the matter of the criminal matters coming before this justice of the peace, the fees from that would be paid by the county and retained by the justice of the peace. At the present time, they are paid to the probate judge and paid into the county.

MR. OVERSMITH: I think we are a little off the subject. We have already adopted the motion to abolish the probate court so the matter of fees isn't under discussion at this time. I raise this question with respect to the county justice of peace. We have never given the dignity to a justice of peace or to the office of the justice of the peace as the English government has and I am wondering whether or not, especially under an elective system, we would be getting anywhere. I would offer this suggestion, that instead of having a county justice of the peace that you have a county court commissioner, giving him jurisdiction over all our justice jurisdiction and such other jurisdiction as might be defined by law. Washington has that system. There is no salary or fees attached to it. Someone, I think, in the discussion this morning mentioned the fact that some of the young lawyers would not seek an office of this kind. It is hardly compatible with the proposition, the way we look at it from a psychological standpoint, to ask a young man, after he has been admitted to the bar, to run on the matter of election for a justice of the peace. He would feel, and justly so, that the public would look at him, not as a lawyer, but as a common justice of the peace.

If we go on to that particular procedure at all, I am not entirely sold on it but I think the plan might be worked out. I would much prefer to have the court appoint a commissioner and then we can have the younger attorneys seek those positions and act as juvenile officers if that was thought advisable. I wanted to offer that as a suggestion. I don't offer it as an amendment but to my mind it is preferable to the suggestion that is made. The suggestion as made by the Council is not definite as to whether we would have one or more justices of the peace in each county. A court commissioner would give a better name, at least, and lend more dignity to the position and give the young man an opportunity, at any rate, of feeling as though he was not belittling his profession by taking the position and for all intents and purposes he would be no different from the precinct justice of the peace except in county wide jurisdiction but he would be classed alone as far as the public is concerned.

MR. ERB: In regard to the naming of a commissioner instead of a justice of the peace we are up against the proposition of requiring a constitutional amendment because the Constitution of the State of Idaho provides who shall exercise jurisdictional functions.

MR. LEEPER: I might suggest, gentlemen, that I don't think the Judicial Council particularly cares just exactly what you recommend in this regard. If you don't feel that you want to approve a justice of the peace with county wide jurisdiction, if you just make a recommendation that they provide some suitable form for carrying on petty jurisdiction in the counties that that would be satisfactory. In the State of Washington all justices have county wide jurisdiction as I understand it. I don't think it makes a great deal of difference just what way we act as long as we tell them to go ahead and provide some form of petty jurisdiction, and if any of you gentlemen have an amendment to that motion of mine I will consent to it if you would rather have it.

MR. OVERSMITH: As I understand it, our Constitution provides for certain courts and such other courts as the legislature may from time to time prescribe and define the jurisdiction. I am not certain about that but I think that is it. Let me add just one more word to what I have already said. The younger attorneys, especially, should have some court where they can try out the small matters without going before a layman. There should be some young man who would take the court commissioner job. He would not necessarily have to be an attorney.

MR. MILLAR: Under the question as submitted here I don't think there would need to be any question concerning the previous motion passed upon. I don't think anyone would have any objection to the transfer of the probate matters to the district court. It is the matter of the appointment of this county wide justice of the peace and it seems to me it is continuing an office in part of what you have been trying to abolish and it is unnecessary, under our present justice of the peace system.

MR. FELTON: I think we are missing one feature of this whole thing, and as one of the younger attorneys who has some practice before the justice court and before the probate court on civil matters, I think when they are going into that they should not only reform the court but they should make some suitable procedure for going into one. The questions that you get into in our justice and probate procedure are unanswerable and there is practically no code that we can go on and work with, and if the thing is going to be gone into from any standpoint the whole small claims part of our procedure should be gone into and worked out from some basis where there would be definite law to go into the court on.

THE PRESIDENT: Any further discussion?

MR. HEALY: I was not sure at the time I made that motion it was in order. I will withdraw my motion for the present but it does seem to me that a matter of the importance of handling juvenile cases ought to receive some further study on the part of the Council and made the subject of a further report at some future meeting of the Bar, and that is what I had in mind. If the Council already has in mind the making of such a report without any action on the part of this body that motion will then be unnecessary and I take it that that is the proposal of the motion that Mr. Meek has stated.

Whereupon, the motion having been regularly moved and seconded, the President declared the motion carried.

MR. LEEPER: I move that this body endorse the recommendation of the Judicial Council relative to the non-partisan election of judges, which would include the non-partisan nomination of judges, by a method which will give greater weight to the opinion of the Bar.

THE PRESIDENT: Any discussion? All those in favor of the mo-

tion will signify by saying "aye". Opposed "no". The motion is unanimously carried.

MR. LEEPER: I move that the recommendation of the Judicial Council relative to the appointment of clerks of the district court by the judges and the enlarging of the powers of the clerks so that they may make all necessary orders in uncontested probate matters under the supervision of the court and subject to review by the court at the instance of any aggrieved party be approved.

MR. MILLAR: I second that motion.

MR. NELSON: I would like to ask the mover of this question what he means by the court enlarging the power of the clerk?

MR. LEEPER: The clerk, as I understand, has no power at this time to make any judicial order.

MR. OVERSMITH: You mean legislative power rather than court power, that the legislature confer upon the clerk the power instead of the court.

MR. LEEPER: That is what I mean.

THE PRESIDENT: All those in favor of the motion will so signify by saying "aye". Those opposed? The motion is unanimously carried.

MR. LEEPER: I move that this body endorse the recommendation of the Judicial Council relative to the increase of salaries of judges in the supreme court and district courts, so that the judges may be adequately compensated and the best available talent may be drafted for judicial service.

MR. GRIFFIN: I second the motion.

THE PRESIDENT: All those in favor of the motion will say "aye". Opposed? Not a word, the motion is unanimously carried.

MR. LEEPER: I think after passing all these recommendations that the Judicial Council should be instructed to forthwith proceed to draft their laws and constitutional amendments, however they intend to carry these into effect, and submit them to the vote of the bar in ample time so that they can consider them before the next meeting, and I will so move that the Judicial Council be so instructed.

MR ERB: I second the motion.

MR. MARTIN: May I suggest that the Judicial Council submit the matters to the State Bar Commission and they will disseminate it to the members of the Bar.

MR. WOLFE: Couldn't those be submitted to the district meeting too?

MR. LEEPER: It would be my idea that they should go out to the Bar before that even. They should be gotten out next winter b fore we hold our meetings.

THE PRESIDENT: Those in favor of the motion say "aye". Opposed? The "ayes" have it.

THE PRESIDENT: The chair will name Mr. Oversmith, Mr. J. F. Martin, and Mr. Geo. Erb as members of the Resolutions Committee.

THE PRESIDENT: We will now have the report of the canvassing committee that canvassed the vote of the election in the Eastern Division.

MR. STELLMON: The Canvassing Committee met, counted the ballots, and found as follows: E. A. Owen received 25 votes, H. B. Thompson received 16 votes, and 8 ballots were rejected. E. A. Owen was elected.

THE PRESIDENT: I will ask is there anything else to come before this meeting?

Whereupon, upon motion duly made and seconded, an adjournment was taken until 10 o'clock July 11th, 1931.

MORNING SESSION, 10 O'CLOCK A. M.

July 11th, 1931.

The meeting was called to order by the President E. A. Owen.

THE PRESIDENT: I have a telegram from one of the loyal members of the Bar.

(Reading) "Grangeville, Idaho, July 10, 1931, President State Bar Commission, Moscow Hotel, Moscow, Idaho. Am disappointed in not being able to attend annual meeting of the Association but am detained here on trial of a case. Please convey my regrets to the commission and members in attendance. I trust you may have an excellent meeting.

J. F. AILSHIE."

After the splendid banquet last night and the most gracious way in which the toastmaster presided, we are delighted at this time to have the opportunity of listening to Mr. Leeper again. He will address the meeting on the subject "The Idaho State Bar and the Individual Lawyer". Mr. Robert D. Leeper.

MR. LEEPER: Gentlemen of the Bar, you have been long suffering with me and I will guarantee that this will positively be my last appearance. This is another of those matters which was thrust upon me by Mr. Sam Griffin and possibly Mr. Owen was in it too, and they requested that a paper be prepared on the subject of the Idaho State Bar and the individual lawyer, and, of course, I was glad to do what I could.

THE IDAHO STATE BAR AND THE INDIVIDUAL LAWYER

Idaho lawyers are by law compelled to become members of the Idaho State Bar Association. With every lawyer a member of the Association, it would seem that the organization should flourish, but the situation merely again exemplifies the old saw—"You can lead a horse to water, but you cannot make him drink." It is quite true that all of us are now enrolled, registered and licensed members in good standing of our Bar Association, which boon is conferred upon us when we make our enforced contribution each year to the state, under the impetus of dire pains and penalties unless we so do. When we pay our license we are automatically enrolled.

My observation has been, however, that the matter of being a member of the association is of but little concern to the rank and file of practitoners. The license is paid for the privilege of practicing law, and to avoid the results of non-compliance. I do not believe that the operation of our present law and payment of the small fee prescribed, is resented to any great extent by Idaho lawyers, particularly the better class of lawyers. It is generally recognized that an integrated Bar, is on the whole, a very excellent institution, both for the profession and for the state. It was my privilege to be a member of the first Board of Commissioners and I have participated in the pioneer work incident to this new experiment in professional control.

When we who handled the affairs of the association in its inception first entered upon our duties, we did so with the enthusiasm of pioneers. Aside from technical organization work, and the routine which are incident to any organization, there appeared to be a higher possibility—the building of a great professional association, wherein all would participate. With every lawyer in good standing a member, it seemed entirely possible that a statewide, close-knit professional contact could be built up which could func-

tion upon the many problems which are constantly arising in our profession. Likewise, it seemed that such an organization could and should function for the benefit of the state and general public by assuming leadership in affairs where lawyers properly should lead. To some extent our earlier enthusiasms have been realized—technically the Involuntary Association has succeeded—and its machinery works effectively. The idea of an integrated Bar has been accepted by the lawyers of Idaho. Admissions have been controlled and discipline has been enforced; we have embarked upon some of the larger ends and aims which we had in mind, referring particularly to the judicial council. I am proud of what has been done; it has been a splendid work, and I am happy to have had some small part in bringing the present result to pass.

However, it is my purpose to discuss another phase of our professional situation in Idaho. As I have said, "You can lead a horse to water, but you cannot make him drink." We have forced every lawyer in Idaho to become a member of the State Bar Association by law. Far the greater part of our membership are men of high social standards and professional capacities. Most of us are more or less the same kind of people, racially and socially. But few of us are hostile to the law which compels us to be members.

Yet after six years of operation I observe but little active interest in the Association or its work among the rank and file of the lawyers of the state. I think that on the whole, our annual meetings are better attended than they were under the old, voluntary association, but in so far as any active professional connection with the association is concerned, most of us are satisfied with the payment of our five dollar fee. As a matter of fact, my observation is that lawyers seem to be growing further apart professionally than in other days—there is but little of the spirit of a united craftsmanship which seems to be maintained by the English in their Inns of Court at London.

I doubt if the involuntary union into which we are forced has affected this phase of the situation, other than to provide a better organization and more able leadership which of necessity have a certain influence. There has been much dispute among eminent students of the subject as to whether there is anything to be gained from a professional standpoint by means of the involuntary association. This point of view has been particularly urged hy representatives of the bar associations of great cities, whose argument is that if a lawyer will not voluntarily participate in a bar association he will he worthless as an involuntary member. They feel that pride of craft, ethical character, and professional association should be the only bases upon which such a union should be had, and that a forced union ol all kinds and classes of lawyers is not desirable.

In Idabo we are not faced with diversity of kind and class as they are in the cities. As I have said, our membership is uniformly homogeneous. There is no particular reason why most of us should not associate together in a close professional union. Yet the prophesy of those who have criticised has come true to the extent that most of us do not maintain any more active concern with the new organization than with the old.

This brings me to the theme of my discussion—"What has the Idaho State Bar Association done for the individual lawyer, and what can it do for him in the future?" It seems rather deplorable that we are faced with such a wide spread failure of interest in professional association as I have indicated, particularly in view of the consideration that we have such an excellent frame work upon which to build what should reasonably be the strongest and most influential public institution in Idaho.

