IDAHO STATE BAR COMMISSION

By_____, Secretary

PROCEEDINGS

of the

IDAHO STATE BAR

Volume ~~VI, 1930~~
VII, 1931

Seventh ~~Sixth~~ Annual Meeting

~~Boise~~, Idaho, July ~~11-12, 1930.~~
Moscow 10-11, 1931

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 1928-31
WARREN TRUITT, Moscow, Northern Division 1929-32
WILLIAM HEALY, Boise, Western Division 1930-33
1931-34

Warren Truitt, Moscow — 1931-32

OFFICERS OF THE IDAHO STATE BAR

JOHN C. RICE, Caldwell, President 1923-25
ROBT. D. LEEPER, Lewiston, President 1925-26
FRANK MARTIN, Boise, President 1926-27
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
SAM S. GRIFFIN, Boise, Secretary 1923-

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Alfred Budge, Justice, Supreme Court, Boise, President
Frank Martin, Boise, Secretary
Miles S. Johnson, Judge, District Court, ~~Blackfoot~~ Lewiston
Ralph Adair, Judge, District Court, Blackfoot
Wm. F. McNaughton, Justice, Supreme Court, Coeur d'Alene
John C. Rice — ~~Dana E. Brinck, Judge, District Court, Boise~~ Caldwell
James R. Bothwell, Twin Falls
Jess Hawley, Boise — ~~James Harris, Weiser~~
A. L. Merrill, Pocatello
Eugene A. Cox, Lewiston

OFFICES OF THE COMMISSION

217 ← ~~86~~ Federal Building, Boise, Idaho

ANNOUNCEMENTS

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

MEETINGS OF THE BAR—The ~~Eastern~~ Northern and Western Divisions will hold Division meetings in 1931 at times and places to be fixed, respectively, by Commissioners Owen and Healy.

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

An election of a commissioner for the Eastern Division will be held in 1931.

1932 — Eastern — 1931 — 1932 — Northern

Proceedings of Idaho State Bar Meeting, Held at Boise, Idaho, July 11th and 12th, 1930

Friday, July 11th, 1930,
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 chamber of the House of Representatives, Capitol building, Boise, Idaho, by Hon. E. A. Owens, of Idaho Falls, vice-president.

VICE-PRESIDENT OWENS: Gentlemen of the Idaho Bar. The hour is here for the annual meeting of the bench and bar of this state. It is indeed unfortunate that the Honorable Jess B. Hawley, president of the Idaho Bar is in north Idaho, there engaged in the trial of a case, and will be unable to attend this meeting. Our secretary, Mr. Griffin has a telegram from Mr. Hawley which he will read to this meeting.

SECRETARY GRIFFIN: (Reading) "Grangeville, Idaho, July 10th, 1930, Sam S. Griffin, Secretary, Idaho State Bar, Boise, Idaho. It is with more regret than I can express that I find myself unable to greet the members of the bar and assist at the meeting Friday. I am defending a will contest case before a jury which unexpectedly is consuming a great deal more time than anyone anticipated, and it is absolutely impossible to secure an adjournment or for me to leave. Please tell the other commissioners and make my apologies and expressions of regret to Mr. Webb and Mr. Masterson and other speakers and members of the bar who will be in attendance. I hope the meeting will be an outstanding success and that the bar will get a new and increased vigor and inspiration from it.

JESS HAWLEY, President."

VICE-PRESIDENT: Gentlemen, we are indeed fortunate to have with us this morning a member of the local bar who is mayor of the capital city of Idaho. It is with great pleasure that I introduce to you at this time the Honorable James P. Pope. (Applause.)

MAYOR POPE: Mr. Chairman, and gentlemen of the Bar: It always seems to me, when I am to give a word of welcome to a group like this, that it is superfluous. All I need to say is you are welcome, and you know that already. However, to carry out my part of the program, I want to assure you that it is with unusual pleasure this morning that I say this word to you. It is not necessary either for me to say that you have the freedom of the city, because you will take it anyway—and I have said to the chief of police that everybody is presumed to know the law except the lawyers, and if he finds any slight infringement on the part of those who do not live in this city that he is to overlook it, so don't worry about the red lights, or anything of that kind while the convention is in session. I wondered

this morning if there was any word in addition to a word of welcome that I might bring, or any information that might justify my appearing here. Frequently I have heard the assertion that the volume of business is probably decreasing in this state, as in other states. That caused me to take a little time to check up the number of lawyers in the state, and in the country, in proportion to the population, and to compare it with the number of lawyers in the older countries, the well settled countries of Europe, with some rather surprising results. In the United States there is one lawyer to every 862 inhabitants, according to the 1922 census. In the District of Columbia there is one lawyer to every 181 inhabitants, that is the greatest number of lawyers in proportion to the population; in the state of Maryland there is one lawyer to every 1702 inhabitants, and that is the smallest percentage to the population. In Idaho we have one lawyer to approximately 700 people—that is a little bit less than the average. In comparing these figures with the older and more settled countries, such as England and Sweden, I found we have three to four times as many lawyers here as in England, and in Sweden there is one lawyer to every 16,450 inhabitants—only 370 lawyers in the entire country. That is the smallest percentage of lawyers to population of any country in Europe; but the observation has been made that in the older, well settled country there are fewer lawyers than in the newer country. The Pacific coast has the largest percentage of lawyers of any section of our country as a whole—more lawyers to the population. That indicates something to me, that the bar association might sometime consider, as to the future of the work of the legal profession. As we become more settled, as the problems here, of irrigation and other matters, become more settled, it is probable that the same thing will happen as has happened in other older, well settled countries.

I am submitting these figures to you just for what they are worth, to give you something in addition to the word which I extend to you.

Now those of you who are not entirely familiar with our section of the state here, we want to assure we have some interesting places which you may visit. Be sure, if you can, to take a trip to the summit up Sunset Drive, where you can reach an elevation of 7000 feet above sea-level in three-quarters of an hour. If you get too warm down here, you can find a cool spot up there. Whatever we have is yours. This is your capital city as much as ours. We want you to feel at home, we want you to enjoy yourselves, we want you to meet as many people as you can—our people are just like your own, in your community, they are home folks; and if there is anything I can do, as representative temporarily of our people here, in an official capacity, to make your convention more comfortable, more happy, please call on me. (Applause.)

VICE-PRESIDENT: Mayor Pope, we thank you for your words

of welcome and assure you that the attorneys from outside your fair city will try to conduct themselves with dignity and decorum while present here.

It will be necessary to pass the next number on the program, which was the president's annual address.

The next is the appointment of committees. The committee on resolutions, which as you see, further along in the program will report tomorrow afternoon—on that committee the chair will appoint John W. Graham, E. J. Frawley, O. W. Worthwine, Abe Goff, A. F. James.

The next order of business is the canvassing of the votes for commissioner of the Western division, and on that canvassing committee the chair will appoint W. C. Dunbar, Harry Benoit, and George Huebener.

Proceeding with the next order of business, we will have the report of the secretary, Sam S. Griffin.

Report of Secretary.

At the annual meeting of the bar held at Idaho Falls, August 9-10th, 1929, Warren Truitt, of Moscow, was appointed Commissioner from the Northern Division, in the place made vacant by the expiration of the term of C. H. Potts of Coeur d'Alene.

Thereafter the board organized with Jess Hawley, Boise, as president, E. A. Owen, Idaho Falls, Vice-president and Sam S. Griffin, secretary.

During the past year the board has held six meetings, one at Idaho Falls, one at Pocatello, one at Lewiston and three at Boise. The August 9th, 1929 meeting, after reorganizing the board, considered three complaint matters, seven applications for admission, and arranged for an examination. At the September meeting, two days and nights were consumed in considering four applications, six disciplinary matters, the bringing of proceedings against the Eastern Idaho Loan & Trust company and W. L. Shattuck, of Idaho Falls, for the unlawful practice of law, the appointment of the Judicial Council as authorized and directed by the Idaho Falls meeting of the Bar, and the review of a disciplinary proceeding, completed by the Disciplinary Committee.

At the November meeting three complaints were considered, further attention given the unlawful practice of law by others than attorneys, the examination papers of nine applicants were graded, and the board met with the Judicial Council at its organization meeting. The February, 1930 meeting passed upon one application for admission, reviewed and entered an order recommending disbarment in the proceedings against T. S. Risser, of Boise (upon which the Supreme Court subsequently entered judgment of disbarment,) considered four complaints and gave further attention to the unlawful

practice of law. In April the board considered the progress of the case against the Eastern Idaho Loan & Trust company, involving unlawful practice of law, considered six complaints, arranged for a bar examination, investigated eight applicants for admission, discussed and determined the interpretation of certain new rules for admission which had been promulgated by the board and approved by the Supreme Court; discussed advisability of establishing a law journal, and decided that in view of the expense involved in support of the judicial council and the normal activities of the bar, the bar was not financially able to contribute to such a project at the present time; arranged programs for the annual meetings of the Northern and Eastern divisions, and a tentative program for the Annual Meeting of the Idaho State bar, met with the Judicial Council for two days, and provided for an election of the successor of Jess Hawley, Commissioner of the Western Division.

The final meeting of the board was held June 13, 1930 following the Northern Division Bar meeting, which was attended by the Board members. Six sets of examination papers were graded, and recommendations for admission made to the Supreme Court. The final program for the annual meeting was determined and one disciplinary matter disposed of.

Aside from informal complaints and unofficial adjustments of differences between attorneys and clients, of which there are many, the board has passed upon formal complaints, or matters pertaining thereto, to the number of 16. One matter is now pending in the Supreme Court, nine were dismissed either upon satisfactory settlement or because no cause of action appeared after the usual preliminary investigation, in one disbarment was ordered, and three are pending upon preliminary investigation; one is pending for hearing before a disciplinary committee, and in one hearing has been had and review will shortly be had by the board.

Examinations for admission were held twice during the past year at five places within the state. Twenty-one applications were examined and investigations of character and educational qualifications made; four were rejected upon this preliminary investigation; two were recommended for admission without examination and upon certificate of practice in another jurisdiction; two applied since the last examination in June; fifteen took the examinations (three for a second time), of whom ten passed and five failed; subsequently one who failed was passed.

Aside from the tasks imposed by admissions and disciplinary matters, there have been, during the past year, three outstanding accomplishments: First, a thorough revision of the rules governing the bar, particularly relating to admissions. More strict and more satisfactory methods have been devised for examination into an applicant's general character, fitness and basic education; the standard of legal education has been raised, and beginning in 1932 the requirements of general education have been increased. Second: the board has undertaken an investigation of unlawful practice of law by unlicensed and unqualified persons and corporations. In this connection, under the direction of the court, prosecution for contempt was had of the Eastern Idaho Loan and Trust company and W. L. Shattuck of Idaho Falls, and therein a determination secured from the Supreme Court asserting that court's power to define what constitutes practice of law and setting forth a definition. Such a definition should be of great benefit to the profession and to the public. Third, the bar of Idaho has, by its creation of a Judicial Council, financed solely by the bar, for the consideration of problems affecting judicial statistics, procedure and administration, taken a step in furtherance of the public good not equaled by any other bar.

The results of its first year's labors, undertaken without personal compensation by its members, consisting of Hon. Alfred Budge, Hon. Wm. F. McNaughton (succeeding Hon. Wm. E. Lee), Justices of the Supreme Court, Hon. Dana E. Brinck, Hon. Ralph Adair and Hon. Miles S. Johnson, district judges, and Hon. Frank Martin, Hon. James R. Bothwell, Eugene Cox, Esq., A. L. Merrill, Esq., and James Harris, Esq., members of the bar, have been published, distributed to all members of the bar, and form the basis for the program of all 1930 meetings of the bar. Members of the bar have also been supplied with subscriptions to the Journal of the American Judicature society, which devotes considerable space to subjects akin to those upon which the council is working.

The condition of the appropriation, and expenses incurred in the Bar's operations, from August 1, 1929 to July 1, 1930, are:

Office Expense		$1,154.57
Secretary	$825.00	
Stenographers	136.00	
Stamps, Supplies, etc.	193.57	
Travel		330.92
Bar Meetings		402.02
Printing and distribution 1929 proceedings		501.60
Examinations		120.59
Discipline		395.14
Judicial Council		712.46
Subscriptions Journal Am. Jud. Soc.		156.25
Miscellaneous		5.00
		$3,778.55

Balance in Appropriation Aug. 1, 1929	$5,478.33
Receipts from licenses	1,999.00
	$7,477.33
Less Expense	3,778.55
Balance July 1, 1930	$3,698.78

Membership, June 30, 1930	
Northern Division	142
Eastern Division	139
Western Division	283
Out of state	25
Total	589

VICE-PRESIDENT: Gentlemen of the bar, what is your pleasure with reference to the report of the secretary?

Whereupon it was duly moved and seconded that the report of the secretary be adopted, and the motion being put was unanimously carried.

VICE-PRESIDENT: We are not rushed for time—are there any questions you may care to ask the secretary?—Mr. Soule?

MR. SOULE: I believe it is stated in the report, and also at the time the notices were sent out for the annual license fee, that we would receive a magazine from the American Judicature Society. I have never received mine, and I know of one or two others who have not, and I am asking on behalf of myself and all the other lawyers, whether or not some slip up occurred, omitting our names from the list.

SECRETARY: At the time the subscriptions were entered, the names of all the members of the bar were sent in, and I think your name was on the list, and you should have received it, and if you had reported it to me I would have had it corrected. Is there anyone else who did not receive the journal of the American Judicature Society—it usually comes out as a small white paper covered pamphlet. If there is anyone else, please report it to me.

John W. Graham, Esq., of Twin Falls, Idaho, chairman of the Committee on Resolutions announced a meeting of that committee at the adjournment for luncheon.

MR. GRAHAM: Mr. Secretary, I notice the condition of our finances—are those funds continuous, or do they lapse.

SECRETARY: They are continuous, that is how we happen to have a balance. As a matter of fact, some of these disciplinary proceedings would have depleted our finances if it were not for that.

MR. GRAHAM: I am glad there is one institution in the state that has a balance on hand.

VICE-PRESIDENT: What makes it more remarkable, Mr. Graham is this fact, that it is an institution that is managed by lawyers! (Laughter.)

Are there any other matters relative to the report of the secretary. He will be glad to answer any of them. This is your meeting, and you are entitled to know what is being done with the Bar association funds. If there are no questions, shall we pass to the next order of business?

As you know, the law provides for division meetings of the bar. The division meeting of the Western division has of course been dispensed with because the annual bar meeting is here in Boise. The Northern division meeting was held at Lewiston on June 12th. The Eastern division meeting was held at Idaho Falls on July 7th.

We have as Commissioner from the Northern District the Honorable Warren Truitt of Moscow, who will now make a report to this annual meeting of what was done at the meeting of the Division in the north. Mr. Truitt. (Applause).

MR. TRUITT: In regard to the meeting of the bar of the Northern division at Lewiston, I am pleased to say that we had a very successful meeting; but I must say that I attribute the principal success of that meeting to the fact that the Judicial Council met there at that time, and we had matters presented by some of our ablest attorneys in the state at that meeting. Some very important questions were discussed, and while the bar commission had its meeting there for the north at that time, for the northern division, I believe that the success was mainly due to the fact that the judicial council met there with the commissioners.

Now I haven't much to say in regard to the meeting there, because it is set out in the report of the secretary of the meeting which I will read:

Minutes of Annual Meeting Northern Division, Idaho State Bar

The annual meeting of the Northern Division of the Idaho State Bar Association was called to order at the hour of 10:00 o'clock A. M., June 12, 1930, at Lewiston, Idaho. The meeting was called to order by the Honorable Warren Truitt, Chairman of the Northern Division. Forty-six members of the Bar of Northern Idaho were present at the meeting.

A motion was made by Eugene A. Cox, that Lincoln E. Shropshire act as secretary Pro. Tem. in the absence of Sam Griffin, secretary.

Motion seconded and carried.

The regular order of business was then taken up before the meeting. The following reports were made:

The Honorable Alfred Budge, Chief Justice of the Supreme Court of Idaho, gave a report of the Work of the Judicial Council of Idaho.

Eugene A. Cox gave a report of the Survey Committee.

The Honorable Miles S. Johnson, Judge of the Tenth Judicial District, gave a report on the proposed statutory amendments and additions to the criminal procedure of Idaho.

The Honorable William F. McNaughton, Justice of the Supreme Court of Idaho, gave a report on the proposed statutory amendments and additions to the civil procedure of Idaho.

Motion made by A. H. Oversmith that a resolution committee be appointed by the chair to consider, during the noon-hour, the suggestions and recommendations made by the various committees.

Motion lost.

Motion made by James F. Ailshie that the reports of the various committees be taken up separately and discussed.

Motion seconded and carried.

Motion made by James F. Ailshie that the suggestion of the Survey Committee that the Judiciary be taken out of Politics and be made non-partisan, be accepted by this meeting and that the Northern Division of the Idaho State Bar go on record as favoring the election of the Judiciary on a non-partisan basis.

Motion seconded and carried.

Motion made that the meeting adjourn until the hour of 1:30 o'clock P. M.

Motion seconded and carried.

Meeting called to order by Chairman Truitt at 1:40 o'clock P. M.

Dean Masterson, of the College of Law, University of Idaho, gave a report on "An Idaho Bar Journal".

Motion made by Eugene A. Cox that the report as given by Dean Masterson be accepted and that the association go on record as favoring the adoption of an Idaho Bar Journal.

Motion seconded and carried.

E. A. Owens, Commissioner, Eastern Division, Idaho State Bar Association, gave a report on the "Unlawful Practice of Law".

Motion by James F. Ailshie that the report as given by Mr. Owens be accepted and that the action of the Bar Commission in attempting to prohibit unlawful practice be commended.

Motion seconded and carried.

Motion by P. E. Stockey that the report of the Survey Committee suggesting the Re-Districting of the District Courts of Idaho be adopted by this Northern Division of the Association and that this

association recommend to the State Bar Association that it be adopted.

Motion seconded and carried.

Motion by Otto D. Burns that the report of the Survey Committee suggesting the transfer of the Probate work to the District Court be adopted and recommended as read.

A substitute motion was made by James F. Ailshie that this meeting approve and recommend that the Probate Judges be an attorney at law and that the Probate court be retained as it now is, and that appeals from Probate courts be direct to the supreme court.

Substitute motion lost; original motion carried.

Motion by A. H. Oversmith that in case the Probate Court should be entirely abolished, the clerks of the District court should be appointed by the Judges and their powers enlarged as suggested by the Survey Committee.

Motion seconded and carried.

Motion by Guy Wolfe that where District Judges are called to serve in the Supreme Court, they should be relieved of their District Court work and should remain with the Supreme Court until the cases upon which they have been called are disposed of.

Motion seconded and carried.

Motion by A. H. Oversmith that the report of the Survey committee suggesting that in misdemeanor cases and civil cases the jury in the District Court consist of six jurymen, be tabled. Motion seconded and carried.

Motion made that the report of the Survey Committee suggesting that judges ought not to be required to serve beyond their strength when they are suffering from any physical disability, and judges should be encouraged to seek temporary relief from work whenever their physical condition requires it, be accepted and recommended.

Motion seconded and carried.

Motion by James F. Ailshie that the association table the suggestion of the survey committee that provision be made for the retirement of Judges of the District Court and Supreme Court upon a stated salary after a stated term of service and upon reaching a specified age.

Motion seconded and carried.

Motion by A. H. Oversmith that the association table the suggestion of the Survey Committee that inquiry should be made to ascertain whether, and at what cost, the State can procure group life insurance for Judges of the Supreme and District Courts without physical examinations, covering up to $5,000 each during their term of office.

Motion lost.

Motion made by Lawrence Huff that the suggestion of the Survey Committee concerning life insurance be accepted and approved.

Motion lost.

Motion by Leo McCarty that the suggestion of the Survey Committee that the statutory per diem allowance for expenses of Judges be increased to $10.00, be accepted and approved.

Motion lost.

Motion made that the recommendation of the Survey Committee that the salaries of the Justices of the Supreme Court be increased, be accepted and approved.

Motion seconded and carried.

Motion made that the recommendation of the Survey Committee that the salaries of Judges of the District Courts be increased when the state is re-districted so as to equitably apportion the work, or upon the transfer of the Probate work to the District Court, be accepted and approved.

Motion seconded and approved.

Motion by P. E. Stockey that the proposed statutory amendments and addition to the Criminal Procedure charging more than one offense in the information or indictment, he accepted and approved.

Motion seconded and carried.

Motion made to table the proposed statutory amendment and additions to the Criminal Procedure requiring defendant to produce names of Witnesses.

Motion seconded and carried.

Motion made by Leo McCarty that the recommendation of the committee that the court examine the Jurors in Civil and Criminal cases, be tabled.

Motion seconded and carried.

Motion made by James F. Ailshie that the proposed amendment to the civil practice providing that instructions shall be deemed excepted to unless the court shall deliver copies of the proposed instructions to counsel before charging the jury and give a reasonable opportunity for the making of exceptions and objections, be accepted and approved.

Motion seconded and carried.

Motion by Frank Kimble that any proposed amendment giving right of court to comment on Evidence and credibility of witnesses, be tabled.

Motion seconded and carried.

Motion by A. H. Oversmith that the recommendation of the committee proposing amendment to the civil procedure to allow judgment Non Obstante Veredicto, be accepted and approved.

Motion second and carried.

Motion made by Leo McCarty that the recommendation of the committee proposing amendment to the civil procedure in reference

to the hearing and disposition of Motion for New Trial, be accepted and adopted as read.

Motion seconded and carried.

Motion made by P. E. Stockey that the recommendation of the committee proposing amendment to civil procedure in reference to Ruling on Motion for New Trial, be accepted and adopted as read.

Motion seconded and carried.

Motion made by Frank Kimble that the recommendation of the committee proposing amendment to the civil procedure in reference to Pleas of Abatement, be accepted and adopted as read.

Motion seconded and carried.

Motion made by Guy Wolfe that the recommendation of the committee proposing amendment to the civil procedure in reference to pleading Written Instruments in Haec Verba, be accepted and adopted as read.

Motion seconded and carried.

Motion made by Eugene A. Cox that the recommendation of the committee on civil procedure suggesting an amendment making a dismissal or nonsuit a bar to another action in certain cases be amended by adding at the end of the proposed new statute the words "unless otherwise ordered by the court" and that the recommendation as amended be adopted.

Motion seconded and carried.

Adjourned.

LINCOLN E. SHROPSHIRE,
Secretary Pro. Tem.

Minutes approved:

WARREN TRUITT,
Chairman.

VICE-PRESIDENT: The report of the Commissioner from the Northern division, and the minutes taken at that meeting will be turned over to the committee on resolutions for their consideration.

I want to add to what the commissioner from the north has said, that the division meeting held at Lewiston, Idaho, was one of the best attended division meetings that I have seen. I believe over 60 members of the bar of the northern division were in attendance at this meeting, and the discussions had relative to matters that came before that meeting were inspirational and of great value. I presume that all of the members of the bar have with them their report of the Judicial Council of Idaho. This report, as you have been told is to be the subject of discussion at this meeting, so that if you haven't a copy of the report with you, perhaps you can obtain one from the secretary.

The Eastern division meeting was held in Idaho Falls on the 7th of July. An unusual condition existed over there at that time. It was exceptionally hot—and that is unusual for Idaho Falls—I am

making that apology like the Californians do about their unusual weather in California.

Mr. A. L. Merrill, who is a member of the Judicial Council from that section of the state, and Judge Adair, were present at that meeting, Judge Adair also being a member of the Judicial Council; and at that meeting we took up the report of the Judicial Council, the report of the survey committee, the report of the Committee on criminal procedure, and the report of the committee on civil procedure, and I will state briefly what was done at that meeting. The first matter considered was the matter, or the question, rather, of passing a resolution favoring the increase in salary of the justices of the Supreme Court. That with very little discussion was passed unanimously by the meeting; and the recommendation of the committee of the Judicial Council with references to increase of the salaries of the district judges was adopted after being amended that the salaries be increased in event—if you will notice the recommendation of the committee, I believe it states in the event of the redistricting of the state that the salaries of the district judges be increased—and that was stricken, and the resolution was passed favoring the increase in salaries in any event. The next question considered was the question of the election of judges of the district court and the Supreme Court, and a recommendation by the committee that they be elected upon a non-partisan basis was unanimously adopted by the meeting of the Eastern division, that meeting going on record as favoring the principle of a non-partisan judiciary, the machinery to be invoked and used, to be left to the committee, and the Judicial Council, for their invention. The discussion relative to redistricting of the State of Idaho as to judicial districts, was a rather heated one. The division meeting went on record as favoring a redistricting of the state, adopting the suggestion made by the survey committee of the Judicial Council. Judge Adair at that time made a report on the work done by the committee on criminal procedure, and the meeting went on record as favoring Suggestion No. 3—I have that out of order—they favored Suggestions Nos. 1, 2, and 3, made by the committee on criminal procedure shown on the report of the Judicial Council. The recommendations made by the committee on civil procedure were adopted unanimously by the Eastern division meeting, that division meeting going on record as favoring those suggestions made by the committee on civil procedure. The division meeting also went on record as favoring the state bar journal to be published at the University of Idaho as a medium of exchange of thought between the members of the bar and the State University Law School; and our meeting also went on record as favoring the principle of a public defender. Some very heated discussions were had relative to the proposed changes in criminal procedure, and those arguments and debates led up to the division meeting going on record as favoring

a change in our law to make it possible to have a public defender for those who are unable to secure the services of counsel. The minutes of that meeting will be referred to the committee on resolutions for their consideration.

The next item is the communication from the Prosecuting Attorney's Association. Will the chairman or the member of that Association who is to present that communication come forward and do so at this time?

Mr. Goff, the vice-president. Mr. Goff.

MR. GOFF: This will be very short. We have here two resolutions which were adopted yesterday at the meeting of the Prosecuting Attorneys' Association which was held here in the state house. The first of these is: "Resolved, that the Prosecuting Attorneys' Association recommend for the consideration of the Idaho State Bar Association the proposition of the establishment of a central bureau of identification in connection with the office of the warden of the state penitentiary, where will be kept a complete set of records of all persons convicted of crimes in this state; and that sheriffs of the several counties be required to take the photograph and fingerprints of every person convicted of either felonies or misdemeanors, this bureau to be organized along the lines of the bureau now maintained at the Washington state penitentiary at Walla Walla, Washington, wherein one expert is employed, assisted by designated inmates of the penitentiary."