The answer to my question is divided into two parts—as to past accomplishments—and possibilities of future benefit. I have already, insofar as I desire, answered the first. When we consider the latter, I preface my remarks with the thought that any organization represents only the collective capacities and enthusiasms of its members. If it be composed of men of ability, fired with enthusiasm for their cause, there is but little doubt as to the standing and effectiveness of the organization and consequent benefit to its members.

The Idaho State Bar Association can be of as much or as little benefit to the lawyers of the state as they themselves desire. If the members take an active interest in its affairs and contribute much towards its advancement, so will the organization contribute towards the welfare of the individual. To the extent that the members neglect their association and fail to avail themselves of its machinery, will it remain formal and without vitality. The Idaho lawyers will get out of the association exactly what they put into it, no more and no less.

The legal profession is one peculiarly in need of the vitalizing influence of a professional union of its members. This has always been recognized under our system of jurisprudence, where the lawyer is an officer of the court and an arm of the law, while at the same time he is dependent for his livelihood upon private employment by litigants.

The position of the lawyer is such that inevitably he is drawn into affairs of government, and becomes the maker and interpeter of laws. The practice of law is not and cannot be a business, controlled by principles and practices which govern the modern business world. It is peculiarly individual, and the only measure of control which can ever be properly exercised over the advocate must be exercised by two agencies, the courts of which he is an officer, and the Bar association.

In connection with control by voluntary association my mind always first turns toward those wonderful institutions, the Inns of Court at London, the Inner Temple, the Middle Temple, Lincoln's Inn and Gray's Inn, in whose archives are written the history of the English Bar since the Fourteenth Century. Here the lawyers of England maintain lifelong association, each from the first day of his pupilage to the end of his days. The membership ranges from the humblest to the highest and most renowned in the Kingdom. The Inns are institutions, part of the warp and woof of the empire, and wielding immense power.

The methods through which an active bar association can function are many. It must first reach the individual lawyer through local associations, as it is substantially impossible to have potency in the state organization without active local groups. Every county and every large town should have its local bar association, meeting at regular and frequent intervals, by means of which the lawyers of each community keep in professional contact with each other. In the larger cities such local associations usually are to be found, but this is not so in the great majority of lesser communities. There are but few active county organizations in the state.

Being in close contact with its membership a local association is a much more vital affair than is the larger group, and its possibilities for good to the individual are innumerable. To recall but a few paths of endeavor—The strong local association operates as a censor of the ethical habits of its members, which is a matter of vital importance to the profession. It keeps a watchful eye upon the shyster and trickster, and keeps him within prescribed bounds of decent practice. It operates as a brake upon the unethical solicitation of business at the expense of fellow practitioners. Particularly does it shield us from the cut-rate lawyer, the man who seeks and gets business

by bargaining away his self respect.

A strong local association is a boon to the young practitioner just starting into business, as through its agency he can move into the stream of practice with far less difficulty and with fewer chances of disaster than if he begins his practice unaided by professional restraints and contacts. An association also offers a possibility of control over judicial elections and appointments, as in Cleveland, and the consequent elimination of unfit judges.

It appears to me that all of these matters are highly important to the profession, and by providing an agency for the approach of such problems as arise as a local bar association is providing the greatest of benefits to the individual pactitioner. The unethical crooked lawyer who is permitted to operate in a community without let or hindrance from his fellow practitioners is a menace to the entire profession. It is unprofessional and undignified for us to bargain our professional services like goods over a counter, lowest bidder take the job. It is improper for responsible men to do important legal work at a fraction of its worth, and the continued practice of rate cutting and bargaining will inevitably result in the complete demoralization of any bar.

It is not alone upon a purely business and ethical basis that a local association can be of value to the individual lawyer. It can be made to provide an avenue of social approach among members which is invaluable and which makes for better feeling and understanding among them. Always involved in controversy with each other, it is difficult at best to keep this professional controversy from extending into the personal. Here is one of those intangible values which cannot be definitely defined but which nevertheless is very real. The development of kindly feelings, personal friendships and professional courtesy among members of the bar is a most excellent thing, and by no other agency can that be promoted except a professional association.

That of which I have been speaking is concerned in the main with the individuality of the lawyer, although there is a distinct advantage to the public resulting from the maintenance of professional ethical standards and proper professional association. However, in contemplating my subject my mind reaches out beyond the more personal advantage which may result to each of us by association, and I proceed to be a consideration of those higher duties which the lawyer owes to his state and nation in these changing times which can only be accomplished by professional union.

It need not be argued that we are in the midst of vast social disturbances which press strongly upon the sustaining web of government and law. In less than a hundred years we have passed from an agrarian civilization to an urban, machine, civilization. The world has been girdled in four and a half days of elapsed flying time. Concerts and speeches echo across the earth in seconds. Automobiles have given rural dwellers immediate access to cities and town. Newspapers bring to all of us the news from everywhere every morning for breakfast. Machinery does the work of man in almost every line of endeavor.

With this change in our physical equipment have come corresponding disruptions in our social order. Men are gathered into great cities, where they live and work in skyscrapers. Industrial leaders have imposed upon us a new order, whereby men labor in huge industrial units and the nation is urged to spend by means of every known advertising agency. Business and industry have become the mightiest influence in the state. Indeed the state itself has entered business, building and operating roads and institutions, operating executive boards and commissions of all kinds, employing thousands of people, and spending millions of money annually.

To the lawyer of the old school who contemplates Modern America it must seem that all boundaries between the economic and the legal world have been wiped out. The law has changed but little in its philosophy since the early days of our nation. The legalistic concept is about the same with us as in the days of Coke, yet the legalistic state has given way in a large measure to the economic state. At least the two have become so intertwined as to be inseparable.

When we who are trained in the ancient tradition venture to consider such matters as the rights of labor in the new order, welfare legislation, the regulation of transportation and other public utilities, taxation in the new state, control of modern business and the centralization of wealth, relief of agriculture, the vast increase in crime and the obvious breakdown of our criminal procedure, government by the executive arm of the State, we are challanged as never have meen before us been challenged. Our nation cries out for leadership, for men devoted to her welfare, with the courage and the capacity to blaze out new trails through the tangled jungles of modern life over which the forces of justice and social order may march to whatever goal awaits us.

There is no higher duty for the lawyer than this. Far too deeply are our various agencies of government dominated by those incapable or unwilling to assume this burden. Brigands of varying degrees of respectability thrust their political leadership upon the state in order to bend its processes to their selfish advantage and the consequent injury of legitimate business and deprivation of economic justice to the whole classes of our people. We have placed in our statute law what are known as prohibition laws, and our citizens are involved in a vast program of clandestine civil disobedience, entirely dishonorable because it is clandestine, while government is convulsed in a futile effort to enforce this statute put upon us by a group dominated leadership. The high apostles of mass production have been unable to solve the problem of our ten million unemployed, and all the politicians in Washington have been unable to bring relief to suffering agriculture.

This obligation of the law and of lawyers to bring forth new concepts of government to meet the ever changing conditions of our times is paramount. It can only be effected through organization and a change in mental attitude and outlook. Probably the best expression of what I have in mind was made by the Honorable Henry Upson Sims, former President of the American Bar Association in a recent address:

> "Before entering upon a discussion of the possible methods of reforming the law, even before considering the need for the law to be reformed, it is necessary to find some body of the citizenship who are willing to assume the responsibility of critics and investigators of the law, and in the event that reformation of the law is found to be desirable, then who are willing to assume the more important responsibility of suggesting and procuring its reformation.
>
> The theme of my addresses during the first months of my term as your President was that the duty to assume all this responsibility lies upon the Bar. Of course every reform which the common law has experienced since it was transplanted into America has been accomplished through the direct agency of lawyers, either as judges or legislators, or text writers and commentators. But they have accomplished it in the main as individuals, or as groups of individuals, rather than as representatives of the Bar. The time has now come, however, when the supervision of the administration of justice in all its phases should be made the charge of the organized Bar. Though the legislatures must do that part of the reforming the accomplishment of which

requires legislation, they must be taught to rely upon the suggestions and the guidance of the organized Bar. And though the courts must do that part of the reforming the accomplishment of which requires the exercise of the judicial function, even the courts must be advised in their functioning by the organized Bar. That is to say this investigation and advice for legislatures and courts, if the reform is to be accomplished systematically, must be provided systematically by the organized Bar."

In a measure, by the neglect of our professional association we have failed in our obligation to the state. It is said that we have become a tribe of money getters, not concerned with broader fields of law and government. By so much have we lost pride of cast and civic usefulness. It is difficult to conceive of the average modern standing with Patrick Henry when he said, "Give me liberty or give me death." Rather does he advise with himself as to which position will profit him most. Thomas Jefferson was a lawyer, and it is doubtful if he ever made any substantial returns from the practice of his profession, yet his name shall be revered so long as love of country and justice shall animate the hearts of men. Lincoln was a lawyer, but he is remembered for his martyrdom.

The true patriot is the man who mourns with his country when evil days fall upon her, who is swift to criticize those who would prostitute her to ignoble ends, who has the broad vision to meet changing conditions and not be irrevocably bound to ancient concepts, and who is willing to sacrifice his time and talents to bring justice to all men. Let us be that kind of men. We know that complete justice is an unattainable ideal, but we at least can be honest in our efforts to aproach it.

In closing may I not again suggest that the best efforts of the lawyer towards this end can be exerted through an active, strongly-knit bar association, and urge upon you a keener interest in your association. Likewise, I would finally urge upon you a higher leadership in the state, and a more just disposal of your time and talents toward the affairs of your country and your fellow citizens.

Thank you.

THE PRESIDENT: The system used by the Bar Commission in conducting the examinations for admission to the Bar is, we think, eminently fair. The applicant for admission is issued a certificate permitting him to take the examination. After his qualifications are investigated and his character passed upon he is issued a certificate to permit him to take those examinations, and that certificate is numbered. The members of the Board, after the Secretary has given those numbers, do not know the parties who are taking the examinations. They are known as Number so-and-so. The papers are graded as the papers of Number so-and-so. Sometimes there is a curiosity on the part of the members of the Board after the examination has been given and the papers graded to know just who it was that made this grade or that grade. After the Commission had graded the papers the other day, I believe I was the one that asked who was number whatever it was because he had written an outstanding examination paper.

I may be divulging one of the secrets of the Board when I mention that fact but that young man is with us this morning and is to speak to us on the subject "The Law School and the Legal Profession." It is a pleasure for me to introduce to this bar meeting this young man, Russell Randall, who will give us a talk on the subject "The Law School and the Legal Profession—A Student's Impression."

MR. RANDALL: Mr. President and members of the Bar, before I start I want to say to Mr. Owen that those are very kind words he said about that bar examination. This is the first news.

I considered it an honor and a privilege to be asked to speak before this organization. I realize that probably I am the youngest person who has ever addressed such an organization as this and I know for a fact that I am one of the least experienced. It is with a feeling of inability that I take up this task of discussing anything pertaining to the legal profession with you who have been members of the Bar for a long time and have been actively engaged in practice.

My impressions, necessarily, have been gathered from a three years study of law in the University of Idaho Law School and so, naturally, are rather restricted. I did not compile data on the Law School, how it has increased in growth and the subjects they are giving there, and so forth, because I didn't think that was you wanted. The topic assigned to me was the impressions of a law graduate.

The first qualification of a law student is that he have a great love for the law, that he be thoroughly interested in it and wants to work hard in getting started so that he can make a success in his chosen profession. On the other hand, he sees a profession which, I think you will admit, is vastly overcrowded, and a profession in which many do not do very much work. It is a profession in which he feels that his preparation has been and is different from the actual practice, and he enters the field with a feeling of unfitness. He feels not capable of taking upon himself the duties that fall to the practicing lawyer; but to me there is one redeeming feature about entering the practice, and that is the welcome which the members of the Bar extend to the young graduates. They give freely of their advice, based upon a long period of practice. It is advice which will help the young lawyer when he starts into the practice. I would not be at all surprised, in such as profession as this, if there were some jealousy in the admission of new members. As I bave said, I think you will agree with me that there are plenty of lawyers now, but there is no feeling apparent, at least, of "let us keep this business to ourselves." Every time that I have had occasion to talk to a lawyer he has never told me how busy he was. He has always had time to give me some help and advice.

Now, you, as members of the Bar, are interested in keeping up the standards of your profession and to protect the public from the practice of law by incompetent men. We, as law graduates, are interested in better preparing ourselves for the practice. Now, there are only a couple of questions I would like to discuss with you. Tbere are many questions, possibly, that could be discussed but I am going to limit them to two.