The second resolution is as follows: "Resolved, that as the legal advisers of the various county officers, the prosecuting attorneys of the state are experiencing a great difficulty due to the present chaotic condition of our taxation laws, and we submit to the Bar association for consideration the recommendation to the legislature of an appropriation for a state tax commission to study the whole tax situation in the state of Idaho and to make specific recommendations for reform."

Now, later in your meeting certain recommendations will be made by your Prosecuting Attorneys' Association, with reference to reform in criminal procedure, but those two resolutions were evolved as they do not involve any procedural changes, but do involve two matters where we felt the Bar association could well assist; and the first of these involves a very small appropriation, and very little expense in maintaining a bureau of identification which we do not have now at the state penitentiary. The other recommendation I feel that all of you who have had any experience during the last few years with the amended and reamended tax laws will realize that there should be some revision of the whole procedure of taxation. I thank you. (Applause).

THE VICE-PRESIDENT: The chair at this time thinks it proper to refer these recommendations or communications to the

committee on resolutions. However, if there is any discussion on these recommendations, or the communications of the Prosecuting Attorneys' Association, we might have it at this time.

MR. OPPENHEIM: If this is the occasion upon which to discuss the recommendations just made, I would like to refer to them. If the matter is to come up later before the resolutions committee, and that is the proper occasion, I would be glad to take it up then.

THE VICE-PRESIDENT: I think we have plenty of time this morning.

MR. OPPENHEIM: This matter was presented at the last legislature. It has been a matter which has been given considerable study and thought. At one time we had the same attempt in that direction, and the Supreme Court held that the constitutional powers were vested in the state board of equalization. We have a state board of equalization with exceptional powers, who can, if they will exercise their powers, do everything that a tax commission can do. The only difficulty is that the power has never been exercised. The members of the board feel that they have too many other duties, and they have through the course of years limited their activities as a state board of equalization to a very few matters, with practically no change in the law. That board now has the constitutional powers of a state tax commission. The last legislature made a small appropriation, some fifteen thousand dollars, for the purpose of enabling the board to consider the very thing involved in this resolution presented by the prosecuting attorneys. Considerable delay was experienced in getting the proper man, and the board apparently did not have the academic attitude expressed in the resolution of the prosecuting attorneys of making a scientific study of the matter. During the legislative session there was discussion of a proposal to have a survey made by competent outside students, if not by our own university, with the idea of making a comprehensive study not only of the tax laws, but of the tax question in this state. However, until there is a change in the constitution which will authorize a separate taxation commission from the present one, it seems to me idle to attempt to proceed except through the constitutional body now created for that purpose. If this matter becomes a matter for resolution by the resolutions committee, I should like to have the opportunity to appear before that committee with relation to it.

MR. GRAHAM: On behalf of the resolutions committee, I would like to hear some expression of opinion from the bar. Personally, I feel we are not prepared to discuss it, much less prepared to act intelligently. It is a scientific subject loaded with dynamite, and should not be acted upon by the Bar association. Personally, I am opposed to the resolution upon the grounds stated by Mr. Oppenheim. In the first place, we are not prepared—I do not suppose there

is a man in the room who has given any special study to the question of taxation. I, for one, would not wish to make any recommendation on the subject without some careful study, and I know the members of the bar have not given the subject that study. I would like to hear an expression from the bar, so the committee can act intelligently.

THE VICE-PRESIDENT: I think your suggestions are quite timely. Are there any other members of the bar who care to discuss this question at this time, who have had the opportunity to give it some study and thought?

MR. HACKMAN: Mr. Chairman.

THE VICE-PRESIDENT: Mr. Hackman.

MR. HACKMAN: I believe, in line with this very point I will say that for several years it has occurred to my mind that legislatures of the state of Idaho could help matters of this character, that is, not getting into this confused condition because of various amendments made to various laws, and having difficulty to interpret and understand them, if they would adopt a system that some of the other states in this union have adopted—and that is to enact a law to employ a competent man the year around, with the necessary assistance, whose duty it would be to look into the various laws enacted in the various states on all subjects, so that when the legislature convenes, and there is a suggestion made to amend any particular law or to enact a new one, that he can promptly inform the men of the legislature who suggest the amendment or change that a certain state in the United States has adopted a law on that subject, or that more than one state has adopted it, and that it has been construed by the courts in a certain way, and suggest that the proposed amendment, or the proposed new law, be worded and phrased in a certain way, and thus meet the decisions that have been given in the states where the subject has already been under consideration. We all know that due to the short time the legislature is in session, and because of the fact that the members who come here to attend—some man has in his mind some particular subject that he thinks a law should be made upon, or on which a law should be changed, and in the short time the legislature is in session, they cannot possibly give it proper consideration. Now if this association were to make a recommendation to create an office of that character, and have a person of that type, with the necessary assistance, to look into the subjects, and have them all in hand, so that he could inform the members of the legislature, we would be able to get away from much of this trouble, such as is mentioned in regard to taxation.

MR. GLENNON: It seems to me Mr. Oppenheim has hit the nail on the head in his remarks. The legislature has no authority to create a tax commission. We have discussed the matter of creating a tax commission for more than twenty years. I was a member of the legislature nineteen years ago, when a special session was called for

the purpose of revamping our tax law, and twenty days' time, I will say, was put in discussing that question alone. The entire session was called for that purpose, and we created a tax commission, as I remember, at that session of the legislature—at least there were three commissioners authorized, with such power as they might have, and when the law was put into operation, we very soon found out that they had no authority whatever, that the legislature could not delegate the power. The only thing that can be done along that line at all, until the constitution is amended, is for the legislature to make an appropriation for the state board of equalization to utilize in gathering such data as the board of equalization may want, and report back to the board. We cannot create a tax commission, the whole matter must be eventually referred back to the state board of equalization, and there the right rests, and they now have the authority to get any information that they desire, if the legislature provides an appropriation for that purpose. As a result, at some of the more recent sessions of the legislature, appropriations for that purpose have been made. Whether it has accomplished any of the purposes, I am not able to say. It seems to me that it is a matter that is considerably out of line with our work, and the purpose of this organization, and in the absence of some definite information, or some definite study on the subject, it seems to me that we probably had better let it alone.

MR. LARSON: As suggested by Mr. Oppenheim, the tax question is one of the most vexing questions confronting county officers. County officers are continually met with problems that are technical, with problems that are hard to understand, and certain provisions of the law that seem to be in conflict, and difficult to reconcile. The whole tax question, in my judgment, needs some kind of reform, and I think the object of the resolution offered by the prosecuting attorneys of the State of Idaho is for this purpose, that of reform, be that through a commission or be that through the board of equalization, there should be some system of taxation established, something modern, something that is not as antiquated and as cumbersome as is our system. Very much to my surprise, when acting as prosecuting attorney of our county, I found that we are spending our tax money before we collect it. In other words, the board of county commissioners will make their levy in September for expenditures made for that current year, and still we say we are on a cash basis! We are unable to build up any reserve in our counties because if we do the big taxpayer will object to that. The commissioners, when they make their levies, will have to give credit for all reserves built up in the respective counties, legally, so that we will have to issue warrants and pay interest on the moneys that we spend in our counties. In other words, we have the cart before the horse, apparently, so when the board of county commissioners meets in September, say for instance, 1930, they make the levy for 1930 expenditures. Now then we are confronted with the further situation that we are on a budget plan. We budget our expenditures in September for 1931, but we do not levy for 1931 until September of that year. The counties have not the funds with which to carry on their business, and must of necessity issue warrants and pay interest. It was for that reason that the legislature saw fit to give the counties and other taxing units power to borrow money on anticipation notes so as to reduce the legal rate of interest, and that is being done now in a number of counties, and by other taxing units in the state. It occurs to me that the whole tax situation is in such a condition that it merits the closest careful consideration of trained minds to evolve some system that is modern, and relieved of its cumbersomeness.

MR. MERRILL: I appreciate the difficulties that the prosecuting attorneys meet, particularly if they are called upon to defend tax deeds, and the fact that they would like to see these laws changed, and amended, to some extent I share with them, but it seems to me that the question is so highly economic and political, that perhaps the very nature of the question removes it to a large degree from a consideration of this body. I am rather inclined to think that our effectiveness will be greater if we confine ourselves to those problems which may be strictly construed problems of lawyers, rather than getting into the problems of economics, and while I would have no objection to seeing this go to the resolutions committee, I hardly feel it is within the domain of this particular body to discuss this particular type of question.

THE VICE-PRESIDENT: Is there any other member of the bar who desires to express his opinion with reference to this question. It may be of help to the resolutions committee in arriving at their decision.

MR. SOULE: Just a word, which can add little to the real importance of the question, but I am inclined to take issue with Mr. Merrill when he says that it is not a part of the objects of this association to take a stand on the improvement of economic conditions. It seems to me from a practical standpoint it would add much to the weight and consideration that is due this body from the laymen of our state if we do take a stand on this question. I think there is nothing which would give our body more consideration than if we did take a stand on this question and make recommendations in regard to our taxation law; and I would like to add to this, by way of recommendation, so far as I may recommend in this body, that our resolutions committee consider seriously the proposition of submitting to the board of equalization under the constitutional authorization, the matter of having a special tax commission, and urging the matter in that fashion, assuming as Mr. Oppenheim has stated, that the legislature cannot provide the separate tax commission;—at any

rate, it would seem feasible to my mind and highly desirable, to have that commission operate and function through and by virtue of the state board of equalization.

THE VICE-PRESIDENT: Thank you, Mr. Soule. I think it well for the meeting to leave that matter to the good judgment of the resolutions committee, they to deal with the communication from the Prosecuting Attorneys Association and make their recommendation to the meeting again, and perhaps they can discuss the question again. I have the utmost confidence in the ability of the resolutions committee appointed by the president, Mr. Hawley, who will consider those matters.

Again calling attention to the report of the Judicial Council, this report is the basis for this program, and the discussions at this annual bar meeting, and I wish that each member of the bar present would make it a point to read the report of the Judicial Council and the suggestions or recommendations made by the various committees of that body, so that we can have a fair, open, free, and highly intelligent discussion of all of these matters during the course of this meeting.

Is there anything else to come before this meeting at this time?

Whereupon, B. F. Delana, Esq., Exalted Ruler of the Elks Club of this city, extended the invitation and courtesies of that club to the visiting members, and called attention to the fact that a luncheon service was available to them at that place.

THE VICE-PRESIDENT: Is there anything else?

MR. GRAHAM: May I suggest if there is any member of the bar present who has any proposed resolution he wishes to submit that he pass it to me immediately after this adjournment?

THE VICE-PRESIDENT: Any other announcement?—If not, a motion is in order for adjournment until two o'clock.

Whereupon, on motion duly made and seconded, the meeting was adjourned until two o'clock P. M. of this day.

Afternoon Session, 2 o'clock P. M., Friday, July 11, 1930.

The meeting was called to order by Vice-President Owen.

THE VICE-PRESIDENT: Our state legislature in 1929 enacted legislation which empowered the state bar commission to appoint a Judicial Council. The state bar meeting held in Idaho Falls last year passed a resolution which in effect called upon the board of Bar Commissioners to appoint a Judicial Council, consisting of five judges and five practising attorneys. Following the state bar meeting, the Bar Commission made such appointment. The Judicial Council at its first meeting elected the present Chief Justice of our state, chairman of the Judicial Council. The state bar of Idaho

is indeed fortunate at this time to have the privilege of hearing an address by the Honorable Alfred Budge. Will you please come forward, Judge Budge? (Applause).

THE HONORABLE ALFRED BUDGE: Mr. Chairman, and members of the bar association. I may possibly be encroaching upon the right that properly belongs to Chief Justice Givens in making a few remarks touching the work of the Supreme Court. I think possibly that you would be interested in knowing the condition of the Supreme Court calendar, and the work of the Supreme Court that has been done during the last eighteen months—that is, I refer to the eighteen months period, because during that length of time we have made rather unusual progress in disposing of the business before the Supreme Court. You will all understand that the state is divided into three districts, the north, central, and southern. We have now, pending upon the Boise calendar, 66 civil cases and seven criminal cases. On the northern calendar we have ten civil cases and no criminal cases. On the Pocatello calendar we have 32 civil cases and three criminal cases, or a total of 118 cases. Now pending in the Supreme Court, and undisposed of, the clerk informs me that upon the Boise calendar there are only 22 cases that are actually ready to be heard. On the Pocatello calendar he informs me there are only three cases actually ready to be heard. On the north Idaho calendar there are no cases that are ready to be heard. We have disposed, since the first of January this year, of 130 cases in which opinions have been written and handed down. In 1927 there were 328 cases pending in the Supreme Court. In 1929 there were 252 cases pending in the Supreme Court, and on July 11th, or today, there are 118 cases pending in the Supreme Court. (Applause).

The Judicial Council Idea

A national organization having for its purpose the creation of an informed and disinterested leadership for public opinion recently took a ballot of its council to determine what in their opinion is the most important question before the public today. The result showed that the administration of justice was considered the most pressing problem.

Briefly, one trouble is that our legal and judicial institutions, however well-suited for the America of a hundred, or even fifty years ago, are failing to meet adequately the vastly different and more complicated conditions of today. It is not to be supposed that there have been no attempts to adjust the law to new situations as they arose. The scope and subject matter of our law has changed not a little in the one hundred and fifty years since the beginning of the Revolution. But in spite of this, there has been no adequate change

in the body of law to enable it to keep pace with the sweeping changes in economic and social conditions.

The machinery of justice is more or less clogged. There are too many delays, technicalities, and unreasonable statutes and rules making the administration of justice more or less uncertain. It is commonly charged that the operation of our courts is needlessly slow and expensive, and that the outcome of litigation is too fortuitous. For these reasons there is a disposition on the part of the people to avoid litigation or appeal to the courts. There is also a disposition towards the creation of boards and commissions clothed with the power to determine facts, sought to be made conclusive and not subject to review by the courts, and power to apply the law to the facts so found. The courts have not yet been deprived of the right to review the law and to determine whether or not as a matter of law the decisions of the boards and commissions should be upheld. It seems the main purpose of the creation of such boards and commissions is to bring about more speedy determinations of the rights of parties involved. The courts have been prone to concede encroachment upon their judicial powers; and to just what extent the legislatures may proceed in further relieving the judiciary is not certain.

Much has been written and said of late, taking the legal profession severely to task for failure to assume the lead in purging our systems of litigation of much legal gesturing, instead of straightaway cutting through stuffy traditions to the determination of the merits of litigation. This criticism evidently does not take into consideration the fact that the hands of the judiciary are often tied by legislative-made rules of procedure. It has been intimated that the legal profession should proceed, with the force of public opinion, to organize a new machinery for law administration and to lend its unstinted aid for the removal of any statutory or even constitutional obstacles which may be used to prevent the businesslike organization of the whole system of law and its enforcement. A prominent lawyer says:

"There are 120,000 lawyers in the United States. We have the loosest organization of any craft in the country. It is partly due to the ultra-individualism of the legal mind. Lawyers have great power for leadership, but sometimes show an ineptitude for team work. Yet team work among lawyers is the hope of this situation. In an age of organization, when organization is the keynote of American life, and everything is organized—organized power, organized influence, organized capital, organized labor—where does the bar stand?"

There would seem, therefore, some reason for the assertion that if the judiciary is to retain its rightful place in the system of government under which we live, and members of the bar are desirous of maintaining the respect and confidence to which their calling ought

to entitle them, it is time for concerted effort toward improvement in the eyes of the laity and to meet the demands of increasing business.

I am quite sure most of us agree that rules of procedure and adjective law especially, formulated and adopted at a time when there was an altogether much more leisurely way of doing business, are not adapted to and cannot meet the needs of a people whose lives and business are attuned to the rapid pace of the present. While we in Idaho are not confronted with a number of problems arising in more densely populated sections of the country, such as crime and congested court dockets, the situation nationally is such as to cause alarm to thinking people everywhere. Allow me to cite two instances: The city of Cleveland, Ohio, ten years ago, with a population one-tenth that of London, reported six times as many murders as London. For every robbery or assault with intent to kill during the same period in London there were seventeen such crimes listed in Cleveland. Yet it was pointed out by competent men who made a survey of the problem in that city that in point of volume of crime in relation to population, Cleveland is neither much better nor much worse than other municipalities of the United States. The state of Nebraska, with a population of a little more than a million, required more judges to handle its civil business in 1900 than all of England and Wales, with a population of thirty-two millions. The problem varies; while it is distressing in one jurisdiction and not in another, it is so general that it must be recognized as national.

The various means by which litigation or prosecution can be avoided, accelerated, and concluded with reduction of taxpayers' burdens for the administration of justice, are most easily accomplished when the judiciary is organized and freed from the plaster-of-Paris rules and regulations of legislators. Legislators are less open to adopt progressive adjuncts to the court system than would be an organized judiciary which had experienced crowded calendars, too much work, and too little power to prevent dilatory tactics. There is every reason why American citizens must turn their faith for reformation from their legislatures toward a delegation, by such legislatures, of their court procedure regulatory powers to the organized judiciary itself.

One of the forward-looking steps in the direction of better organization, better administration, and better justice, if you please, is the Judicial Council movement, now rapidly sweeping the country. It has been called a movement for modernizing justice, and indicates the path to a greater respectability of the law, higher dignity and usefulness of judges, and the way of escape from many absurdities now flanking law administration. Organizations of this kind are now in existence in eighteen states, and a number of other states are expected to join the list at an early date. About three hundred

judges and lawyers in these states are engaged in constructive labors of the highest order. There is a tremendous force for the regeneration of our judicial system throughout the country, a truly noble beginning. Arrangements are being made among the Judicial councils of the various states to work co-operatively, and the National Conference of Judicial Councils will meet in joint session with the American Bar Association at the annual meeting of the latter in Chicago next month.

Judicial councils have come as organs devoted to a study of needs and remedies, and as an approach to administrative unity. There has come at the same time an understanding that the bar shares in responsibility for the administration of justice. We are just getting the stage set for significant achievement. Judicial councils afford opportunity, not only for a unification of the bench in respect to justice as a matter of administration, but also for the bar to influence events just so far as bar influence can be formulated. There are the strongest reasons for believing that we have entered upon a new era. There is no organized opposition to the movements looking to power and freedom on the part of the bench and bar to work out their problems. It is not claimed for such organizations they will be panaceas effecting immediate and miraculous cures of all the ills, supposed or otherwise, with which the system of laws and their administration may be afflicted. It is the view, however, and the hope, that an examination and study of these problems will develop an enlightened attitude and conclusions as to the extent and causes of the remediable defects in the administration of justice. An opening wedge for improvement will then have been provided. A proper study of these prohlems embraces such matters as the transactions involved in litigation; the personnel, including judges, lawyers, jurors, and others employed in the processes of litigation; the organization of courts and the distribution of work among them; and the procedural rules and devices which are employed.

The powers of Judicial councils differ in different states. In some states the council has no powers except to study and report the results of their study. In California the council has power, by constitutional amendment, to "adopt and amend rules of practice and procedure for the several courts not inconsistent with laws", and the chairman may provide for assignment of judges of one court to sit in another if the business requires such assistance. In the main, these councils have been more in the nature of research and advisory boards than true judiciary reorganizations. The Federal Government has added to its judiciary efficiency by providing more district judges and creating a judiciary council.

Copies of the report of the proceedings of the newly-formed Judicial Council of Idaho have been transmitted to the members of the bar, and no doubt the most of you have given some attention to the

contents. I shall not attempt to cover the ground of what is contained in the report, as specific discussions of a portion of the work therein represented are, I understand, to follow my comments. As set forth in the report, the Judicial Council of Idaho in its present form was established by action of the Idaho State Bar, at the annual meeting held last year at Idaho Falls. As at present constituted, the council is an arm of the bar, created in pursuance of a resolution under authority of an amendment to the Bar Act. Its recommendations are subject to approval of the organized bar, and such of the suggestions as have been made toward statutory changes which are accepted by the bar must of course be submitted to the legislature for final action.

An eminent author and observer has said: "A body like the Judicial Council with real powers would inject a great deal of common sense not only into law administration but into the law itself. American justice will not relieve itself of absurdities, nor will it restore itself in the opinion of a dissatisfied and distrustful public, until American justice organizes itself, unifies its systems of judiciary, informs the public of its doings, mobilizes and enlists the bar, and aids the legislatures."

The fact that we have undertaken a study of judicial administration in this state ought to be indication that we are desirous of improvement and advancement along this line. The same fact makes it reasonable to anticipate that this beginning may lead to achievement of relatively permanent results. The time has been too short in which to fully analyze our first report, but perhaps the propositions considered will indicate some of the directions in which further inquiry can be made. The task is obviously too great for individual effort. It necessitates a consideration of all relevant facts, no matter in what fields of human knowledge these facts fall. There is need for an organizing intelligence, for co-ordinated effort, for the sustained thinking of many minds driving towards the same goal. When starting on an exploration of so extensive a territory, it is important to get all light possible on the probable fertility of the field, on the areas that are most promising, and on how the task can best be done. For this purpose we come to you who are familiar with the problem and best qualified to judge. We seek your suggestions, we seek your criticisms, and we seek your aid. (Applause)

THE VICE-PRESIDENT: I think, gentlemen of the bar, that we are fortunate to have had the privilege of listening to this scholarly address by a judge of our Supreme Court, and Judge Budge, we certainly appreciate it.

I presume that we should now discuss this Judicial Council idea, and according to the program, that discussion is to be led by J. L. Eberle of Boise. (Applause).

MR. EBERLE: Mr. President, My remarks are extemporan-

eous. I had no way of knowing just what Judge Budge's address would cover. In opening this discussion, fellow members of the bar, nothing is further from my thought than to discourage the efforts of those who have worked so hard, nor to dampen the ardor and enthusiasm of those who have been working on it for several years; but we must not forget that the first step towards failure in all these enterprises is to deceive ourselves. Judicial councils have sprung up in such a variety of form and structures and powers, that to speak of the Judicial Council idea as such is like the bond salesman after the war, who used to refer to a bond as a bond. As you gentlemen know, prior to the World War the rank and file of the American people knew practically nothing about bonds. Then came the great Liberty Loan drives, and the attention of the people was directed toward bonds. Then the great deluge after the war, of bonds of every character and description, and the education of the people began. They gradually came to realize that a bond is dependent on the security behind it, and they began to scrutinize more carefully the value behind the bonds. So it is with Judicial councils. We have councils with memberships ranging from five to fifty; powers, some have none at all, others in varying degrees; their structure consisting of jurists and lawyers—others having laymen among their memberships, others even taking into the fold members of the legislative and executive branches. We have them from pure advisory to those who have power to a certain extent. Now so much has been said in the last two years, and so much has been written about the Judicial Council idea, the fact that it is modern, that it is flexible, that it is not bound by rigid constitutional rules, but when stripped of its folderols, is it anything more than the application of sound business judgment to the administration of our judiciary? I stated some time ago, nothing was more effective than business administration for our judiciary—and when I made that statement one of the older practitioners took me to task quite seriously. He said that he thought it encouraged disrespect to the profession to speak of it in terms of business. That same feeling in the bar was quite evident some years ago when at a meeting of lawyers, one of them made an attack on the business of the practice of law. At the conclusion of the talk, one of the older practitioners said quite feelingly that the application of business principles to the practice of law was inconsistent with the ideas of the profession, and I find that feeling among our own members, perhaps that we are a little better than business men, that the use of sound business practice cannot be consistent with the professional ethics and ideas of our profession. It has been largely instrumental in making this Judicial Council idea advisory rather than with any teeth in it. Perhaps the greatest discouragement is that some of the earliest councils, organized some years ago, Connecticut for instance, have been least effective, and perhaps may be said to be substantial failures.

This conception of the application of sound business practice to our judicial plant being rather contrary to the conception of some of the older members of the bar, has been disproved in the larger communities where lawyers have applied sound business practice to their own business, with the same result as in larger enterprises, greater business, increased earnings, raised standards, have been applied to the profession of law in those communities. There should be nothing inconsistent, excepting perhaps that of sentiment, in applying business principles to the practice of law. Business principles mean nothing more than dealing at arm's length. Is there anything inconsistent with the application of that sound business principle with the practice of law? I know that many will insist that a lawyer practising his profession is acting more in a fiduciary capacity. The business man has seen this before we have. What has he done? As we went along with our judicial plant, with its awkward, clumsy machinery, he is not there. Perhaps he has felt that rather instinctive antipathy towards it, and what has he done? He made a short-cut, created a tribunal here, a commission there, a bureau somewhere else, and I am wondering whether that is not to a certain extent largely responsible for the modification, and perhaps falling off of our business. Now, then, if this Judicial Council conception is a fundamental idea, then must we not apply the same rules to this idea as the average business man would apply to any successful enterprise. In other words, can we have in an ordinary enterprise a business operated by an advisory board of directors? Would that be the conception you have of the ordinary enterprise? We must be frank with ourselves. We have been kidding ourselves, in the words of slang. We now have a decentralized plant, consisting of a heterogeneous membership, which we never would think of applying to a client's business. If that is true, the idea means nothing, unless we give to the council the proper power, and have the proper structure and management; and by power, I mean the rule-making power, not merely an advisory power, but the power to proceed and act; and by structure, I mean we must use the same common sense which we apply to business. We sit on the Judicial Council now with judges, they are personal friends of ours; can we be as frank, as open, sitting on the same council with them, or might we be affected by the fact that we practice law before those very men on the bench. These are suggestions as to structure. Then as to management. We have been mighty fortunate in having these men devote the time and energy they have in bringing the council idea as far as it has been brought; but we cannot expect these men to continue to put time and effort on it, at least not sufficient time to keep this idea before the public. It has got to be sold to our own members. There is a lot of

feeling of antipathy towards the permeation of this sound business practice to our own profession. Our own members have got to be sold. Can we expect these men to do that? The press, the public, the legislative branch, the executive branch, someone has got to be at it continually. We must have a business secretary, with heart and soul in this, someone who is sold on the idea, and will keep it going. Some man will have to keep at this continuously, keep at the public, the press, the branches of the legislature, and the executive branch of our government, to put this idea over. When I say this, I do not mean that the idea that is incorporated in the report is hopeless. I hope it is the genesis. If it is not, then let's forget it. If we cannot go on and make this judicial plant effective, reform our adjective law, and build up our substantive law, let's drop it. But, if we are merely to have an advisory council, I would like to ask now, would you advise that sort of a set-up for any enterprise if it were your client's for an effective enterprise to be carried on in the ordinary business world. I think not. If the Judicial Council idea is to be carried on, it should be put upon a sound basis, and if we do not do that, let us forget the Judicial Council idea now.