One is the question of legal ethics. When the graduate finishes law school he knows little of the ethics of the profession. The faculty of the University of Idaho Law School bas seen fit to abolish it from the course of study. I think that it is a mistake to allow graduates to go out into the field without a knowledge of the ethics of the profession. I believe that legal ethics should be the subject of a series of lectures given by some active practitioner. In that way the problems would be presented practically. I do not believe that you can learn legal ethics by studying cases.

When the young lawyer finishes school he is over zealous for work. He is afraid that when he gets into the practice he is not going to get much to do and as a result he takes just about any business he can get which may lead to a great deal of embarrassment in the future. One case may be a link in the chain of character which, in the future, he will regret. Now, what is the part of the members of the Bar with reference to this question of legal ethics? How can they help the young practitioner? In my opinion, whenever a problem is presented to a young lawyer that he is not sure of it should be his duty to consult an old practitioner to find out

what he should do. The old practitioner has years of experience behind him which the young men do not. He knows what cases to get into and what to stay out of. We, as young lawyers, have no desire to become what is known as shysters. A young lawyer gets into that sort of practice very innocently, and so if a young man is starting on the down road I think it should be the duty of the members of the profession to help him out and give him the advice that he needs in these questions.

Now, upon admission to the bar, a young lawyer is held out to the public as qualified to go out into the world and practice law. He is to represent clients in the protection of their person and property. After the preparation which he has had, is he qualified to practice law? If you will pardon the reference to your bar examination, when a young lawyer or graduate sees on the bar examination a question which requires him to draw a complaint on the question of divorce involving property rights, temporary and permanent allowances and the custody of children, and he has had little practice in drawing complaints in law school, and when he looks down the page and sees another question requiring him to make an examination of an abstract and he has never seen an abstract of title, he begins to wonder whether his preparation has been sufficient.

To get this idea that I am trying to convey, let us pause for a moment and compare the legal profession with other professions. How are the doctors prepared in comparison with the lawyers? When a doctor completes his undergraduate work in college, he spends four years in the study of medicine, supplemented with two years, I believe, interneship in a hospital. During his career in medical college he is given actual and practical experience. He is given cases to work upon so that when a person comes to the young doctor and wants medical work done he does not have to refer to a text, but he can refer to his vast practical experience which he has received. The dentist's preparation is the same. While in college he is given the actual cases to handle. Problems are presented to him for his solution and execution. The public accountant, which is somewhat analagous, I believe, is required to spend so much time in the work in an active practitioner's office before he is admitted to become a certified public accountant and so, when a set of books are brought into the young accountant, he is not bewildered in not knowing what to do but he has that practical experience which he can refer to.

How about the preparation of the lawyer? Before we start to discuss this I would like to say that I believe it is impossible to teach a man to practice law without the actual practice. There is too much detail to take up and too much routine work about the practice which he cannot be taught in law school. It is impossible to learn how to try a case until you try one. A young lawyer sets up an office of his own in a small town and a client comes in with an abstract of title to examine. Is that young lawyer qualified to render an opinion on an abstract of title? A client brings in a will to probate and the young lawyer has never had any experience in probate procedure. Is he qualified to handle that estate? The client brings in a set of facts to start a law suit. Is he qualified to represent that client in that case and can he draw a complaint which will embody those facts? Instances could be cited for some time but these go to illustrate that the young lawyer has little comprehension of the practice of law.

The second fundamental principle, I believe, of any law school is to teach the student how to work and study. I think you will agree with me that the lawyer must continually study and it is hard work to make a living practicing law, so that if a law school lets a student go out with very little work in the study of law he is not only handicapped in the practice of law

but he is also an embarrassment to the Bar Association and to the law school itself.

And the third fundamental principle of any law school, I think, is to teach the student how to find the law after the facts are presented to him. This should involve the actual use of the library and how to find cases after the case has been presented to him.

These, to me, are the fundamental principles of any law school, and I think any law school which sets itself up as a law school owes a duty to the students to endeavor to make provision for these fundamental principles. But if a law school can do added service to the student why should not it attempt to do so and in that way would it not be making itself a better law school?

There is one suggestion I would like to make and that is, why couldn't more of these practical things be taught in law school? As I said before it is impossible to teach a student how to practice law, but why couldn't the drawing of more papers, be made a part of the course in Wills? Why could not examinations of abstracts be made a part of the course in Titles to Real Estate? Why couldn't the student, in his study of pleadings, be required to draw more pleadings? Those are the things that confront him when he gets out and I think you will agree with me that the largest part of any lawyer's business is routine work, that is, drawing papers, preparing cases for trial, and not the actual trial.

The ideal solution in my mind, would be to require a period of study in an approved law office. This is too impractical and could not be worked out, I believe, but this leads to one suggestion I would like to make and that is to make the practical things a part of the law school. Law, to me, is a living thing and not a dead thing. It should be presented in a living manner as applied to people and not as applied to hypothetical cases.

It has not been my intention to leave the impression with you that I am criticizing the University of Idaho Law School in particular. Any criticism that I may have made of the study of law to my mind equally applies to any law school. I have merely attempted to show you that the impressions of any law graduate are that there is a step missing between the study and the practice of law. It seems to me that the duty to attempt to remedy this defect is as much the duty of a Bar Association as of a Law School itself.

In closing, gentlemen, I would like to say that through a closer cooperation between the Bar and the Law School I believe both organizations could be benefitted. I do not believe it is possible to carry on, successfully, a law school, without the cooperation and support of the Bar and, on the other hand, I think that the Bar itself can derive a great deal of benefit from the law school. It does a great deal of research work which could be presented to the practitioners. The better the preparation of students for membership in the Bar and the better the law school is, the better your Bar will be. I thank you.

MR. GRIFFIN: I want to accept the Bar's congratulations to myself, Mr. Oversmith, Dean Masterson and Al Morgan because the four of us had the idea of having a graduate from the University address us and it was through Dean Masterson that we secured Mr. Randall. I am particularly impressed by the suggestions that has been made, especially the question of ethics. The Board is constantly met with an inability to examine character adequately and we get some rather strange answers on our question of ethics sometimes. It seems rather strange to us that the boy has that attitude that he apparently has indicated in his answer. It seems to me that the Bar in that connection could do a great deal for these young fellows

I think it is an obligation of the Bar.

The other is the question of the practical curriculum. I do not believe that it can be worked out but it seems to me a very excellent suggestion and we should not lose what Mr. Randall has given us from the standpoint of a boy who has just gone through law school and is about to start practicing, and I move, Mr. President, that the Bar Commission appoint a committee on—we might call it "Students in Law College"—to take Mr. Randall's address and study it and make such suggestions as can be made to the Bar and to the Commission to assist the students who are in the University to become better members of the Bar and better practitioners.

MR. ERB: I second the motion.

MR. WOLFE. If you will allow a suggestion, I would suggest that this committee shall deal with the relationship of the Bar Association and the Law School, and in that way this committee can work in connection with the authorities of the Law School on these particular questions and work out something absolutely practical.

MR. GRIFFIN: I assume they would do so but I am more interested in the students than in the school as a whole. My thought was that it would be directed to the individual boys in the school. Of course, any work done would have to be through the faculty and with the faculty working with them.

MR J. F. MARTIN: I want to say a word, too, about this. I think that the remarks of this young man have impressed me more than anything I have heard with reference to our law school in a good many years. Probably my interest in the Law School is deepened by the fact that what little law I know I learned over there. If all of them are of the same type as this young man I believe they are mighty keen boys. He has learned enough in this law school over here to know that he does not know anything about the practice of law and if every lawyer knew that he would be smart. I think the biggest difficulty that we, as practitioners, meet in our practice is running up against fellows that don't know enough to know that they don't know anything. When a lawyer knows that he is then in a position to learn and to try his cases in a skillful manner. I rather gather from the address of this young man that the moot court has been abolished. Is that right?

MR. RANDALL: It has been abolished as a course but the students themselves conduct a moot court.

MR. MARTIN: Who is your instructor?

MR. RANDALL: We work with the faculty.

MR. MARTIN: Have you an active practitioner on your faculty?

MR. RANDALL: No, there is no one now engaged in the practice on the faculty.

MR. MARTIN: During my time in school, for a good many years before and for some years afterward, to my mind one of the greatest men that God ever put on earth devoted unselfishly, without remuneration or hope of pay, three afternoons of every week to a moot court over there. I have reference to my dear old friend, Frank Moore. For years that man went up that hill, in winter and snow and wind, without any hope of pay except the love he had for that institution, and I am indeed regretful to hear that that court over there is no longer operated. If I gather from Mr. Randall's talk one thought, it is the fact that this Bar Association should in someway endeavor to put an active practitioner in that law school for the purpose of establishing the practice of teaching these boys at least some of the rudiments or fundamentals of trying a law suit. We all know, of course, that the boy in a year's time cannot be taught how to try a law suit.

[illegible] Supreme Court has taken a rap at one or two men who have [illegible] for many years and have suggested that they still do not [illegible] there the students how to stand up on their feet and when [illegible] down to get back up.

[illegible] is absolutely right when he says that when an abstract is brought [illegible] I have what it is. He is asked to draw a complaint and [illegible] what it means. Those fundamentals are, in my opinion, [illegible] the boys should be taught over there. If we knew the law—[illegible] senior member of the family firm, knew [illegible] working until ten to eleven or twelve o'clock [illegible] I am here to work. But he has taught me where to [illegible] and that is all that we are ever supposed to be taught in a law [illegible] Randall's speech has shown me that there is a deficiency [illegible] these boys are taught. I heartily agree with Mr. Griffin [illegible] ought to take a hand in this thing and teach these young-[illegible] how to get upon their feet and stay on their feet [illegible] we all know, as practitioners, that we are happy indeed [illegible] comes into us and says "I'm sunk". Why, we lay our [illegible] by the boy. We are always happy to do it. We look for [illegible] to do it. We take pleasure in seeing that the young man [illegible] right and I think the Association as such ought to take a hand [illegible] committee might to be appointed. Then we have to work [illegible] and some [illegible] paying for this and I think that can be done, [illegible] in accord with this Association taking a hand in this [illegible] these men get off on the right foot and I take plea-[illegible] the motion of Mr. Griffin.

[illegible] been so many years since I was up there and [illegible] of the remarks of Mr. Randall. I feel, however, [illegible] the law school to give a student very much of the [illegible] law. When I was there we had our moot court and [illegible] abstracts so I was not stuck quite so bad. [illegible] the question right or not, I do not know. I feel [illegible] for this thing is going to rest on the boys, too. I [illegible] one year in offices at a very meager salary, less than $50.00 [illegible] when I got out for myself at the end of one year I was [illegible] because it gave me confidence and experience. [illegible] that is the thing that the Bar will have to work on. We [illegible] for the Bar to take in these young fellows if they are willing to [illegible] down on their bellies and crawl. If the Bar will be will-[illegible] the Bar will take in these young fellows at a meager sal-[illegible] than training I feel then that they are rendering a more [illegible] can be rendered in any way because I do know it is [illegible] the Bar to attempt to give all of the practical training that is [illegible]

MR. [illegible]: As the only officer of the Latah County Bar here, I [illegible] to offer whatever aid that we can give in working out this [illegible]

[illegible] I went through Law School we had, however, one member [illegible] who had been an active practitioner in law and I refer to [illegible] I consider that possibly the other two members of the faculty [illegible] there but he did but he taught us more than the other [illegible] and the problems that we have met since we trace [illegible] up and down the state the fellows that knew Gill re-[illegible] from one end of this state to the other because of the things [illegible] and it is my impression that some person who has been

in the active practice, whether he is so constituted that he can make a success of the practice of law or not or whether he is so constituted that he is merely a teacher, yet the active practice of law for a few years will have a leavening effect and will permit him to pass on to the students something of the nature of the practice when they get out the same as Gill passed on to us, and I again repeat my offer for the local Bar to help out in any way it can to solve this problem.

THE PRESIDENT: All those in favor of the motion will so signify by saying "aye". Opposed? The motion is carried unanimously.

I trust that this young man's high regard for and his clean wholesome conception of the law and the legal profession will remain with him throughout the years of his active practice.

We now have come to the report of the Legislative Committee. We will hear from Honorable Frank Martin, Chairman of the Legislative Committee.