THE VICE-PRESIDENT: Gentlemen of the bar, if that was just an off-hand discussion, I wonder what he could do if he came up here with a prepared speech. (Applause). We thank you for paving the way for a further discussion of this idea. The meeting is now open to any suggestions or thoughts by any member. Now don't all speak at once—Gentlemen of the bar, some of us who have been back of this, especially the members of the Judicial Council, and the board of commissioners, would like to hear a free, open, and frank discussion of this Judicial Council idea.

MR. OPPENHEIM: I am on this next discussion, with respect to the report of the Judicial Council, and I would like to take occasion at that time to answer the gentleman. It might be well that the general discussion be postponed.

THE VICE-PRESIDENT: We shall be glad to give you that opportunity—Is it the concensus of this bar meeting that the Judicial Council is to continue? We would like to know just what the concensus of this bar meeting is. The bar meeting at Idaho Falls last year went on record by resolution approving the appointment of a Judicial Council. Following that the Judicial Council was created, and it has been functioning throughout the past year. The Judicial Council has given to the bar of this state a very thorough and comprehensive report of the work that it has done since it was created, and certainly we are entitled to an expression either of commendation or criticism at this time.

MR. HACKMAN: I move you that general discussion of this subject be postponed until we have had the discussion of Mr. Merrill and Mr. Oppenheim, and then we will take up this general motion.

A VOICE: I second the motion.

THE VICE-PRESIDENT: It has been moved and seconded that this discussion be postponed until all the facts are before the meeting relative to the Judicial Council and the work of the various committees.

MR. HACKMAN: Until Mr. Merrill and Mr. Oppenheim have been heard.

THE VICE-PRESIDENT: To come later this afternoon.

MR. HACKMAN: Yes.

Whereupon, the motion was duly put and carried.

THE VICE-PRESIDENT: Very well, we will continue to the next order of business, the report of the canvassing committee. The chairman of the canvassing committee will make his report at this time.

MR. W. C. DUNBAR: Mr. Chairman and gentlemen. We, your committee who canvassed your election, beg to report that there were sixty ballots, of which sixteen were rejected, leaving 44, which were cast as follows: William Healy, 43, William Langroise, 1. Respectfully submitted—We think that the one vote for Mr. Langroise was cast by Mr. Healy.

THE VICE-PRESIDENT: If Mr. Dunbar will bring Mr. Healy forward—

Whereupon, the chairman of the canvassing committee conducted Mr. William Healy to the chair. (Applause).

THE VICE-PRESIDENT: Mr. Healy is declared elected Commissioner of the Western Division. We are glad to have you with us on the Bar Commission, and we assure you there will be plenty of work for you during the next three years. (Applause).

The next speaker on the program is a man whom you all know, a member of the Judicial Council, engaged in the practice of law at Pocatello, formerly a member of the State Bar Commission, and ex-president of the State Bar Association. It gives me pleasure to introduce A. L. Merrill of Pocatello, who will speak to you.—(Applause), his subject being a survey of Idaho judicial business.

A Survey of Idaho Judicial Business

MR. MERRILL: Mr. President, and gentlemen of the bar. I think perhaps we are all agreed when we speak of judicial procedure and judicial problems, and of government, that there are two or three fundamental facts which we should never lose sight of. In the first place, human nature does not change, and the great fundamentals of liberty, and of government, as we understand it, really do not change. Popular government as we enjoy it, is after all, organized self-control. I can think of no two words that more accurately express to me the meaning of popular organized government than organized self-control. And in this organization for our control we have

developed the theory and idea of our judicial procedure. It is of course true, that as new problems present themselves, as new changes come in our economic life, and in our economic structure, some changes must of necessity come in our judicial procedure, and in the manner and method of handling this judicial business, because after all I think Mr. Eberle is unquestionably right in his suggestion and his thought that business and law are not very far apart, and that we should apply to the court's business, those same fundamental principles which are applied to the business of our clients, I mean the successful clients!

After the Judicial Council was organized there were several committees appointed. One committee was the committee for the survey, charged with the duty and the purpose of making a survey of the business of the courts, with the idea of trying to arrive at the facts as to just how the business was handled throughout the state. It was thought in the beginning that that committee should be composed entirely of practising lawyers, that no judge should be subjected to any embarrassment in the least in attempting to work out that particular problem, and I believe, gentlemen, that if there is a class of men who could accurately size up the business of the courts it must be the lawyers. I do not see how a layman could go into a court house, examine the books, examine the filed cases, and say what the labor of the courts had been, or what the labor of the lawyer was who engaged in his practice before these courts; but I think lawyers can come to a rather careful conclusion as to these matters. Another thing with reference to this report, to which I shall call your attention, is that the recommendations which are suggested herein, which I will mention a little later, have not been adopted by the Judicial Council. Bear this in mind, that this survey committee merely worked as an arm of the Judicial Council for the purpose of obtaining facts as best we could, and delivering these facts through the medium of the Judicial Council to you, with the personal suggestions and recommendations of the members of the survey committee. I am particularly anxious that I be not misunderstood on that point. The suggestions made are not chargeable to the Judicial Council as a whole, neither are they adopted, and neither are they recommendations, except in one or two instances, of the committee, but they are problems presented, which it is hoped will provoke discussion and assist in arriving at an accurate conclusion and judgment. The work commenced under the direction of Mr. Eugene A. Cox as chairman of the committee, to whom, by the way, the credit for this report should be given, because of his untiring efforts and work in that regard. I am sorry that he is not here to give it in person. It is printed in the pamphlet that has been sent to you, but I have been somewhat annoyed at several suggestions made to me, which indicate that the report has

been in some instances misunderstood, and that the conclusions drawn by some are hardly accurate.

I do not know, gentlemen, whether you have grasped this report, but I have here a graph of the figures which are reflected in the report which you do have. I think you can get a comprehensive view of the work of the courts if you will observe from this report, which appears on page ten, by the way, the fact that Wyoming has a population of 247,000 people, with 82,000 people per supreme court judge, and 27,000 people per trial judge. Idaho with 546,000 people has a population per supreme court judge of 109,000, and 34,000 per trial court judge. You will note how this graph reflects the comparison between Idaho and Montana. Montana with a population of 548,000, has a population of 77,000 per supreme judge, and 18,000 per trial judge. Oregon has a population of 129,000 per supreme court judge. and 32,000 per trial judge. Washington has the same per trial judge, and 175,000 per supreme court judge. You will observe from that that the supreme court judges and the trial court judges in Idaho are carrying a load comparable with the judges of other states of this northwestern territory.

Now notice this next graph which I think is extremely important, with reference to the suggestion here. We are divided into eleven districts. There are two judges in five of those districts, one judge in each of the remaining districts. If you will note, the first district, the population is 18,200, valuation twenty-five million; the second, population 29,000, with a valuation of twenty-seven million. You will see a difference there. Now in the third district, population 59,000, with a valuation of fifty-eight million. In the fourth district, a population of 21,000, and a twenty-four million valuation. In the fifth district, 74,000, sixty-eight million valuation. In the sixth, 37,000, twenty-nine million valuation. In the seventh, 70,000 population, fifty-four million valuation. In the eighth, with two judges, a population of 53,000, the valuation forty-nine million. Now, in the ninth, population 66,000 people, with a valuation of fifty million one hundred and eight thousand—stop and compare that with the first district, one judge with 18,000 people, and twenty-five million valuation, and in the ninth, one judge, 66,000 people with fifty million valuation. You have that report, and if you will go down through it, you will see from this graph the difference in the labors in detail of the judges of these respective districts.

Now, if you will follow that up with another graph that is here, you will observe the cases in these various districts. In the years 1920 to 1930, you will observe the business of the courts. In 1920, in the state of Idaho, there were 5,784 cases filed, and 628 criminal cases. The next year is 6604 civil and 961 criminal. Now if you will drop down ten years later, 4,011 civil cases filed in 1929, and 587 criminal cases. You will observe that in the past ten years there

has been a decrease in the work of the courts in Idaho as reflected by the number of cases filed. Thirty-nine per cent in civil business and thirty-nine per cent—curiously enough—also in the criminal business. You will observe from that a decrease in judicial business as reflected by these figures. Now these figures were obtained in the following way: This committee prepared questionnaires which questionnaires were sent by the Clerk of the Supreme Court to the clerks of the various district courts, and these clerks in connection with the district judges gave the information therein sought, such information being the number of cases filed in these particular counties, civil and criminal, and also the number of cases filed in particular years; and then these figures were compiled in order that these charts might at a glance show what was done. Every county responded, and we feel that the report is absolutely correct, or as nearly correct as it could be under the circumstances. I want to call your attention to the judicial business as shown by the average number of civil cases in each district from the year 1920 to 1930—the last report of the state as a whole. In the first district, if you have the table before you, there are 221 cases filed—that is the average—this is page 13 of the report, if you have it there; you will notice the second district average, 184, the third 651, the fourth 344, the fifth 943, the sixth 400, the seventh 688, the eighth 517, the ninth 700, the tenth 352, the eleventh 1037. Now if you will compare that table with the table I first called attention to, you will observe that the population, the assessed valuation, and the number of cases filed in the respective counties or districts are in harmony. The more population, the more property rights involved, the more cases filed. Now in this chart you will observe that during the year 1929 we have tabled the number of cases filed in various districts. The first, civil, 210, criminal, 27; the second, civil, 141, criminal, 35;—this is just below the other table on page 13—let us compare there just for a moment the first and the ninth districts. In the first districts, 210 civil cases, 27 criminal cases; in the ninth, 512 civil cases, 72 criminal cases. Now note there is one judge in each district. You will observe by the graph just how many actions were filed and how the work of these courts is illustrated. Now with reference to that feature, gentlemen, this committee suggests that something ought to be done. We have merely suggested for your consideration the question of forming four—three or not more than four districts and in these districts have the present judicial districts, in order that there might be an equalization of the work; that in such larger districts there be amongst the district judges, one presiding judge, or that that be done by the Justice of the Supreme Court, and that the work in that method be equalized. Some, however, suggest that that would not be proper because the larger centers would elect all the judges. There may be some merit to that argument, but I for one

feel that it is not true, because the larger centers do not elect the Supreme Court judges, they do not all come from Boise, they are, and they have been, chosen from all over the state. Take the ninth district, the last three judges, one has been chosen from St. Anthony, another from Idaho Falls, another from Rexburg. The larger center in that district, Idaho Falls, has not always named the judge. And it does not seem to me that it would be the case here. It has been suggested that in the larger districts created as suggested by the committee, that there be divisions as is the case with divisions of the county, when votes are cast for county commissioners, and that the requirement be that the judge must come from some particular division, but be elected at large within the district.

The purpose of the suggestion as to the creation of three or four districts is to equalize the work of the courts in the district. The districts were created, as you all know, without any particular reference to geography, or a great deal of reference to the population, and these inequalities seem to have developed. We think that perhaps this can be remedied by the plan suggested; if you have a better plan it would of course meet with the approval of the survey committee.

Another thing that you will note in the report is the matter of the probate court's jurisdiction, whether or not the present probate court work should remain in the probate court, or should it be abolished and that business transferred to the district court. The thought underlying that is, first, that many of the problems of the probate court are of a character that should require the attention of trained lawyers and judges for their determination. Many problems in probate court practice and procedure are of equal importance with the problems of other civil work. Secondly, it was thought that it would be a matter of economy, because by reason of the decrease in judicial business, this work of the probate courts should be given to the district courts, and the expense of the probate judges eliminated. I rather suspect that the expense of the probate courts is close to $100,000.00 a year. It was thought, however, that in that connection, there ought to be a clerk of the district court appointed by the judge, in order that the type of individual necessary to handle this work could be secured, and not left to chance in general election. The committee recognizes the fact that the transfer of the probate work to the district court would require some constitutional amendment, perhaps.

Now, the committee furthermore suggests for your consideration the question of the election of judges. It is thought that, following the suggestion of the American Bar Association, the American Judicature Society, the American Law Institute, all three of whom urge this very thing, that perhaps judges might be elected on a non-partisan basis, or at any rate taken from politics. Immediately when that

suggestion was made, the idea seemed to get out that we were advocating going back to the non-partisan election of judges as we heretofore had it in this state. That was not the thought. The thought was merely to determine whether or not the bar wanted to commit itself to the principle, leaving the machinery for future consideration. As to whether or not we should do it one way or another is today immaterial, the query being, do we want to endeavor to evolve some plan by means of which we could accomplish what I am inclined to think is being, perhaps, tried in many districts right here today—that of selecting judges without regard to politics or political faith. I merely call your attention to the fact that some districts in Idaho where there are two judges, by almost unanimous consent of the bar, elect judges from different political parties. That is particularly true in the fifth district. Now, whether we can devise some plan for the election of judges without regard to political faith, is the thought which the committee wishes to urge, leaving the machinery to be developed in the future. It is the idea, the principle, that we are urging.

Now you will observe in the report, which I shall not take the time to further comment upon, other than merely to say such suggestions are made, a suggestion which has to do with the handling of jury cases, with the matter of cutting down number of jurors in certain cases, in order to save expense. The ultimate aim of this, gentlemen, so far as the survey committee was concerned, was to enable our judges to handle efficiently the business of the state, to save as much money as we can, and to increase the pay of the judges to a point commensurate with their work, and to this end these suggestions are made. The questions suggested for discussion here are: first, that the state be divided into not less than three nor more than four districts, as herein suggested; second, that in case of the transfer of probate business to the district courts, the probate court should be entirely abolished in order to effect economy. In case of such transfer the clerks of the district court should be appointed by the judges and their powers enlarged as hereinbefore suggested. Third, that if it is deemed inadvisable to enlarge the powers of the clerks, a system of court commissioners should be provided with compensation upon a fee, rather than a salary, basis; fourth, that in misdemeanor cases and civil cases the jury in the district court consist of six jurymen; fifth, that where district judges are called to serve in the Supreme Court, they should be relieved of their district court work and should remain with the Supreme Court until the cases upon which they have been called are disposed of. If the state were redistricted as hereinabove suggested, a judge could be called to assist the Supreme Court or detailed to another district whenever necessary without disorganizing the business of his own district. Number six has to do with judges being relieved whenever they are ill or otherwise unable to perform their duties. Number seven has to do with the retirement of judges upon some plan. Eight has to do with a theory of group insurance; number nine with the increase of the statutory per diem allowance for expenses of judges.

Now the only direct recommendations that the committee makes here are three, and one of those I wish to modify. First, that the salaries of the justices of the Supreme Court be increased. Second, that the salaries of the judges of the district courts be increased when the state is re-districted so as to equitably apportion the work, or upon the transfer of the probate work to the district courts. Now the committee wants to be understood as in no sense opposing an increase in salaries in the district court, but urging that we are merely suggesting that in view of this survey, perhaps something else ought to be done in order that this end might be accomplished. Three, that the judges of the district courts and Supreme Court be be elected upon non-partisan tickets, and there again permit me to repeat it is only the principle that we are urging now, and not the machinery. I thank you, gentlemen. (Applause)

THE VICE-PRESIDENT: The discussion on this subject is to be led off by the Honorable Benjamin W. Oppenheim of Boise. We will be pleased to hear from you, Mr. Oppenheim.

MR. OPPENHEIM: Mr. President, gentlemen of the bar. In the last legislative session, both houses of the legislature passed a bill increasing judicial salaries, both of the Supreme Court and district courts, which bill was vetoed by the Governor. There was no objection to the increase of the salaries of the Supreme judges, but the spokesman for the Governor said to the judiciary committees of the two houses that he would not approve an increase in district judges' salaries unless there was a redistricting of the state, and he pointed out some obvious inconsistencies. The legislature only had a few days to go, but at that time, if our committees had had this report of facts, we would have been able to intelligently frame an act re-districting this state which could have been put into effect next January, at the time that the new judges will take office. To me, gentlemen, that illustrates the principal value of this report. It is meat, it is not froth. It shows facts upon which intelligent men may arrive at definite conclusions, and generally speaking, no man can read this report and not come to the conclusion that re-districting this state is necessary. It is the preliminary to any other judicial reform in this state, and if the Judicial Council had done nothing else that justified its existence, it has done so in putting out this report of facts. But, gentlemen, there is another phase of this matter that I think deserves commendation. The report is prepared in a scientific manner, that is to say, it sets forth facts from which you can draw your own conclusions. Its own conclusions are more or less tentative; it assumes an attitude of a scientist watching an

experiment in the laboratory. Any legislation we have with respect to judicial reform is bound to be experimental; it must be first proposed, tested, and then either approved or abolished. I submitted this report the other day to an intelligent layman, a man who has had considerable to do with public affairs in this state, and he tried to read it, and read it part way through, and then said, "Why, this is technical, this is for you gentlemen of the bar to evaluate, this is something a layman cannot do"—and there he pointed out the field for the Judicial Council, and for the bar of this state. We have these facts before us, we have the known opinion of laymen that the district courts of this state are not properly set up, and it is our duty, by recommendation, to get results. During the last two sessions of the legislature, whenever any judicial reform was proposed, if it was not one where self-interest on the part of attorneys, or other interest, was not obvious, the legislature almost always followed the recommendation of the judiciary committee. That has not always been the case with legislative reforms, but when the judiciary committees have asked for reforms that were obviously not self-serving, and good reasons and facts could be adduced to support them, the legislature has listened.

There are some minor features of this report that perhaps deserve a little comment. I was very much interested in Mr. Eberle's statement that judicial councils should not consist of judges because lawyers on the committee might be afraid to express themselves. In spite of the judicial salve that appears at the bottom of page 10, I call your attention to a little expression that appears on page 17 of this report: The committee is discussing the personnel of juries and what will bring about improvement, and among the desirable things, the committee says with courage, "a firmer attitude on the part of the judges with reference to excuses" is necessary. I submit that this is a dignified and probably decided statement on the part of the lawyers, and disproves Mr. Eberle's dictum that we are all milk and water when it comes to criticizing judges.

Underlying this report are two reforms, two fundamental reforms that have been discussed for years by the American Bar Association, and discussion has been had about both in this state. One is the unified court; running all through these reports is the tentative step toward a unified court. The other recommendation, other than those on adjective law, all tend toward the freedom of the judiciary, giving the judges more power while they are on the bench, and then on the other hand, more money to spend while they are off of it. Mr. Cox, who seems to have had considerable to do with getting up this report, was kind enough when he knew that he was not going to be present, to send me some additional information, and I would like briefly to refer to some of the additional facts which he has adduced in support of the recommendations of the committee.

"There is a practical consideration—", says Mr. Cox, "which vitally affects any proposed program, but which is not mentioned in the report, and that is the economic condition in Idaho. Here is the reported net income of individual citizens of Idaho from 1921 to 1928,"—leaving out the odd figures, 1922, fifty-one million, 1923, fifty-eight million, 1924, fifty-two million, 1925, forty million, 1926, thirty-nine million, and 1927, thirty-eight million. You will notice that thirty-eight million is compared with fifty-one million in 1922, fifty-eight million in 1923. Mr. Cox says, "You will note that there has been a forty per cent decrease—"a rather significant figure when taken in conection with the report to which Mr. Merrill has called attention, that there has been a decrease of thirty-nine per cent in both branches, civil and criminal. It would seem that on the basis of both statements, the decrease in court business has followed the decrease in general business. Mr. Cox says: "This decrease has been in part due to changes in the law, but the trend continues despite these changes. It is probable too that the effect of changes in the law is more apparent than real, since most of the taxpayers who were excused by the changes in the law would in any event have been excused by their own necessities." Mr. Cox is a little bit pessimistic; he says: "Up to this year the atmosphere of prosperity still prevailed, although the people were not prosperous, but from now on we may anticipate that the legislatures will react to the psychology of hard times. The point of all this is that in any program for reorganization of the judicial system non-essentials must be eliminated and the program must offer a plan which combines economy and efficiency.

"The abolition of the probate courts will cut overhead in the neighborhood of $100,000. This will enable judicial salaries to be increased and clerk's salaries to be increased where conditions warrant it and will still leave a substantial saving.

"In our plan of reorganization we have suggested the division of the state into three or four districts with a presiding judge in each district without, for the time being, reducing the number of judges in the state. Such an arrangement would provide an organization where the Chief Justice of the Supreme Court and the presiding judges of the districts could keep contact and keep the practice uniform. It would also be easy for these four or five judges to meet with the Judicial Council from time to time and the Council would perform the function of a clearing house between the bar and bench.

"It is the general idea of the Council—" and here is the scientific attitude of the committee: "It is the general idea of the Council in making constitutional changes affecting the judiciary to suggest flexible provisions which will leave a good deal of freedom for development and experimentation in organization in the future.

"All that the Council has done up to this time is to block out the

general outline of a program. If the bar approves the work done, then between now and next year the Council will try to work out details for submission to the bar. If the bar does not approve the plan in its general outline, then of course the Council will have to work on whatever program the bar does approve."

I assume in general discussion of this matter that the three principal recommendations of the committee are thrown out for action by the bar association. Addressing myself to these three recommendations, one, that the salaries of the judges of the Supreme Court be increased, I would suggest that the approval of the bar association in that respect be pro forma. Bar associations for many years past have approved of that recommendation, and the fight for increased salaries for the Supreme Court justices is almost won, and would have been won last session had it not been tied up with the salaries of the district judges and the question of re-districting the state; it would already be in effect. It seems to me that no debate on that subject at this session of the bar need be had. I would like to jump to the third recommendation, that judges of the district and Supreme courts be elected upon a non-partisan ticket. I dislike very much to discuss this subject, and I think most of us do. In the first place, this bar association is new, and the Judicial Council idea is new to this state. What is the use of making recommendations if you cannot put them across, and why not be practical about it. If this association and the Judicial Council is to be successful, it must act upon things that it can put across. Now, no matter what the merits of a non-partisan judiciary may be,—no matter what the merits of the idea may be—it is bound up with past history in this state which makes it impossible at this time to get the recommendation adopted. What is the use, therefore, of going into this, and passing a resolution on this which will simply be ignored? I am not discussing this on the merits; I am simply interested in having this body adopt resolutions which are sane, sensible and conservative, and not intermixed with current political issues that we cannot win on the merits. Now the time will come in this state when that subject can be discussed without heat, but I defy you to discuss it at this time without immediately running into opposition,—not so much from the bar association, not so much from the lawyers, but from the laymen. Now, until we establish ourselves as a conservative, sensible advisory body, there is no need of our going up against a stone wall.

Going to the other recommendation, that the salaries of the judges of the district court be increased when the state is re-districted so as to equitably apportion the work, or upon the transfer of the probate work to the district courts, I regard that recommendation as very unfortunately phrased. The important thing, from the standpoint of the layman, is not whether the judges get more salaries or not, but whether the administration of justice is more efficient

and economical; so the second part of that recommendation ought to be the dog, and the tail is simply the salaries of judges, if it is feasible. I think the wording of the committee's questions for discussion on page 19 is the proper form of recommendation to be adopted by this bar association: "Number 1, that the state be divided into not less than three nor more than four districts, as hereinabove suggested." What we are after is efficiency in the administration of justice. These tables, and this report which are obviously correct, prove that the state ought to be re-districted, and the action by this bar association should not leave the criticism that we are seeking to get more money for some member of the bar, but that the real purpose back of our reform is an increase in efficiency and an increase in the administration of justice. We feel confident that will bring an increase of salary, but you cannot go to the public with that question as the primary question. Fortunately, independent of the constitution the state can be re-districted. I pointed out how we could have a re-districting some time ago if we had had sense or sufficient knowledge. The other part of the recommendation, namely, with respect to the consolidation of the work of the probate court with the district court, I think it deserving of the approval of this bar association, also, but it requires a constitutional amendment, obviously, and the Council is not through with the gathering of accurate information with respect to that particular improvement or reform. If this report were as full and complete with respect to probate business as it is with respect to district court business, we could perhaps take action upon it. It may be that between now and the time the legislature meets the Judicial Council can frame the necessary constitutional amendment to bring about that change by the next legislature, on the basis of recommendation of this bar and the judicial Council, backed up by facts which have been gathered and will still further be gathered by this survey committee; the constitutional amendment could be submitted at the next election, and at the same time, the re-districting of the state—these reforms could go into full force and effect at the time of the next regular election of judges and clerks, four years from next January. During that time it would be possible for this Judicial Council and its committees, working with the same impartiality, and scientific attitude as a fact-gathering body, to formulate the arguments calculated to win over the legislature and the public.

I trust that the resolutions committee will pro forma approve the first recommendation, and will enthusiastically approve the second recommendation of the survey committee reworded so that the tail will not wag the dog. I thank you. (Applause)

THE VICE-PRESIDENT: The meeting is now open for a thorough discussion of the subjects that have been presented. Surely some things that have been stated by these speakers who have led off

the discussion will provoke reply, and it should not be a difficult matter to get an argument on those questions in a body of this kind.

MR. TRUITT: I came to this meeting more to hear others speak than to speak myself. Mr. Eberle's able address here caused me to think on the questiou of the work of the Judicial Council. I think we are doing something with a Judicial Council, and I think that the Judicial Council is functioning and I think we have been doing a good deal of work along that line. I have learned something about the Judicial Council from the different states of the Union, and from the information I have they are functioning Judicial Councils similar to the one we have here, and I believe that there is a great field for work for the Judicial Council if it functions as it should, and as I believe it is functioning. I remember a story about a case that happened away out in the frontier some place; a man had stolen a horse, and at one time that was considered a capital offense. This was at a place where there was no higher court, but there was a justice of the peace there, and the matter came up before the justice of the peace. He sentenced him to be hung. In the meantime some friends of the accused, the defendant, went off and found a lawyer to come and defend him before this capital judgment was inflicted on him; the lawyer came in before the justice of the peace and said, "Your Honor, you can't try this man and condemn him. It it without your jurisdiction." "Well," the justice said, "I think we can try him", and the lawyer said, "Well, but you cannot hang him." "Yes", said the justice of the peace, "but we have hung him already!" Now it seems to me that this Judicial Council is doing something, it is functioning, and I believe there is a great work for the Judicial Council. I think it is well for us to consider that phase of the matter before we go any farther, but I think that this Judicial Council was properly organized and is doing a great work for the benefit of the state and the bar, and the work of the judges of the state, for that matter.

THE VICE-PRESIDENT: Anyone else anything to say on this subject—all of the subjects or any of them?