MR. MARTIN: I believe ever since the Bar was organized the Commissioners have worked very closely with the faculty of the University, and whatever deficiency might exist there I am satisfied the Bar will have some way of giving assistance to the faculty and the faculty will willingly accept it. However, we all realize that teaching a young man to practice law while he is in the law school is a very difficult and almost an impossible task. You cannot get the zest and the human side to a moot case that is necessary to increase the very active interest of the man who makes a success as a practitioner. There is just that vital element of coming in contact with a man who needs your help, or knowing that the question you will solve is vital, to add interest that gives zest to your work and will cause you to take hold of it in a very practical way that is impossible for you to get in a moot court however skillfully it is carried on. It takes that contact with an opponent when a vital question is involved to smooth down rough edges so that he will work in a practical way. Let's not feel that we can accomplish too much in this moot court of ours but we can accomplish something.

To my subject, Mr. President.

REPORT OF THE LEGISLATIVE COMMITTEE TO THE IDAHO STATE BAR.

GENTLEMEN:

I have the honor to submit the report of the Legislative Committee appointed by the State Bar Commission by authority of a resolution of this association.

The Committee was appointed in November, 1930, and organized for action about January 1, 1931. The committee was distributed over the state so as to be entirely representative of the bar of the various localities of the state. By reason of this wide distribution the active work was largely done by the members of the committee residing within the vicinity of the State Capitol, but practically every member of the committee was in Boise during the first half of the legislative session and was available for conferences. Every member of the committee entered into the work assigned to us with a zeal and added to whatever success was accomplished.

The members of the Judiciary Committee of each house received the suggestions of this body submitted through your legislative committee with approval and willingly co-operated with your committee in presenting and securing consideration by the legislature of the Acts carrying out your recommendations.

We also acknowledge with pleasure the assistance rendered to us by

General W. D. Gillis and Judge F. E. Chalfant, legal advisor to the House of Representatives and its various committees.

There was referred to us fourteen recommendations for legislation, being largely that portion of the work of the Judicial Council which had been approved by the State Bar.

We felt it our duty to confine our efforts in support of those measures only which had been submitted to and approved by the State Bar and therefore refused to recommend, or support measures coming from individuals or other sources.

Of the fourteen measures recommended by you, eight were enacted into legislation. The matters affecting the Code of Civil Procedure all became laws and are as follows:

Authorizing courts to enter judgment notwithstanding the verdict in civil cases. This Act added a new section, 6864A to Article 4 Chapt. 256 C. S. Chapt. 27, Laws 1931.

Authorizing a court upon a motion for a new trial where a motion for a directed verdict had been denied, to, in lieu of a new trial for such error, vacate the judgment entered and order judgment for the moving party notwithstanding the verdict. This Act amended Sec. 6888 C. S. Chapt. 12, Laws, 1931.

Amending Sec. 6891 C. S. relating to motions for a new trial; providing that any motion not brought to a hearing within sixty days after filing of the notice of intention to move for a new trial shall be deemed waived unless the court, for good cause shown extends the time therefor. Chap. 9, Laws 1931.

An act amending Art. 8, of Chapt. 256, C. S., relating to ruling on motion for new trial in civil cases; by adding section 6891-A; providing that in cases tried without a jury the court may change or add to the findings, modify the judgment in whole or in part, vacate the judgment in whole or in part and grant a new trial on all or part of the issues or in lieu of granting a new trial may vacate and set aside the findings and judgment and reopen the case for further proceedings and the introduction of additional evidence. Chapt. 28, Laws 1931.

An act amending Art. 3 Chap. 256 C. S. relating to pleas in abatement. This Act added to the code Sec. 6837A and provides that the court may order the issue raised by plea of another action pending, or of former adjudication, to be separately tried prior to any trial of the issues in the case. Chapt. 10, Laws, 1931.

An Act amending Art. 7, Chapt. 254 C. S., relating to pleading written instruments by adding Sec. 6709A authorizing the court to require the pleading of written instruments in haec verba. Chapt. 11, Laws 1931.

An Act amending Sec. 6830 C. S., relating to nonsuits in civil cases, providing that a dismissal under the Fourth and Fifth subdivisions of said subdivision shall operate as a bar to another action upon the same cause of action. Chapt. 13, Laws, 1931.

This legislation was all for the purpose of expediting and simplifying court procedure.

Chapter 213, Laws, 1931, provides for the compilation, annotation and publication of the codes and statutes of the state. By this Act the Governor, Secretary of State and a member of the Supreme Court were appointed a commission to contract for this work. The contract has been let and the codes are to be completed and delivered on or before July 1, 1932.

In the following matters recommended to the Committee legislation was not secured:

Increase in the salaries of the Supreme Court Justices and District Judges.

Whil: the members of the committee and the Judiciary Committees of both houses were fully alive to the injustice being done by the present low salaries of these officers, after consultation with the Governor and the leading members of the legislature, especially those of the Appropriations Committees, the matter was given up.

As instructed an Act was prepared and submitted to the Judiciary Committee of both houses and introduced in the House by the authority of said committees. This Bill provided a legal status for the Judicial Council which was to be appointed by the State Bar Commission, and composed of two Justices of the Supreme Court, three judges of the District Courts, four members of the State Bar and in addition the Attorney General, Dean of the Law School of the University, and President of the State Bar as Ex-Officio Members. That Act defined the duties of the Judicial Council and contained an appropriation of $3,000 for the necessary expenses of the Commission for the biennium. This Act was referred to the appropriations committee and notwithstanding the whole hearted support which it received from the Judiciary Committee, the members of the Bar Commission and the efforts of this legislative committee, they refused to report the Bill to the House and smothered it. It is not permissable for me to criticize the action of the Appropriations Committee in this matter but it does seem when imporant legislation is referred to a committee that it should be reported.

The recommended legislation permitting two or more offences to be stated in one indictment or information, in separate counts, recommended by the Association of Prosecuting Attorneys and endorsed by the State Bar failed by reason of a division of sentiment in your legislative committee and of the bar in regard thereto. We found that those members of the bar who engaged more or less in criminal defense were for some reason opposed to this legislation. We were, therefore, unable to present a united support to the legislature in favor of this enactment. We did not feel justified in placing this association in the position of urging this legislation upon the legslature while it was being opposed at the same time by prominent members of the bar.

The same condition prevailed as to the enactment of the recommended legislation as follows:

> "Sec. 6849A. In all cases either criminal or civil, wherein the court, before instructing the jury shall submit to attoneys for all parties the instructions it proposes to give to the jury, either those requested or given on the court's own motion and shall give counsel a reasonable opportunity to make objection to such instructions or any part thereof, any objection not taken before the reading of the instructions to the jury shall be deemed waived. In making such objections the party objecting shall point out specifically the particular instruction or portion thereof objected to, and shall specify the particular ground upon which such objection is taken. Such objections, and the rulings of the court thereon, shall be taken by the reporter and included in any transcript made by him of the proceedings upon the trial."

We, therefore, did not urge the passage of this Bill.

The Committee felt that these two measures should be deferred until a further consideration of them should secure a more united support of the bar.

After consulting with state officers most intimately concerned with establishing and carrying on the activity we decided not to press the legislation for the establishment of an adequate identification system in connection with the State Penitentiary, under which the apprehension of criminals and their identification together with past records of other crimes would be facilitated.

These last three recommendations have admitted usefulness and desirability and we feel may be properly recommended to the next legislature.

In regard to the recommendation to increase the ease with which transfers of District Judges may be made from one district to another and for the purpose of relieving congestion in certain districts or procuring judges where local judges are disqualified that the power now given to the Governor in making such transfers be vested in the Supreme Court:—The investigation of the committee revealed that the above power was vested in the Governor by the Constitution (Art. V. Sec. 12) and that the legislature had already gone as far as it might go by authorizing the Supreme Court to in certain cases direct the district judge to serve for a stated period in another district. Chapt. 11 Sec. 2, 1923 Laws.

We feel the thanks of this committee and of the Idaho Bar is due to the Judiciary Committee of each house and to the members generally of the legislature for the wholehearted manner in which they received and supported the recommendations of the State Bar.

Respectfully submitted,

FRANK MARTIN, *Chairman.*

THE PRESIDENT: Is there anything else to come before this meeting before adjournment?

MR. HEALY: I do not know to what extent the local bars of North Idaho have undertaken to organize themselves. At our Nampa meeting the suggestion was made that it might be a very meritorious act on the part of the Bar Commission to assist and to encourgae in every way possible the organization of local associations. No concrete proposal as to how we might do this was put forward but I feel, as one member of the Commission and I am sure the others feel likewise, that any encouragement or assistance that we can render to you in building up and integrating your local bars will have a very wholesome effect in increasing the interest in the State Bar Association as a whole. In view of the fact that we have here representatives from a great many counties of the State I would like to suggest to you that the Commission is anxious to do anything it can to help you in your organization work and in your local efforts and we believe that the success of the integrated bar and the building up of a spirit in the Bar as a whole depends in a very large measure upon the success with which local bars are organized and those local organizations function. Down in South Idaho we have several very strong local bars and the more energetically that work is prosecuted locally, the better it is going to be for the Bar as a whole. I haven't any motion to make in conection with these remarks but I would like to impress upon the lawyers who are here that anything they can do to help build up the local associtions will be a great benefit to the Commission in carrying on the work of the Bar of the State.

THE PRESIDENT: The meeting is adjourned until 2:00 P.M.

AFTERNOON SESSION 2 O'CLOCK P.M., SATURDAY, JULY 11, 1931.

The meeting was called to order by the President, E. A. Owen.

THE PRESIDENT: Gentlemen, as we have considerable ground to cover at this afternoon session I think we should start work at this time. We have with us a member of the local Bar who is well known to all. He has prepared a subject entitled "Anaesthetics—An Economic Discussion." Honorable A. H. Oversmith of Moscow.

ANAESTHETICS

MR. OVERSMITH: The science of government has not kept pace with

this inventive and scientific age. Governments are adopting and putting into operation policies which were probably sufficient for society as it existed a century ago. The recurring periods of depression and panics have always followed an unscientific and false application of governmental activities. A monetary system or some medium of exchange has always been and will probably remain a function of government, and in this age of quick communication and rapid transit of movable products a safe and sane medium of exchange becomes not only a national but an international problem. Mediums of exchange are indispensable to the prosperity of any nation and to the extent necessary for the exchange of commodities between nations the means by which such exchange is made possible is bound to affect international prosperity. A monetary system is indispensable for the exchange of commodities within a nation. Soviet Russia tried and abandoned an extremely costly experiment to carry on internal and external commerce by an exchange of commodities without the medium of exchange.

A nation which possesses and actually satisfies the demands of its people would have no need for extra territorial trade. International trade relations are subject to frequent changes and violent disturbances caused by wars, new inventions, scientific discoveries, and all those forces which may cause more or less demands to be made by one or more nations on the others. The foreign demand for motor vehicles made and designed in this country and the world wide appeal made by our moving picture industry made necessary new alignments in our international credit system of no small proportions. The world wide war literally threw a monkey wrench into the international monetary and credit system, the effects of which can never be entirely effaced. Have these movements and disturbances so upset conditions in our own country as to bring about our financial downfall? Possibly such are the major causes of our present condition but we should also analyze our own financial structures in an effort to throw some light on this all absorbing subject. A better and more elastic international exchange of moneys and credits than has been used might be devised through diplomacy with the co-operation of our so-called international bankers.

Any fundamental error committed by a nation in its monetary system, which includes the use and transfer of credits, is bound to result in a collapse comparable to the sudden collapse of a suspension bridge or any other massive structure under construction. Such a structural collapse is familiar and can be traced to errors, either in the plans of the engineers designing the structure or in the failure of the structural engineers to construct according to the original and correct plans. Errors in governmental policies result in the same sudden collapse of business as any material collapse results from faulty structural plans or a false or selfish interpretation of the original design. Get the meaning of this; the engineer, in drafting his plans and specifications for a modern structure, must take into consideration natural laws and he must know and specify material and workmanship which will conform to known factors. The person responsible for the carrying out of the original design must follow the plan of the architect or structural engineer. If either the architect or the contractor proceeds without an adequate knowledge and application of natural laws disaster must follow just as certain as night follows the day.

History records many similar periods to that which we are now experiencing and the writers of history have related the historical facts. The economists have, as a rule, looked to the future rather than to the past. While we know as a matter of history that panics and financial depressions have been of frequent occurrence, yet no exclusive study has been made of their real economic causes. In the main, these economic forces which have brought about panics and periods of depression have been the erroneous or false governmental regulation and methods adopted for mediums of exchange or a monetary system which attempted to comprehend not only the needs of the people of a particular government but the necessity of an exchange of commodities with other nations. In this modern age we have reached another phase in our economic development which I am inclined to believe is as important for the public welfare as the adoption of a safe and sane medium of exchange or monetary system. This second or new phase of economic development through the application and use of modern inventions and scientific discoveries has greatly increased the demands upon all modern governments. The increased demands of modern society on account of changed conditions have, at least in the mind of the writer, rendered obsolete and unworkable the system of raising revenue through indirect taxation for the support of our national government and, to a certain extent, the support of our state and local governments. In any event, the writer attributes the proximate cause of our present condition to the costs of government through indirect taxation.