MR. GIBSON: I do not see anything to discuss. Mr. Oppenheim has settled the whole business. Now he says we are going to adopt the first, leave the tail off the second, and we are not going to talk about the third. I think under the circumstances, if Mr. Oppenheim is to have his way, we might just as well adjourn. It has been very interesting to me why we should not talk about the third recommendation. He says there are certain reasons. Of course we are aware that we at one time had a non-partisan judiciary, and later it was changed, but I should be interested to know why we should simply drop the third and keep from discussing it. I believe the bar association should not be afraid of any thing. If there is any good reason why we should not adopt this third recommendation, or why we should not discuss it, if Ben will just whisper that so it will not get in the newspapers, we will be satisfied. (Applause and laughter).

THE VICE-PRESIDENT: If we just keep on, we are going to have an argument, I can see that.

MR. T. A. WALTERS: If I might be heard, to address myself to my friend Brother Oppenheim's remarks, I would like to take just a few minutes to express my views, and particularly to answer my friend's position. I would say in the beginning that I neither admire his courage nor agree with his logic. He announces the principle that we should do away with the office of the probate judge in the interests of efficiency, and then refuses to address himself to the question of a non-partisan judiciary which has been advocated as one means of gaining efficiency. He is therefore in my opinion not logical in his conclusions, or in his address, relative to these three recommendations. I know of no reason, as has already been suggested, why this bar association should not make itself known on a non-partisan judiciary, if it is of the opinion that it will lend to the efficiency of the judiciary, or that it is theoretically wise, or that it is to be desired, or if either or all these things are to be desired, or it will accomplish either or all of those things. If it will, then I as a humble member of this association am ready and willing to express myself in that regard, and personally I am of the opinion that with the proper machinery provided, a non-partisan judiciary might add in efficiency and effectiveness in the state of Idaho. I would say this, however, that it makes no difference to me in addressing a judge, what his political opinions might be, if he is mentally honest, that is the only qualification that I see in a judge, when I vote for a candidate for that office—and that, I think, is the only qualification that we should require, outside of his learning, of any man seeking a position on the bench of this state. If the selection of judges on a non-partisan ballot by a proper machinery—with the existence, I might say, of proper machinery for the selection of the candidates—would give us that result, then I am in favor of it. What has occurred in the past is of little consequence. Let the dead past bury its dead, and if we believe in this principle, let us announce it to the public, and make ourselves known.

On the other proposition of abolishing the office of probate judge and transferring the duties to the district court, or district judge, I can see many reasons why much of that work should be transferred to the office of the district court. I can also see several reasons, perhaps, why it should not be transferred. If we look at it from a standpoint of economy I question very much whether we shall effect any saving by abolishing the office of probate judge and transferring the probate matters to the district court, unless we abolish some other offices at the same time. We have a probation officer, we have a ju-

venile court, which are a part of the duties of the probate judge, and if the office was abolished merely for the purpose of transferring probate matters to the office of the district court, then we would have to select some other office or create an office for the purpose of taking care of the juvenile matters, for the purpose of taking care of insanity proceedings, and those related matters, unless they were also transferred to the district court. And if they were transferred to the district court, from the very nature of things, the judge himself could not take care of them unless it was in an aggravated case, or an earnestly contested one, and if they could not be taken care of by him it would be necessary to elect or appoint some officer, which expense coupled with the increased salary of the judge would equal the amount paid to the probate judge.

MR. KATERNDAHL: Not that Mr. Oppenheim needs my defense, but speaking as one who has attempted to carry out the recommendations of this association in the legislature, I would like to say that we find it difficult in the legislature to carry out a great many recommendations. If they are few and to the point, we have less difficulty in getting them through. If there are a great number of recommendations tied up together, it sometimes delays the passage of those which are really desirable.

MR. HAAG: Gentlemen of the bar, it seems to me that our Brother Walters has to some extent brought out the matters that I had in mind. I think we have come to the time, if it is the time, for redistricting, but I think to redistrict, we are going in the wrong direction when we attempt to reduce the number of courts. I would not be in favor of reducing the number of district courts any more than I would be in favor of reducing it to just one district court as the popular court. We must have courts to take care of the business in the local communities. The very thing that Brother Walters spoke about, nothing has been said as to how it shall be taken care of, if the probate court is transferred to the district court; I refer to the juvenile court work. Now if the business of the probate court is transferred to the district court, which I am heartily in favor of, even if it would necessitate the judge devoting his full time to it, I would say it would he necessary, with very few exceptions, probably, in some of the very smallest counties,—possibly two counties in our district, to have a judge for each county. That has been the history of the different states, Indiana, Iowa, and so forth, where they have taken the probate court work out of the probate courts and placed it in the district courts, just like we have here, in the recommendation. As time has gone by and the population has increased within the district, it has been found necessary to have a district judge in each county; and if you will take care of your juvenile delinquents, and all the matters that go to the probate court, I dare say it will take the time of one person. So, as I say, I think we are going the

wrong way when we diminish the district courts. Also, we must not forget that if this state were divided into districts as suggested, we would have to travel so much farther to get a judge to sign an order, and it would eat up the greater part of that $100,000.00 which you have saved. I dare say you cannot travel thirty to forty miles to get a judge to sign an order to show cause, for a party to appear in court, without spending ten to fifteen dollars. I am in favor of swallowing up the probate courts in Idaho. It should be a qualification placed upon the judge of the probate court like any other, he should be an attorney at the bar, but I think the better way would be as I have suggested, to redistrict the state and place a district judge in each county, with the provision that he is also ex-officio juvenile judge. He would probably need some assistance. For instance, in this county, one judge could not take care of all the work, but in the outlying counties like Gem and Valley, one person could probably take care of all the work—could take care of both these counties and of the juvenile work also. Nothing has been suggested as to how we would take care of the juvenile delinquents, and we must not forget the juvenile delinquents. The purpose of the juvenile court is to prevent the juvenile from becoming a criminal.

MR. FELTHAM: I am very much interested in this question. I happened to be the unfortunate victim, some twelve or fifteen years ago, that followed the case in the Supreme Court brought to redistrict the state—that is to establish the superior court—some of the men present in this room will remember the transaction, and remember the fight we went through, and I thought then, and I think now, that the superior court system as used in California, is the system for this state, always has been, and always will be, and in the course of time we will come to it, we will have to come to it from very necessity. The system that is presented here, to divide the state into three or four districts, intends to aggregate a number of judges elected in some manner, God only knows what, it does not specify, there is no theory advanced here as to how that shall be done. I am very glad that the Judicial Council has been appointed, so that this matter can come on for hearing. It is a question that we ought to have discussed years ago, and which from necessity must be discussed now and in the future. The committee has done its work well, given us tabled reports with a great deal of information, and it has made suggestions, but it does not follow them through. Someone here made the suggestion this afternoon that the resolutions committee take this up and resolve, and so forth. I do not think it is within the function of this meeting to settle that question. We have a system in this country of submitting matters by vote to the people, and I think the only possible way we can settle this question satisfactorily to the bar in general, is to submit these questions to a vote of the bar individually. This is hardly a representative crowd of the bar.

We are gathered from quite a few counties here, but we do not represent the bar throughout the state, and those men who are not here today have a perfect right to have this matter taken before them and discuss it, until they come to some conclusion in regard to it, and it seems to me the thing we must do today is formulate some sort of a proposition as set forth in this report, for redistricting the state maybe into three or four districts, or the proposition of taking up some other system, such as the superior court system, and let this proposition be submitted to the lawyers and let them have a vote as they would on any other referendum, and come to a conclusion as to what they want to say on it. In that way we can get an expression from the bar of this state that will be worth something.

I have been a practicing lawyer here in this state for thirty-eight years in the country districts. In some few places in this state, such as Boise, Pocatello, and perhaps one or two cities in the north, you men who have located there have been fortunate enough to have a judge at your door. You have been able to reach him at any time without trouble and with but little expense, but the country lawyer who is scattered all over this country, is not so fortunate as you are. He has got to travel miles, and at a considerable expense and loss of time to get in touch with the judge at all. Many of these counties do not have court but twice a year, and then have a judge probably in the county one or two days, or a week at the most, and after that, if we have anything done, we have got to travel long distances to get before the judge, to get an order, or transact any other business before him, and it is expensive to a client, and I think you will all agree that just in proportion as the expense of your case increases, just so in proportion does your fee decrease, or even result in the loss of the case, the expense of the case prohibiting it from going on.

Another thing happens in these country districts that is very bad, and that is, we elect in the country districts probate judges from among the people, not men skilled in the law,—we rarely ever get a man to stand for the office who has had any experience in the law at all. Consequently we have a man as probate judge who knows nothing about law. So there is the greatest need for someone in the probate court who is capable of taking care of the probate work. It is just as necessary to have a lawyer on the bench in the probate court as it is to have a lawyer on the bench in the district court. A great many times his problem is exceedingly difficult to handle.

Now, there is another matter which comes to my mind, and that is, the people who live in the country want something to say as to who shall be their judge. You may talk about the non-partisan judiciary, but the only way to get a judiciary that is satisfactory to the people in the country, is to be able to elect a judge from among their own people. When we elect a judge, we do not care anything about

his politics or his religion, but we do want an honest man, and there is a crying need in the country districts to be able to elect our own judge.

Now, understand me, I am not objecting to the propositions offered by the committee. I am glad they offered them. It lays the foundation for argument. I say, let's take this to the bar in such a way that the bar will have the right to pass upon it in a proper way.

MR. HACKMAN: In regard to this Judicial Council, I feel that we owe a vote of thanks to the members of that council for the work they have performed, and what they have done. It does not make any difference whether we agree or not, the men who have spent time on this report, and delved into facts and figures, certainly ought to have a vote of thanks from this meeting.

I, for one, do not agree with the report in regard to dividing the state up, and the suggestion I would make in lieu of that is that we consider the method that is now adopted by the Federal judiciary, and that is that the Chief Justice of the Supreme Court of the United States orders a district court judge from one district into another, just as the work requires a judge. Now I believe that with the present district courts, if we had enacted into the law a provision that reports are to be made from the various district courts to the Chief Justice of the Supreme Court, and that the Chief Justice may order a judge from one district into another, we could then keep up with the work in delinquent districts courts, and where there is not enough work to keep a judge, to put him somewhere else, working. That would be the suggestion I would make in lieu of this committee's suggestion to redistrict.

There is a recommendation about the selection of juries, and a criticism that I feel I should make, and we ought to recommend that there be a change in our law in regard to juries. We have in some places in Idaho a system carried out by the court, by which jurymen are selected, and on the very slightest excuse they are excused, and then the sheriff goes out and picks up men who are put on the juries term after term. And I feel that that provision should be changed. In the state of Nevada, the district judges may, with the supreme court judges, formulate a system of rules of government, and they are very simple and they expedite business. It has been said that we ought not to do anything here, because we are not a representative meeting. I feel that if the members of the bar of the state of Idaho would attend to their business they would be here and would be heard, and the only way to make a success of this bar association is for the men to attend, and when they do attend, to speak words of encouragement to those who have worked in the interim to prepare and get up reports, and in that way encourage the work of the association, and make it worth while.

As to probate court work being transferred, I have nothing to say except this, that where the courts that are equivalent to the probate courts have been assigned to the district courts, and the routine work done by the clerks, and the contested matters heard before the district judge, it has been satisfactory.

I would like to move at this time, whether we adopt the report or not, that we thank the members of the Judicial Council for the work that they have done, the reports that they have made for us, and that we ask them to continue their work.

Whereupon, the motion was duly seconded and carried.

MR. GRAHAM: All I wish to say to the members of the bar is that the bar of Twin Falls County, in regard to this redistricting, our bar association some weeks ago met, some twenty-five or thirty members, and went on record as unanimously opposed to redistricting of the state for judicial districts. I think there is one thing which is clear from the report, and that is in regard to judicial districts number nine and number one, and possibly number four. In district number one, they claim they haven't enough work, and in number nine, they have too much work. It is not necessary to kill the animal to cure some disease! If that is the defect, let us remedy that, and not destroy the whole system.

THE VICE-PRESIDENT: As the time is rapidly passing, and we have with us this afternoon a member of the profession who in one sense is not a member of the profession; he is busily engaged in preparing young men for the profession of law. He will speak to you on the subject of the law profession and the law school. I take pleasure in introducing to the members of the Idaho State Bar at this time Dean Masterson of the College of Law, of the University of Idaho.

DEAN W. E. MASTERSON: Mr. President and Gentlemen of the Idaho Bar: There are four types of law school in this country today:

First, schools that do nothing except prepare their students for the practice of law. Heretofore, the law school of this state has belonged to this type.

Second, schools whose primary purpose is to train students for the practice of law, and yet devote some time to the training of law teachers and to legal research and scholarly production.

Third, schools in which "research in law, although still conducted in conjunction with a professional law school, gives the impression, whether intended or not, of being the activity in which the faculty is principally interested".