The similarity of the conditions preceding each period of depression is so striking as to merit repetition. Something like one hundred years ago Washington Irving wrote a story, or rather a history, of an erroneous and false governmental activity of the French Government and which became familiarly known as the "Mississippi Bubble." Probably Washington Irving also had in mind a period of depression in English history following the speculative period of the "South Sea Bubble." The language of Washington Irving in leading up to his story of the error of the French Government so aptly describes conditions that with only a few substituted phrases or words we have a fairly accurate description of the phenomena leading up to our present depression. He says:

> "When a man of business hears on every side rumors of fortunes suddenly acquired; when he finds banks liberal and brokers busy; when he sees adventurers flush of paper capital, and full of scheme and enterprise; when he perceives a greater disposition to buy than to sell; when trade overflows its accustomed channels and deluges the country; when he hears of new commercial adventures, of mergers of all kinds, of the establishment of branches in all lines of business; when he finds joint stock companies of all kinds forming; when he finds new methods of financing, new issues of stock, splitting up of stocks to attract the small savings, new promotions; when idlers suddenly become men of business and dash into the game of commerce as they would into the hazards of a faro table; when he beholds the streets crowded with new automobiles; and deals made on the stock market in excess of normal conditions; tradesmen flush with sudden success and vieing with each other in expense; in a word, when he hears of the whole community enjoying the term of 'unexampled prosperity', let him look upon the whole as a 'weather breeder' and prepare for the impending storm. It is then that the promissory capital begins to vanish into smoke, a panic succeeds, and the whole superstructure, built upon credit and reared by speculation, crumbles into the ground, leaving scarce a wreck behind—'it is such stuff as dreams are made of.'"

Abraham Lincoln, in one of his debates with Douglas, said: "If we could first know where we are and whither we are tending we could better judge what to do and how to do it." Fitting Lincoln's language to the present situation, or if Lincoln was alive today he would say: "If we could first know how we got here we could better judge what to do and how to do it." A reminder of a few elementary principles of economics might be profitable even though they are mere repetitions of what has been said but perhaps in somewhat different language.

There are only three things absolutely essential to man's existence, namely, food, clothing and shelter. Primitive people are satisfied with these three essentials and those of us who have passed the meridian of life can remember a condition of society when the realization of a reasonable supply of food, clothing and shelter satisfied the ambitions of the great majority of the people.

It was to the economic interests of the master to furnish his slave with a reasonable amount of food, clothing and shelter in order to fully realize upon the products of his labor. Instead of machinery enslaving labor it should furnish labor more than involuntary servitude can possibly supply. With agriculture producing an abundance of food and clothing, or products from which food and clothing are manufactured, with our mines and forests producing an abundance of raw materials for the manufacture of labor saving machines and the building of safe and commodious places of shelter, there should be no economic want or distress. The problem of the utilization of the surplus labor caused by the application of modern methods of production becomes acute in times of panic and depression. How to employ this surplus labor should be the subject of thoughtful inquiry of every citizen. If this labor cannot be used in the production of food, clothing and shelter then it must be employed to satisfy further desires. The distribution of the products of this surplus labor must be in the form of higher culture, better education, more pleasure, recreation and comfort. These five objectives may well be termed the five children of modern civilization.

Granting the advisability or even the necessity for the adequate support of the five additional requirements of this age, we must not lose sight of the necessity for an additional requirement, which may be termed a foster father. In order to furnish adequate employment of labor whose energies are required to meet the new needs of modern times it is necessary that we accumulate from time to time sufficient savings or capital in order to promote the industries and effort necesary to furnish better educational facilities, to create new sources and places of pleasure, and to supply those things which add to our culture, recreation and comfort.

The furnishing of better and more extensive educational facilities and the creation of new sources and places of pleasure are matters which come properly within governmental functions. These demands upon the government necessarily increase enforced contributions from society as a whole. There seems to be very little disposition on the part of anyone to unreasonably limit public expenditures to further education or to build highways, public parks, pleasure grounds, and other means of satisfying the demands for pleasure. The cost of supplying those things which add to our culture, recreation and comfort should be left to private initiative and private control. Every civilization in the past has tried to meet the demands of progress. The highest civilization in the past of which we have any adequate knowledge found expression in what is today termed the Greek civilization. The great humanistic philosophers and patrons of art and culture of that civilization not only defended but advocated involuntary servitude or slavery as a necessary system to promote education and higher development of culture and recreation and the procurement of more comfort and pleasure for at least those who possessed the will power and energy to succeed. Involuntary servitude is slavery, no matter in what form it may exist. Russia today is merely following a political and economic philsophy of the Greek civilization but has broadened the scope of servitude by imposing a system of involuntary servitude on all of its people.

Those who advocate the Russian system of communism as a governmental policy should be frank enough to admit that it is destructive of personal liberty and imposes upon each individual an involuntary servitude. No one will deny any citizen the right to plead for a peaceful evolution in government.

What has been said is to impress upon your minds the necesity for increased contributions in the way of taxes. To these increased demands must be added the usual obligations of the country to pay the cost incurred by past wars; to pay the necessary expense of maintaining law and order; and also to pay the cost of such reasonable preparedness as may be deemed necessary to prevent

foreign aggressions in the future. The total amount which is now being paid by the people of the United States to meet all these demands is beyond comprehension as no accurate statistics are available. We do know, approximately, the actual amount of money which is expended annually by the national and state governments, and by all of the other lesser taxing units, but by reason of indirect taxation which the writer believes has outworn its usefulness to a large extent, the actual cost of the various functions of government in this country cannot even be estimated. President Hoover less than a month ago made the statement that the total value of movable goods produced annually in this country prior to the beginning of the present depression was fifty billion dollars. With all the information available through the aid of expert statisticians employed by the United States Government, the figures given by President Hoover should be somewhere near correct. The appropriations made by Cogress before it recently adjourned for carrying on the functions of the United States Government were approximately four billion one hundred million dollars. The amount of money appropriated and expended by the various state governments and the lesser taxing units has been computed to be somewhat slightly in excess of nine billion dollars, making a total amount of taxes which must be raised somewhat in excess of thirteen billion dollars annually, or, in other words, a tax in excess of 27½ per cent of the total value of the annual productive wealth of the country. This enormous sum of money paid for governmental functions must either be met with the cash or the government, through bond issues, must use the savings and accumulated wealth which are so necessary for industrial development. The individual taxpayer must meet his share of this obligation by earnings, by depleting his reserves, or by mortgaging or pledging his investments or assets.

Payment of taxes out of cash accumulated through savings or earnings is undoubtedly painful and becomes somewhat extremely distressing when it is realized that governmental functions are responsible for the expenditure of 27½ per cent of the total primary earnings of labor and effort on the part of our citizens. Here is where the anaesthetic comes into our discussion. The medical profession use anaesthetics for the purpose of relieving pain. It is only administered by experts. There are few fatal or harmful results from their use. The amount administered depends upon whether or not the patient is in need of complete immunation from pain or merely the alleviation of a local source of distress. Our Federal Government has various sources of revenue, and I think it was Alexander Hamilton who once said that the people would pay any kind of tax indirectly without a murmur and argued in favor of customs taxes which could be collected with little, if any, dis-satisfaction. This indirect method of raising revenue was later extended to the imposition of excise taxes which are paid indirectly by the consumer. The Eighteenth amendment did not curb appetites but did shift, to some extent at least, a craving for liquor in favor of tobacco which is now a fruitful source of revenue.

The late World War made new sources of revenue imperative. We had an income tax prior to 1914, yet the amount of money raised by the Federal Government from this tax was incomparable to the amount which is now raised by this method. The Congress have, through liberal exemptions from the income tax, so arranged our tax system that few people contribute directly to the support of the United States government. Heavy as the personal income tax may be upon those enjoying incomes within the higher brackets there is no widespread complaint, due to the fact that only a few persons are affected by the surtaxes and, of necessity, the lack of sympathy on the part of those earning or possessing a smaller annual income in the way of profit on wages. Outside of the personal income tax Congress and each administration have provided for

the raising of the other necessary revenues for the government through a painless system. To better illustrate this painless method of collecting the necessary governmental revenues I have purposely labeled or named these sources of revenue as the proceeds derived from anaesthetic taxes. The cost of collecting this tax through a legal administration of anaesthetics is, in my opinion, the proximate cause of our present depression.

Prior to the present condition our Federal government annually collected from the corporation profit taxes and the corporation capital gain tax some thing in excess of one billion dollars. Approximate amounts only are given in this discussion. A few illustrations of the tremendous cost to the producer and the consumer in order to produce a sufficient revenue by indirect taxation methods are given for your enlightenment. We import considerable silk from Japan. A Spokane wholesaler purchases from the importer in Japan one thousand dollars worth of silk, payable when such silk is laid down on the dock in Seattle. There is a tariff, we will say, of twenty-five per cent on its import value before it can be removed from the dock. The wholesale merchant in Spokane borrows, not the original cost of the silk, but the Two Hundred Fifty Dollar tariff duty and immediately takes out insurance in an amount sufficient to cover the original cost of the goods, plus interest, plus the insurance, and plus the freight or express charges from the dock to the Spokane warehouse. All this is added to the cost of the goods and to this is added a percentage of profit and the necessary overhead charges for carrying the goods until they can reach the retailer who, in turn, sells to the consumer. Upon the arrival of the goods in Moscow the retailer figures his profit, not upon the original one thousand dollars cost at the Seattle dock, but with all the other charges added. If the consumers could pay to the United States government the amount of the revenue actually received at the time of the purchase the amount of saving would be no inconsiderable amount. Bear in mind this discussion has nothing to do with the political or economic aspects of a protective tariff. It is not an argument either for or against such a tariff for the reason that this form of protection does not have for its aim the raising of revenue but rather the exclusion of foreign products. This tax, even though it possesses the anaesthetic qualities of deadening the sensibilities of the purchaser in the amount of his contribution to the United States government, is not as vicious as other such enforced contributions.

Take the excise tax on tobacco as another example and use a cigarette package to illustrate my meaning. This morning I purchased from a local tobacco dealer a package of cigarettes costing twenty cents upon which I find a government stamp of two cents which was placed there, not by the retailer, but by the manufacturer before the package was placed upon the market. This two cents had to be paid by the manufacturer to the United States government. Upon examination I noticed the stamp was purchased in March of this year or, in other words, someone along the line has had invested in this package two cents for a period of four months before it is repaid, adding to the cost, of course, the necessary interest carrying charges and additional insurance. This is another anaesthetic tax which is probably not extremely harmful.

The one form of Federal tax, however, which costs the people of the United States from fifty to five hundred per cent more than the government derives, is the tax of twelve per cent upon the profits of corporations and the capital gain tax of corporations. No proof should be required in support of the assertion that this tax is merely added to the cost of doing business and, of necessity, it must be added in order for the corporation to pay its stockholders a reasonable return on their investments. The original income tax povided for a tax on profits of corporations, but on account of the tremendous increase of the expenses of the government due to the costs of the war and the tremendous increase of governmental expenses since the war the present tax becomes an important factor in the commercial and industrial world. Representatives of corporations came before Congress and asked for the repeal of this tax or, if it could not be repealed, then that the amount of the tax be reduced to the pre-war level. I am not attempting to repeat the arguments brought before Congress and the manner in which these arguments were met by our inexpert administrants of anaesthetics. Government statisticians and members of Congress informed the corporations that this tax was necessary. The corporations were advised to cut cost by mass production and to throw away or discard good machinery, equipment and buildings which might be found to be inadequate. It was argued that money for replacement of modern machinery and equipment was available and that corporation bonds and stocks could be sold to the public in order to meet the requirements of capital for expansion. The Federal Reserve banking system encouraged this idea by providing for liberal loans and discounts. As a result of all these factors and many others, the detailing of which time forbids, we entered upon an era of mass production before the consuming public was ready and every scheme and device for the forcing upon the market of goods was resorted to in order to meet the new conditions caused by this tax. Long time credits, installment plan buying, and the mortgaging of homes and farms, in order to create a market for the products, was urged and, in fact, insisted upon. Schools were even opened and curriculum introduced into high schools and universities for the education of sales agents. Not only was the country greatly oversold with material goods but, in order to meet the demand for expansion of production, the country was flooded with another species of sales agents to get the cash by sale of bonds, debentures, stocks and other forms of what purported to be interest or dividend bearing paper. Promoters of apartment houses, hotels, office buildings and other structures oversold the market and not only overbuilt but actually defrauded hundreds of thousands of bona fide investors of savings and accumulations.

The consumer should have been benefited if there was any economy in mass production or in the use of modern machinery and equipment. Instead of consumers' prices being lowered on products coming from the hands of large corporations there was an actual increase of prices on most everything except to the original producers of food, clothing and shelter. In spite of the depressed conditions existing in agriculture and in forest products ever since the panic of 1920, there was a continual increase, at least in paper profits, of corporation earnings even after the government had collected the tax. This increase of profits was used as a pretext by brokers in Wall Street and the trained professional sellers throughout the country in urging the public to buy stocks irrespective of the safety of the investment. Conservative managers of corporate interests seem to have lost all sense of proportion, and business judgment on economic developments failed them. They wanted in on the sales and promotions game, and they got in. Mergers were effected which were not necessary for the economic distribution of products. Corporations were re-organized through the issuance of various forms of stock and by the splitting up of stocks. All of these new forms of financing were forced upon the market and a beautiful mirage of anticipated profits created in a desert caused by an excessive and unscientific taxation system.

But few may agree with this analysis of the cause of the present depression, but at least to my mind it is as logical an explanation as any one or more explanations which have been advanced by others. It has been said that the causes of the depression are world-wide but the world-wide depression was not in partciular evidence until the results of the error of the economic

system of the United States govenment brought about the crash in Wall Street. Never in the history of the world has there been an economic disturbance in the United States which was so seriously felt throughout the world as at present. We had half, or nearly half, of the world's gold supply. We had become a creditor nation. In addition to becoming a creditor nation, we became an exporting nation of increasing importance. European countries and, to a certain extent, the South American countries were depending on the United States for further credits and loans with which to improve their own economic conditions. Naturally, any crash in the United States would be seriously reflected in every other civilized country. Others have assigned the World War and our participating therein as the proximate cause of our depression. No question but what the war has been a contributing factor but we felt the first effects of war credit expansion in 1920 and its cost should have been liquidated prior to 1930.

Taking the cost of a combined harvester to the farmer as another illustration of the ultimate or consumer's cost of this form of indirect taxation, we will make an arbitrary estimate of two hundred dollars which the government received from the consumer's price of three thousand dollars for the harvester. Something like fifteen to twenty corporations have been interested in the manufacture of materials and the manufacture and assembling of the different parts of the harvester. Add to this a half dozen corporations transporting the materials and machinery you have every corporation adding to as cost of doing business the twelve per cent government tax on its profits, interest on additional investments, additional insurance, and the necessary overhead in order to pass on the tax. What this cost might add up to as a whole is impossible to even estimate or calculate from any available statistics. The arbitrary estimate of a two hundred dollar tax may easily be imagined to have increased anywhere from one hundred to five hundred per cent to the ultimate consumer.

Time forbids a discussion of the previous periods of depression in this country and like periods in other countries. Undoubtdely the French depression and panic in the reign of the Regency of the Duke of Orleans in about 1720 was caused by the government adopting a falacious policy advocated by an Englishman whose economic ideas had been turned down by every civilized nation. The governing powers of England were responsible to a large extent for the inflation familiarly known as the "South Sea Bubble." Again, the governing powers of England were responsible for the ruination of the rubber industry by an attempt to control the price of that commodity and its distribution. Brazil has experienced a similar defeat in its coffee manipulations. The panics of 1837 and '57 in our own country were undoubtedly caused by failure of the United States government to regulate and maintain a safe monetary system. Some of us have a vivid recollection of the panic of '93 which, after all is said and done, merely reflected the error of the United States government in maintaining a semi-legal dual monetary system, and while the causes of this panic have been attributed to over-expansion of railroads, the repeal of the protective tariff, and the Cleveland administration, it must be admitted that our monetary system at least contributed to if it was not the proximate cause of that unfortunate period.

The discussion thus far has been on the indirect taxation system of the United States government. Does this same system apply to state, county and other tax levying bodies? While most of the revenue for state and local taxing district purposes is raised by a direct property tax, the tax burden, however, upon property and also upon the consumers to meet these requirements is unreasonably burdensome. One indirect tax in Idaho is the tax upon the gross revenue of the insurance companies doing business in the state.

This tax is small, amounting to two and three per cent of the annual gross revenue of each insurance company doing business within the State of Idaho. There is collected from this source a total of something like six hundred thousand dollars annually. Insurance companies add this tax to the cost of doing business and not only is the amount added to the premiums paid by the policy holder but also the cost of the production of business, or the percentage of commissions on the amount paid the state, is charged to the purchaser of insurance. A safe estimate on the cost of collecting this tax from the consumer would be at least one hundred twenty thousand dollars annually. This tax is so slight and the cost of collection is small when compared with the cost of collecting those indirect taxes already discussed. The amount collected from railroads and other public utilities, however, presents another question. In the first place, the tax collected is not equally distributed. The property owners adjacent to a railroad receive an undue advantage over the property which does not happen to be within the boundaries of a taxing distict through which the railroad passes. Taxing districts which have a large railroad valuation have a tendency to become extravagant and any such extravagance must be paid by the public as a whole. As an illustration, the writer was in a school district which maintained an accredited high school paying better salaries and demanding more experienced teachers than many other high schools in the state. The total taxable property within the district was about three hundred and fifty thousand dollars, two hundred seventy thousand dollars of which was railroad property. Similar school districts in the state with no railroad valuation must be content with the ordinary eighth grade school. We have made these public utilities tax collectors rather than taxpayers through our system of taxation.

In conclusion, it would seem to be advisable that entirely new methods should be devised for collecting sufficient revenue to operate governments. Wherever possible indirect taxation should be avoided. There will be a greater interest in elections and governmental affairs if taxes are paid in the first instance by the consumer. Our tax levying and spending officials will be more careful with expenditures. The cost of interchange of goods will be greatly lessened to the benefit of the consumer. The transaction of business, in the way of interchange of commodities, will be facilitated on account of eliminating the necessity of adding the tax burden to the cost of business. It is a problem worthy of consideration. I thank you.

THE PRESIDENT: Proceeding to the next number or address on the program we have with us Honorable Charles E. Winstead, District Judge from Boise, who will address the meeting on the Idaho income tax and new procedural legislation.

JUDGE WINSTEAD:

THE IDAHO INCOME TAX LAW

Gentlemcn of the Idaho Bar:

One of the major governmental problems before the American people during these times of business depression is the matter of taxation. When a period of inflation is followed by a period of deflation and the consequential decline in profits, one of the first activities on the part of the intelligent business man is consideration of and reduction where possible in his overhead expenses and fixed charges. This may result in increased economies in production, reduction in overhead costs of management, etc. So likewise during such periods the attention of the intelligent citizen is turned towards reduction in governmental expenses and also to the reduction of the tax burden. Governmental costs, however, are not capable of the quick changes and severe pruning of private business. Economies in government can be in-

troduced, it is true, but the expense of good roads, improvement districts, and other public improvements because of their public interest are not capable of immediate relief. The relief in this field can best be secured by the adoption of a more equitable system of taxation and the wider distribution of the tax burden among the citizens of the community.

The State of Idaho, with an area equal almost to Ohio, Indiana, and Illinois combined, with a population much less than any one of a number of cities in the states mentioned, scattered over this area, and with the resulting transportation and other problems, is different from states with small areas and more populous communities. Governmental subdivisions must be maintained good roads are absolutely necessary for access to interior communities and for the transportation of supplies required as well as for the distribution of the products obtained from the mines, forests and farms. School expenses are necessarily large because of the scattered population. We have these privileges and they must be paid for. The expenses of government under such conditions are difficult to lower.

The problem, then, before the citizens of Idaho is not so much a reduction of the general tax burden, hut rather a distribution of this tax burden so that every citizen will pay his just portion. A more equitable distribution of the tax burden will reduce the burden on the average individual. For years real estate and tangible property have paid more than their fair share of the expenses of government.

It is conceded that the taxing machinery of this state and its subdivisions is antiquated, expensive, and inequitable. The time of the state board of equalization has been wasted in attempting to equalize assessments. County assessors are human, and being elective in the several counties, do not consider themselves bound by what is done outside of their respective jurisdictions. In the past much money has been wasted in the vain effort to determine why the assessor of Boundary county did not assess cows on the same basis as the assessor of Bannock county. An efficient taxing system will eliminate the necessity of equalization and provide for the expenses of state government from some other source, leaving to the respective counties the assessment of property for local purposes.

At the opening of the last session of the State legislature, the Governor recommended the adoption of an income tax for state purposes. It must be conceded that an income tax is the most equitable tax yet devised for it places the tax burden upon those able to pay.

It happened that I had something to do with the framing of the Idaho Income Tax Bill as it now appears upon the statutes. The first draft of the measure was based upon the adaptation of the 1928 Federal Income Tax law to State conditions, and was made by several men who had had years of experience in the administration of the Federal Act through their connection with the office of the Collector of Internal Revenue for Idaho. One of the most active in this work was former senator Dow Dunning.

It was deemed advisable to use the Federal Act as a basis for the proposed Idaho law for the reason that in the many years of its existence Congress, with the aid of capable experts, had made frequent alterations and amendments in the effort to simplify and make workable its many provisions. It has been repeatedly demonstrated that experience is a most important factor in the administration of such a law, and that the application of the theories of the law to actual practice required numerous changes to make it workable. Then, with the use of the Federal Act as a basis, it would be possible to have the benefit of the interpretation as to specific provisions not only by administrative officers and boards of the government, but also by the Federal Courts, including the United States Supreme Court. Then other

important factors in the selection of the Federal Act as a basis were the limited time at the disposal of the Legislature to evolve a workable act, the lack of funds to secure data and expert advice and the probability that this act would meet Idaho conditions more fairly than any State act. As a matter of history, the Federal Act in its inception was based on the Wisconsin Act, and the other state acts have been based upon the Federal Act.

It was our idea in espousing an adaptation of the Federal Act so far as applicable to Idaho, that the first and most important consideration was the adoption of the principle of the income tax. We desired to get the best law available in the time at our disposal. There was no pride of authorship and no attempt at originality. There was no desire and no disposal on the part of our committee to engraft upon the statutes of this state some new and untried theory of taxation. We do not claim in this a perfect law. An act of this character presents two problems, one as to the legality of the various provisions, and the other as to the accuracy of its details from an accountant's view point. The practical administration of the law will demonstrate its weaknesses, if any, and another Legislature will be available to determine what improvements are desirable.

At this point I desire to digress for a minute and make a few observations as to the work of the committee. While we were drafting the law, the third house was in full session, with all seats and chairs filled. The mining interests were fully represented, as were the lumber interests, the power interests, the railroads, the banks, and every other organized interest in the state. Each interest had present its tax experts, who cluttered up the sidelines and by their presence helped make the new Hotel Boise a profitable investment from the start.

Taxation, gentlemen, is a community problem. We have our State Chamber of Commerce and city Chambers of Commerce, all boosting for state, county, city, and village improvements. When it comes to donations for a community sales day or a Fourth of July celebration the boys are all together. But when a group of us sitting around a table were trying to figure out an equitable tax system where each citizen of the state, no matter where he lived or what his business was, would pay his just share of the tax burden, where were all of these tax experts? Did they, or either or any of them, volunteer assistance The answer is a resouding "No". Here was an opportunity for organized business to furnish data to refute the impression which prevails among the rank and file of the voters and taxpayers of the state, that organized business is not disposed to pay its share of the tax burden and that these tax experts are employed to advise their employers how to evade or to shift taxes. This lack of co-operation when co-operation was possible and desirable causes the average citizen to look with suspicion upon the professions of virtue of representatives of organized business so often heard at meetings of Chambers of Commerce and service clubs. And the individual taxpayer is not free from a similar hypocrisy. The farmer wants to tax the mines, the mines want to tax the small business man through a sales tax, the small business man wants to tax the banks, they all want to tax the chain stores; so in an endless circle ad infinitum. If, however, the various interests will forget the idea of evasion, personal privilege, or business advantage, and approach this problem from a community viewpoint and a spirit of fairness and insist that all interests get together and assume their proper proportion of this governmental charge, then the tax problem can be solved quickly, easily, and fairly without hardship to any interest and without the glaring inequalities of the present system. To gain this end we must have less conversation and more action. Let all the various interests in the State sit down together, lay the cards on the table, be fair, and treat

this problem from the viewpiont of the public good, and Idaho can get more beneficial advertising through an equitable tax system than all other forms.

Now returning to the Income Tax Law. In the time at my disposal it will be impossible to analyze the various legal and accounting provisions of the law or to discuss it in detail. I will discuss the general principle of an income tax law with particular reference to its general constitutionality. Of course because of the field it covers and the differences between Federal powers and State control there may be, and probably will be, specific provisions which may need alteration before they can be made entirely workable. So I will not attempt to criticize specific provisions either from a legal viewpoint or from the viewpoint of accounting.

An Income Tax principle is apparently workable, and not in conflict with the provisions of the constitution of Idaho. The taxation provisions of the State constitution appear in Article VII and are as follows:

"Sec. 2. REVENUE TO BE PROVIDED BY TAXATION. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax (both upon natural persons and upon corporations, other than municipal, doing business in this state); also a per capita tax; *Provided,* The legislature may exempt a limited amount of improvements upon land from taxation.

"Sec. 3. PROPERTY TO BE DEFINED AND CLASSIFIED. The word "property" as herein used shall be defined and classified by law.

"Sec. 5. TAXES TO BE UNIFORM: EXEMPTIONS. All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: *Provided,* That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the state: *Provided further,* That duplicate taxation of property for the same purpose during the same year, is hereby prohibited."

In appoaching this question from the viewpoint of constitutionality, we may well consider the reasoning of the Court in Achenbach vs. Kincaid, 25 Idaho 768, where in considering the question of the validity of the 1913 automobile license law which provided that motor vehicle licenses should be in lieu of taxes, the Court (Budge J.) said in part:

"It is very clear, from these statements and numerous others which might be quoted, that the constitutional convention intended that the legislature should have the sole right to determine what propery should be exempt from taxation.....

"As to the question of taxation: The legislature possessed plenary power, except as such power may be limited or restricted by the constitution. It is not necessary that the constitution shall contain a grant of power to the legislature to deal with the question of taxation. It is sufficient proof of its power if there be found in the constitution no prohibition against what the legislature has attempted to do.

"As stated by the supreme court of Oregon in the case of State vs. Cochran, 55 Or. 157, 104 Pac. 419, 105 Pac. 884; 'A state constitution unlike a federal constitution is one of limitation and not a grant of powers, and any act adopted by the legislature not prohibited by the state constitution is valid, and such inhibition must expressly or impliedly be made to appear beyond a reasonable doubt.' (Cases cited).

"In passing upon the constitutionality of a statute, every reasonable doubt as to its validity will be resolved in favor of sustaining the statute. (Cases cited).

"An act of the legislature will not be declared unconstitutional unless in plain violation of some provision of the constitution. (Cases cited).

"The court in construing a statute must adopt such construcion as will sustain the constitutionality of the statute, where that can be done without doing violence to the language thereof. The courts must as far as possible uphold and give effect to all statutes enacted by the legislature."

In a later case, In re Kessler, 26 Idaho 764, the Supreme Court of Idaho, (Morgan, J.) quotes with approval Judge Cooley in Vol. 1 of his work on Taxation, third edition, page 9, as follows:

"Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes; and not only is the power unlimited in its reach as to subjects, but in its very nature it acknowledges no limits, and may be carried even to the extent of exhaustion and destruction, thus becoming in its exercise a power to destroy. If the power be threatened with abuse, security must be found in the responsibility of the legislature that imposes the tax to the constituency which must pay it. The judiciary can afford no redress against oppressive taxation, so long as the legislature, in imposing it, shall keep within the limits of legislative authority, and violate no express provision of the constitution. The necessity for imposing it addresses itself to the legislative discretion, and it is or may be an urgent necessity which will admit of no property or other conflicting right in the citizen while it remains unsatisfied."

The Court quotes from a Utah case (Salt Lake City v. Christensen Co., 34 Utah 38, 95 Pac. 523, 17 L.R.A.N.S. 898) under a constitutional provision stating that nothing in the constitution should be so construed as to prevent the legislature

"from providing a stamp tax, or a tax on income, occupation, franchise, or mortgage,"

and then adds:

"this paragraph of the Utah constitution merely points out the proper construction of that document, which would prevail in the absence of the paragraph."

The Court then refers to Section 5 of Article VII of the Idaho constitution and to the contention that under that section the taxes must be uniform upon the same class of subjects and based upon a just valuation, and adds:

"The provision of that section of our constitution, requiring all taxes to be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and to be levied and collected under general laws, etc....., refers solely to taxation according to the commonly accepted meaning of that term, by assessment, levy and collection, and does not apply to license or registration fees. It is to be borne in mind that the law under consideration does not impose a tax upon property, but imposes a registration fee, or license, upon the privilege of

operating motor vehicles upon the public highways.

"It has been frequently held by this court that liquor licenses, pool and billiard table licenses, taxes by way of licenses imposed upon persons and corporations engaged in loaning money within the state, and upon railway and express companies doing business within the state, are not taxes contemplated by Secs. 2 and 5 of Art. 7 of the constitution but constitute a separate and distinct way of raising revenue, independent of taxation in the commonly accepted meaning of that term. (Citing cases).

In a later case, State vs. Nelson, 36 Idaho 713, the Idaho Supreme Court (W. A. Lee, J.) says, in part:

"It has been frequently held, and correctly, we think, that the term 'taxes' above referred to has reference only to property taxation, where the tax is assessed and collected upon property values in the usual and ordinary manner, and was not intended to include either the license or per capita taxes referred to in Section 2, which the legislature alone is therein authorized to impose upon the inhabitants of the State."

Also:

"It will be observed that the restrictions placed upon the legislature by Article VII of the constitution requires that all revenue raised, in the usual sense in which that term is used, shall be in proportion to the value of the property taxes and shall be uniform upon the same class of subjects; that it shall be levied and collected under general laws, which shall prescribe such regulations as will secure a just valuation for taxation upon all property, real and personal, except as to the license and per capita tax, which the legislature may impose under the provisions of the last clause of said Section 2 of Article VII of the organic law. There are apparently no limitations or restrictions upon the power of the legislature with respect to raising revenue for all purposes for which the legislature is required to provide such revenue as may be needful. ..... We have already observed that the term 'taxes' as used in this section has no reference to revenue raised by license or per capita taxes but refers only to the method of taxation prescribed by the first part of sections 2 and 5 of this article; that is, a tax levied by valuation so that all persons pay in proportion to the value of the property owned by them."

The main controversy in connection with the validity of our Income Tax Law revolves around the proper interpretation of Article VII of our State constitution and particularly Sections 2, 3, and 5 of this Article, with a view of determining whether or not such tax is prohibited by this Article. If this Article does not prohibit a tax on income then it must be conceded that the adoption of the law was within the powers of the legislature and no change is necessary in our organic law to make the law effective. The special session of the legislature which passed the income tax law also, under House Joint Resolution No. 3, proposed an amendment in the form of a new section to be added to Article VII and to be designated as Section 17, which will expressly authorize an income tax. This amendment will come before the voters of the State at the next general election. It is interesting to note that by its terms this proposed amendment treats the income tax as an excise tax.

A number of states, including Kentucky, Massachusetts, Oklahoma, South Carolina, and Wisconsin, have adopted express constitutional provisions for an income tax.

Among the other states which have considered tax measures which include income tax provisions, the controversy hinges upon the interpretation of the meaning of the word "income" and the determination of whether or not "income" is property, and also whether an income tax is a property tax or an excise tax.

Alabama takes the view that income is property within the meaning of the Alabama constitution, and therefore an income tax (Revenue Act 1919) is unconstitutional. On the other hand, Mississippi takes the view that an income tax is an excise tax and not a tax on property within the meaning of Section 112 of the Mississippi constitution which requires that property shall be taxed in proportion to its value and shall be assessed for taxes under general laws and by uniform rules according to its true value. The Alabama decision is Eliasberg Bros. Merc. Co. v. Grimes, 86 So. 56; 11 A.L.R. 300. The Mississippi decision is Hattiesburg Grocery Co. v. Robertson, 126 Miss. 34; 88 So. 4; 25 A.L.R. 784.

In the Mississippi case the Court quotes with approval from 26 R.C.L., p. 34, as follows:

"Taxes fall naturally into three classes, namely, capitation or poll taxes, taxes on property, and excises. Capitation or poll taxes are taxes of a fixed amount upon all the persons, or upon all the persons of a certain class, resident within a specified territory, without regard to their property or the occupations in which they are engaged. Taxes on property are taxes assessed on all property, or on all the property of a certain class, located within a certain territory on a specified date in propotion to its value, or in accordance with some other reasonable method of apportionment, the obligation to pay which is absolute and unavoidable, and is not based upon any voluntary action of the person assessed. A property tax is ordinarily measured by the amount of property owned by the taxpayer on a given day, and not on the total amount owned by him during the year, and it is ordinarily assessed at stated periods determined in advance, and collected at appointed times. ..... Excises, in their original sense, were something cut off from the price paid on a sale of goods, as a contribution to the support of government. The word has, however, come to have a broader meaning, and includes every form of taxation which is not a burden laid directly upon persons or property; in other words, excise includes every form of charge imposed by public authority for the purpose of raising revenue, upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation."

Farther on, the Court says:

"But a tax on income, to be paid by the recipient thereof without reference to whether he has invested, spent or wasted it, as is the tax here in question, is not on the specific property from which the income was received, irrespective of the person of the recipient, neither is it a tax on the person irrespective of property; for no definition of income can be framed under which it can be dissociated from the activities of the person who produced or received it, so that a tax on income necessarily includes among its elements the production or receipt of property. (State ex rel. Sallie F. Moone Co. v. Wisconsin Tax Commission, 166 Wis. 287, 163 N.W. 639, 165 N. W. 470), and to that extent is a tax on the performance of an act resulting in gain to the person performing it, and the rule is, and was when Sec. 112 of the State constitution was adopted, that when the tax is imposed upon the performance of an act, it will not be classified as a tax on property, although it is proportioned in amounts to the value of the property used in connection with or produced by the act which is taxed.

"Income is necessarily the product of the joint efforts of the state and of the recipient of the income, the State furnishing the protection necessary to enable the recipient to produce, receive and enjoy it, and a tax

thereon, in the last analysis, is simply a portion cut from the income and appropriated by the state as its share thereof, and, while a tax on income includes some of the elements both of a tax on property and of a tax on persons, it cannot be classified as strictly a tax on either, for it is generically and necessarily an excise, and should be enforced as such unless and until so to do would accomplish the result which Sec. 112 of the constitution was adopted to prevent, which is to prevent discrimination in the taxation of property, so that all property shall bear its due proportion of the burdens of government. ..... This section contains no language even remotely indicating that its purpose is to withdraw from the legislature the power to tax any species of property or any of the activities of persons who enjoy the protection of the state's laws, but such would be the effect if a tax on income derived from property should be held to be necessarily a tax on the property from which the income was derived; for it would then necessarily follow that a tax on specific property derived as gain from other property on the value of which income must be computed, would also be a tax on the property from which it was derived. So that the property derived as gain from other property would be exempt from taxation until the form thereof is so changed that it can no longer be classified as property derived as gain from other property. Such a result is manifestly not within the purpose of the section.

"The error in the cases cited by counsel for the appellant" (including the Alabama case above referred to) "holding that an income tax must be classified as a tax on property, results from dissociating gains, derived from capital, or from labor, or from both, wholly from the activities relative thereto of the persons taxed, and looking alone to the specific property which constitutes the gain so derived."

In 1929 the legislature of Georgia passed an income tax law which went so far as to provide that returns should be made on duplicate forms to that made by the taxpayer under the Federal Act and the tax was based on the amount paid the government under the Federal Act. An action was brought to enjoin the enforcement of the state act. The case is entitled Featherstone v. Norman, 153 S. E. 58, 70 A. L. R. 449. A number of questions were raised including the question as to whether or not this act violated Article 7, Sec. 2, par. 1, of the Georgia state constitution, which provides that

"all taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax."

The complaining taxpayer attacks the constitutionality of this statute, upon the grounds, among others, that (1) it is a tax on property and is not laid ad valorem, and (2) it is not uniform on the same class of subjects.

In the syllabus to this case the Supreme Court of Georgia held:

1. A tax on income is not a tax on property in the sense in which that word is used in the constitution.

(a) Property in common parlance and within the meaning of this provision of the constitution is used in contradistinction to incomes, and means the corpus of an estate or investment from which the income flows. Hence income is not property within the meaning of this provision, and need not be levied ad valorem.

(b) The Income Tax Act ..... does not violate the uniformity clause of this provision of the constitution by reason of the imposition of a graduated income tax, and by reason of the exemptions from the tax by it provided.

(c) The classification of incomes for taxation, the graduated scale of rates, and the exemptions from this tax by said act, are reasonable, and not arbitrary, and were matters to be determined by the legislature under its power to classify subjects for taxation under said provision of the constitution.

2. The power of the legislature to impose an income tax is an inherent power of that body, and the constitutional grant thereof is not necessary to enable the legislature to exercise it.

This opinon to my mind is one of the best reasoned decisions on a constitution which is very similar to the Idaho constitution as far as taxation matters are concerned. In the body of the opinion the Court quotes with approval the reasoning of the Supreme Court of Missouri in Ludlow-Saylor Wire Co. vs. Woilbrinck, 275 Mo. 339; 205 S. W. 196, 198, as follows:

". . . . In directing, as the Constitution does, that taxes on property should be levied according to value, reference was intended to be made to other species of property than that which a person has in his income; that the Constitution did not abridge the power of the Legislature to provide revenue by a taxation of income; that its command was directed to other and distinct classes of property, which on account of their peculiar nature could be measured in value, become the object of taxation independent of the owner, and were susceptible, by proper procedure, to lien or seizure for the enforcement of the tax. The court held that it was property having such a nature and characteristics, and not the mere usufruct of such property, nor the earnings of physical or mental labor, which was referred to in the clause under review, and intended thereby to be subjected to taxation according to its value.

The Court then approved the ruling in Arkansas, where in Stanley vs. Gates, 179 Ark. 886, 19 S. W. (2nd) 1000, the Supreme Court held that an "income tax imposed by Income Tax Act 1929 . . . . is not a property tax, and the act is therefore not violative of equality and uniformity clause of Constitution, Art. 16, Sec. 5."

The Court then approved the ruling in Purnell vs. Page, 133 N. C. 125, 45 S. E. 534, where the Court said:

"But the tax levied on income is not a property tax, but is a percentage laid on the amount which a man receives, irrespective of whether he spends it, wastes it, or invests it."

The Supreme Court of Wisconsin has held that an income tax is not levied upon, and does not attach to, property as such, but is on the recipient of the income, the tax being upon the right or ability to produce, create, receive, and enjoy, and not upon specific property. State vs. Wisconsin Tax Commission, 161 Wis. 111, 152 N. W. 848, and cases cited.

The Court says, further on:

"If an occupation tax can be graded according to the number of drays used in business, or according to population, or according to gross sales, or according to the number of chairs in a baber shop, we can see no valid eason why an income tax cannot be graded according to the amount of income received. Ordinarily, the only uniformity required of a state income tax is uniformity within the class. An income tax statute is not unconstitutional because it exempts incomes under a certain amount, or because it increases the rate as the

income increases. To be uniform under this provision, taxation need not be universal. Certain objects may be made its subjects, and others may be exempted from its operation. Certain occupations may be taxed, and others not; but as between the subjects of taxation in the same class there must be equality. All that the law requires is that classification of persons who are to be exempt shall not be arbitrary and unreasonable."

"Having reached the conclusion that a tax on income is not a tax on property in the sense of that term as used in our Constitution, and that for this reason a tax on income is not required to be laid ad valorem, and having reached the further conclusion that an income tax can be graded by the Legislature in exercising its power of classification of incomes for taxation, and that the uniformity required is a uniform rate upon all incomes within the class created, the situation is the same as if the power to classify and grade income taxes were constitutionally granted. It then necessarily follows that it is for the Legislature to determine what amount of income shall be exempt, and to fix the method and ratio of gradation."

The Court then turns its attention to the Alabama decision in Eliasberg Merc. Co. vs. Grimes, supra, and with regard to that decision has this to say:

"Undoubtedly income is in a very vital sense a property right; but when we speak of a man's income, we do not refer to the same as his property. In common parlance and in the law, as we have seen, income is used in contradistinction to property. The proposition that taxation of income is taxation on property from which it comes involves the assertion that the two taxes are imposed upon the same subject. The Supreme Court of Alabama in its decision recognizes that income in existence at the time required by the Alabama statute for the return of property is subject to a separate assessment for taxation. So both the property from which the income comes and the income itself are subject to separate assessments for taxation. The two are separate and distinct things. The taxation of the one is not the taxation of the other. The assertion that the tax on one is a tax on the other is a fanciful conceit to which we cannot agree."

Returning to the Idaho constitution, Section 3 of Article VII seems to be not only unique in character, but in itself a grant to the legislature of full power in the matter of an income tax law in its provision that

"The word 'property' as herein used shall be defined and classified by law."

The Idaho Income Tax law takes cognizance of this constitutional provision in Sec. 78 of the Act, which reads as follows:

Sec. 78. *Not a property tax.* For the purpose of raising revenue, the net income required to be shown on returns under this Act and taken as a basis for determining the tax thereunder shall not be classified or held or construed to be property. And all income, except what has been expressly exempted under the provisions of this Act and income not permitted to be taxed under the Constitution of this State or the Constitution or laws of the United States, shall be included and considered in determining the net income of taxpayers within the provisions of this Act."

As stated before, an act of this character presents problems in accounting and legal questions which will only come to light through the practical application of the Act. In addition to the act in question, two general schemes for an income tax system were considered. The so-called Assessors' Plan was merely a very rough skeleton with impossible administrative features, for it contemplated administration through the present county assessors with tax rolls made up and collections handled through the county treasurers with no centralized power in control. This scheme was never sponsored in the legislature and never came to the point of being drafted or presented in the form of a bill.

The other scheme was the so-called "Dodge plan". This presented an original and untried scheme. When you have the opportunity, if you will examine House Bill 260 of the last legislature from a legal viewpoint you will find there provisions which would give our Judicial Council full time work to harmonize and justify under any existing or contemplated constitutional or procedural provisions.

The Governor and the legislature are entitled to much credit for their untiring work in the adoption of this law.

In closing, I desire to refer briefly to the proposed amendment to the State constitution which will be submitted to the voters at the next general election. This amendment as proposed, reads as follows:

"Section 17. Neither the limitations imposed on the taxation of property, nor any other provision of this Constitution, shall be construed as limiting, except as hereinafter provided, the power of the Legislature to impose taxes on incomes, or according to or measured by incomes from all sources, and on sales, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided; and such taxes may be imposed for the purposes of providing revenue for the State, and for counties, cities, towns or other municipal corporations therein. No excise or privilege tax measured by income shall exceed six percent of the net income, and no tax on income shall exceed six percent of the net income, and the aggregate of all taxes on and measured by income shall not exceed ten per cent of the net income."

This is the only constitutional amendment in any state, either adopted or proposed, except possibly Utah, which attempts to tie the hands of the State legislature by limiting the rate of taxation. There is no valid reason for such limitation, and in the event that the present law is held to be constitutional the amendment should be defeated.

THE PRESIDENT: We will entertain the communication from the Prosecuting Attorney's Association at this time.

MR. MEEK: We have nothing to offer.

THE PRESIDENT: Then we will pass to the report of the Resolutions Committee.

MR. MEEK: Do you desire these resolutions all read at once or separately?

THE PRESIDENT: Read them all and then we can take them up separately.

I

WHEREAS, a strong and active Bar Association is of great benefit and importance to the individual lawyer, to the State, and to the general public, and

WHEREAS, in order that a State Association may be of maximum use and benefit, it is essential that the individual lawyer take a keen and active interest in its affairs, and that local associations in cities and counties be vigorously maintained; and

WHEREAS, it is the sense of this meeting that the individual lawyer of the state is not maintaining such keen and active interest and that in

most places local associations are not functioning, to the great detriment and disadvantage of the lawyer, the public and the State,

NOW, THEREFORE, BE IT RESOLVED that the officers of this association devote themselves during the ensuing year as a matter of state policy to the building up of local bar associations in every city and county in the State, and that a reasonable amount of money be appropriated for this purpose, and

BE IT FURTHER RESOLVED that the members of the bar of Idaho are urged to take an active, unselfish interest in the affairs of their local, state and national bar associations and exercise the powers and functions thereof, not only for the benefit of themselves, but for the benefit of their communities and the State.

II

BE IT RESOLVED

That the Idaho State Bar Association does hereby request the Commission to make investigation of the procedural matter relative to interrogatories of parties before trial and the settlement of issues by judges, and to bring in a form of proposed legislative enactment which will provide for such practice in Idaho for consideration by this Association at its next annual meeting.

III

BE IT RESOLVED

That the officers of this association shall appoint a special committee of three in each district of the state, who shall be charged with the duty of studying and analyzing all legislation to be submitted and proposed by the Judicial Counsel during the coming year, and who shall appear at the next district and state meetings prepared to explain and discuss said proposals and the possible results therefor.

IV

We heartily endorse the Law School of the University of Idaho and the Idaho Law Journal as published by this department, and we cannot urge too strongly upon the individual members of the Bar of the State of Idaho that they subscribe to this very instructive Journal. It is a work that should be continued but without the support of the lawyers of this state it cannot cover its full field of usefulness, and we further urge upon the lawyers of this state that when requested from time to time to contribute articles to this Journal that they give their time and ability to such contributions.

V

We believe that the most important work of the Bar Association is the revision of our judicial system and especially the manner of the election of judges. The suggestions made in the splendid address of Hon. Frank Martin are worthy of our most earnest consideration and we especially urge upon the Judicial Council the preparation of necessary constitutional amendments and legislation at as early a date as possible for the submission to the individual members of the Bar of a plan for putting these suggestions into effect, and that those matters be taken up in district meetings and made the major order of business at our next annual meeting.

VI

This association extends its thanks to Hon. C. Ben Ross, the Governor of Idaho, to the individual members of the Legislature and to the Judicial Committees of the House and Senate for the cooperation and assistance rendered in enacting into laws the greater portion of the legislative program adopted by this Association last year.

VII

BE IT RESOLVED that we extend our thanks and appreciation to the jurists and members of our Association who have presented the well considered and thought out papers at our meeting and we further suggest that these addresses be printed in the report of the official proceedings of this meeting.

VIII

We most heartily thank the officers of our Association, the members of the Judicial Council of Idaho, the members of the Survey Committee, the Legislative Committee, and all other special committees that have been appointed during the year for their earnest, conscientious and unselfish devotion to the work of this Association, and we most earnestly urge the continuation of the good work that these officers and various bodies have been doing.

IX

We want to thank the citizens of Moscow and the members of the Bar of Latah County for their hospitality and the wonderful entertainment afforded the members of the Idaho State Bar Association at its annual meeting, and we express our appreciation and trust that in the near future we will again be invited to return to Moscow for the meeting of this Association.

MR. MEEK: I, as Chairman of that Committee, move the adoption of these Resolutions.

MR. SHROPSHIRE: I second that motion.

Whereupon, the motion having been duly made and seconded, and unanimously carried the resolutions were adopted as presented.

THE PRESIDENT: Gentlemen of the Bar of Idaho, Mr. F. L. Stotler, an attorney from Colfax who is on the governing board of the Bar in the State of Washington, has extended a most cordial invitation to the members of the Idaho State Bar to attend the annual meeting of the Washington State Bar at Aberdeen, I believe, next week sometime.

At this time, Gentlemen of the Bar, it gives me pleasure to introduce to you the new president of the State Bar Commission and, therefore, president of the Idaho State Bar for next year, the Honorable Warren Truitt of Moscow.

JUDGE TRUITT: Gentlemen, I appreciate the honor that is given to me at this time very greatly but I want to assure you that I feel inadequate, in a way, to meet the burdens and the responsibilities and the work that is incumbent upon the president of this Association or this Commission. I know what that work is by having been on the commission for over two years now, and I know the work that has been placed upon your retiring president of the Commission, Mr. Owen. He has been a faithful worker and has discharged all those duties incumbent upon him in a remarkably good manner, and I feel that the best wishes and the thanks of the Bar of the state are due to him for the excellent service that he has rendered in this position. I can only say this in regard to my own service that I will do the very best I can to carry out the duties and perform the work that is incumbent upon me as one of the Commission and as President of the Commission. I thank you.

MR. OWEN: Mr. President, I move that we do now adjourn.

MR. GRIFFIN: I second the motion.

Whereupon, on motion duly made, and seconded, and put an adjournment was taken sine die.

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