Fourth, schools of the type of the Institute for the Study of Law, recently established at John Hopkins University, which are not interested in training practicing lawyers, but devote their time and

energy to a study of the law as one of the social sciences—a study of how the law functions in society.[1]

What should be the purpose and mission of a law school in *this* state? What must its accomplishment be to justify its existence? We are all concerned with maintaining a law school that will render a maximum of service to the state. Must it conform to one of the four types mentioned, or must it become a fifth type by choosing from the four those activities peculiarly adapted to the needs of this state? I must confess that the answer to this question is not at once evident. I am convinced, however, that it should no longer exist solely as a law school of the first type: its accomplishment should reach beyond the training of a few lawyers: it should perform a wider and more far-reaching service by broadening the scope of its activities. It seems to me that it should exist not only as an institution where a few lawyers are thoroughly and soundly trained, but also as a center of certain other activities that will benefit the practicing profession and serve to cement the teaching and practicing professions in this state. I am convinced, therefore, that a closer cooperation should exist between the legal profession and the law school of this state in our joint efforts to make lawyers and to bring about needed legal reform. The bar of this state, for example, should vitally concern itself with the formulation and enforcement of proper standards by the law school, as well as by the bar admission authorities. The men who graduate from the law school will work for or with you; they will become your fellow members of the bar and will either elevate or lower its standing.

I believe that the graduates of an up-to-date law school of high standards have something of value and interest to bring to the profession. They enter the profession after three years of thorough training in legal history and the most recent legal theory, and an acquaintance with current legal literature and the trend of legal development. Entering the profession with this equipment, they cannot but add a scholarly touch and tone to it and breathe into it a quickened professional spirit. As civilization grows more complex in its economic, social and industrial aspects, and as the activities of and the relations between men become more numerous and complicated, we find ourselves emerging upon an era of what is sometimes spoken of as the socialization of the law. There is a trend away from many of the legal theories and concepts of the last century, and new legal developments are rapidly taking place to meet the exigencies of a new and complex civilization.

The doctrine of liability, without fault, for example, is being slowly extended and applied in our present-day affairs.

Corporation law is being rapidly codified, and the new codes are

(1) For a full description of these four types of law schools, see "Legal Education, 1925-1928", by Alfred Z. Reed.

sweeping away many troublesome doctrines. There is a pronounced and growing demand that legislative meddling in procedural matters yield to the wisdom, and ripe experience, and discretion of the judiciary. These and other innovations, studied in connection with the common law as a background, must be a part of the young lawyer's equipment if he is to be properly trained in the fundamentals and basic principles of a great science.

Where else can these new developments and theories be studied, systematized and taught except in law schools? What busy lawyer has time to do this? No one can deny that the young lawyer should enter the practice with a thorough knowledge of these theories and developments, and equipped with this knowledge, he carries to the profession a fresh learning which the lawyer, submerged in a busy practice, must necessarily neglect. The ranks of the profession are thus constantly reinforced with the appearance of a few younger men of fresh views, with the scholar's outlook, a yearning for mastery of a great science, and with vision trained in the direction of new movements and developments.

For no other reason, a state should maintain a high-class law school as a center from which a study and the teaching of these things may be carried on.

May I digress at this point long enough to say that right here lies the difference between two entirely distinct, yet closely correlated professions. The teacher of law is constantly engaged upon a study of the history, the development, the theory, the principles, and the trend of the law; the practitioner, while necessarily engaged at times in the application of legal principles, is engaged, a large part of his time, in a certain routine of practice that cannot be taught in a law school. It goes without saying that a law school cannot teach adequately and satisfactorily office practice and court room procedure. Repeated efforts to do so have signally failed. These things must be learned by actual experience in the law office and the court room. It is the purpose of a law school to give the student a thorough perspective of law as a science and to ground him in its general principles and concepts. Experience and statistics show that it is futile to attempt to lay too much stress on practice in any truly practical sense in a law school. As a result, this subject has lost considerable ground in the curriculum of law schools during the past century. The following figures are significant:

Blackstone's Commentaries devote 14.2% to procedure; Kent's Commentaries devote no space to the subject; the University of Pennsylvania Law School in 1871 devoted 25%, in 1874, 18.7%, and in 1930, it devotes 15.8% of the time of its curriculum to the subject; and a corresponding increase in emphasis upon substantive law subjects has taken place. And the University of Pennsylvania Law School gives about one-third more time to practice subjects than do

most law schools, so that the best law schools today give about 10% of their curriculum over to the procedural subjects, including evidence.[1] Professor Dickinson of the University of Pennsylvania Law Schools, aptly observes. The law school cannot hope to compete with the office in habituating prospective lawyers to the atmosphere and routine of practice. Its task is to do two things:

"(1) To equip students with knowledge of a large enough body of law to serve as an orientation and starting point for learning the additional law they will need from day to day in practice;

"(2) To habituate them to dealing with the application of law, and with gaps in the law where no legal rule exists." (Ibid, p. 371).

Indeed, the province of the law school is to give to its students a certain mental equipment necessary for the practice of law, namely, the power of analysis, a capacity to reason and to perceive, and to apply to practical problems and factual situations the principles of the common law. It seems that this equipment is best accomplished by the case system now in use at our law school and in practically all the other good law schools in America.

It follows, therefore, that Bar examinations primarily should test a student's knowledge of the broad principles of the common law, with a minimum of emphasis upon local variations, his capacity to apply the general principles to supposititious cases, his power of reason and analysis, and his general mental and moral fitness and promise as a lawyer, and not his memory or knowledge of local technical, or procedural matters, which should and must be learned in the practice, such as the number of days a summons may be left unheeded or how many peremptory challenges has the party defendant.

Mr. Strawn recently observed that "never in the history of the world have the requirements for the successful practice of the law been so exacting" and that " . . . as time goes on the problems of society will become more and more complex and that the lawyer's field of activity and usefulness will constantly grow broader and his responsibility greater." (Cal. Bar. Assn., 1927, pp. 159, 163.) The lawyer of tomorrow must, therefore, bring to his profession a broad general education. In recognition of this fact, the better law schools have, within recent years, raised their requirements for admission. The Association of American Law Schools, of which our law school is a member requires two years of college work prior to entering a law school, and three years of training in the law school. These requirements are certainly looking in the right direction. They have been endorsed by the American Bar Association. This Association has given our law school Class "A" rating.

(1) In this connection, see an excellent article by John Dickinson, "Making Lawyers", VIII No. Car. Law Rev. 367, 380, from which these statistics are taken.

But I do not believe that our College of Law should stop with the training of a few lawyers.

As already observed, it should render a wider service to the State that maintains it, and to the Bar. It must be a center of other activities, whose existence will give prestige to the profession and the school itself. These other activities should directly aid the practicing lawyer, and they should be carried on primarily for his benefit. If you are convinced of the merits of my observations and recommendations in this connection, I am sure that every lawyer of the state who wishes to advance the welfare of the profession will give them his support.

I have already addressed a number of the local bars and the northern division of the State bar in regard to one of these activities; namely, the publication of a law journal. I shall not elaborate that point here. I am grateful for the enthusiasm and the hearty response with which this idea has been received by you of the Bar. The law faculty and the student body share wholeheartedly your enthusiasm. As a matter of fact, some half-dozen prominent lawyers and instructors of law, including members of our own faculty, and the Bar of Idaho, are now engaged in writing articles on certain interesting, but difficult questions of law of special interest to the profession of this state. It is my hope and belief that this Association will see fit to cooperate with the law faculty in this undertaking; for with your assistance and cooperation, I would have assurance of its success. This journal, it seems to me, should be prepared and published under the joint auspices and efforts of the Bar and the law school. All articles should be carefully read by members of the faculty and thorough scholars and specialists of the Bar, so that only materials of the highest class will appear. Some space should be devoted, among other things, to noting up of current, interesting cases, to resumes of recent legislation, and to book reviews. A journal would thus be an additional aid in instruction and a constructive commentary on the law.

Thirty-seven of the sixty-seven schools, members of the Association of American Law Schools, and eight schools not members of that Association now publish law reviews. These are in addition to the publications by the Bar Associations and learned societies, such as the American Journal of International Law, and the Journal of the American Judicature Society. If it be argued that there are already too many law reviews, the answer is that there are none that give any consideration to legal problems of peculiar interest in this jurisdiction and that an Idaho Bar Journal would be read by many members of the Bar who do not read any other Journal.

The advantages of a law journal are too numerous for enumeration here. But briefly, they may be summarized as follows:

First, they afford the teacher a vehicle for his thought. They

are a channel by which the result of his research and minute study of legal problems may be given to the profession. When in the preparation of his lectures, he acquires expert knowledge, the bench and the bar should be given the benefit of this knowledge. Furthermore, a law journal brings pressure to bear upon the teacher to research and write and to keep abreast of the local law, and it is a help in the preparation of his lectures. No teacher of law does his duty unless he reads some five or six of the best law journals; this is necessary if he and his students are to become conversant with the trend of contemporary thought and legal development.

Second, law reviews are invaluable aids to the practicing lawyer and judge. They are "mines for the brief writer, furnishing ideas as well as citations:"[1] and they keep the busy lawyer posted on current decisions, contemporary legal thought and legal literature and reforms and undertakings, such as we witness today in the activities of judicial councils, code commissions, institutes for the study of law, legal surveys and the restatement of the law. Sound law review articles assist judges in finding the law and in stating reasons for their decisions. Law review articles are cited by justices of the best and highest courts of the country.

These are only some of the uses and functions of a law journal. Much could be said of its value to students of law, members of judicial councils, and legislators, in proposing legislation and needed legal reform.

I offer this idea of a law journal as one means of bringing about a closer relation between your work and mine; I offer it without apology; I come to you with it because I am convinced that it is a channel through which the college of law can render you a practical service.

I believe, furthermore, that as time goes on, and as the law school receives more generous support and cooperation from the Bar and the Legislature, and we are able to secure and maintain the services of teachers of repute, trained in legal history and theory, in methods of research and of teaching, and the technique of scholarly production, then, I am convinced, that the law school should be made to serve the state, and particularly the legal profession, in still other ways. I shall not take the time to go into the many activities of the profession participated in today by law schools in many other states, such as the drafting of changes in laws and codes of procedure, assistance rendered judicial councils, research in various branches of the law with the view to legal reform, and in writing annotations of local decisions and statutes to the restatements of the law now being undertaken by the American Law Institute. As an

(1) "Concerning the Extent to which the Law Review Contributes to the Development of the Law", by Douglas B. Maggs, So. Calif. Law Rev., June, 1930. This article is an excellent presentation of the numerous advantages of a law journal.

experiment, and in the hope of eventually enlisting the interest of the Bar of the State, I am now engaged upon the task of writing Idaho annotations to the restatement of the law of contracts, now nearing completion by the Institute just referred to. I hope to complete this work and have it ready for publication by the Institute by next June. These restatements are being cited by many of the courts of the country, including New York, Iowa, Missouri, Georgia, Maryland, New Jersey, New Hampshire, Oregon, Kansas, Connecticut, Arizona, North Dakota, Kentucky, Pennsylvania, Mississippi, and the Federal courts; and they are being heartily received by America's greatest legal minds. The day is near when no lawyer or judge can afford to be without these restatements with the local annotations. They are destined to lift our law out of its present chaotic condition and make it easier to teach and to practice. I trust that our modest experiment in this direction will point to the truth of my prediction and will mean the beginning of still another activity that will prove the worth of a law school to this state and its value to the Bar.

Our centers of learning can, through their law schools, influence the course and the trend of the law and the thinking and behavior of the generations of lawyers and judges to come; they can, no doubt, assist in legal reform, lighten the burden of the lawyer's manifold tasks, and ensure the solidarity, enhance the prestige, and elevate the tone of the profession of which they are a part. With your cooperation, your sympathy, and your assistance, something may be done immediately in the accomplishment of these desirable results by the publication of a well-edited law journal of the first class, and by the building of a law school that will give back to you young men whom you will be proud to welcome as your fellows, and that will assist the profession in its tireless efforts to render a high and unselfish service to the State.

MR. KAHN: May I inquire if any action has been taken by the Idaho State Bar Association in connection with this journal.

THE VICE-PRESIDENT: No, there has not. The northern division meeting has already gone on record as being in favor of it.

MR. KAHN: Then I move you that the matter be referred to the resolutions committee with instructions to prepare a resolution fully approving the establishment of a law journal.

A VOICE: Second the motion.

MR. MERRILL: I wonder if it is necessary to refer it to the resolutions committee; why could we not take direct action?

MR. KAHN: The only reason I referred it to the resolutions committee, was that I thought they would prepare a carefully worded resolution.

Whereupon, the motion being duly put, was carried.

On motion duly made and seconded, an adjournment was taken until ten o'clock a. m. of the following day.

MORNING SESSION 10 O'CLOCK A. M. SATURDAY, JULY 12, 1930.

The meeting was called to order by the chairman, Vice-President E. A. Owens.

THE VICE-PRESIDENT: I believe the Secretary has some announcements, and a communication from the President of the State Bar.

THE SECRETARY: I have a letter from Mr. Jess Hawley, in which he says: "It begins to look as if I may not be able to attend the meeting of the association, at least not until the second day. I am in a will contest case and so far not one-fifth of the witnesses have been examined. I thought there was plenty of time to try the case and get away and there would have been had it been in the District Court, but I am torn between what I conceive to be a duty to go down to Boise and a certain duty to help out on this case.

"If I am unable to get down for the meeting, I would like to have you suggest that the resolutions committee should consider these propositions, in addition to others which are presented by the Judicial Council's report:

"1. A resolution justifying and approving the existence of the Judicial Council, and authorizing the legislative committee to make effort to secure its recognition as a state proposition, to the extent of some state aid, leaving, however, the appointment power in the commission, as at present.

"2. Appointment by the commissioner of one member of the bar of each county to serve in liaison capacity with the Secretary and board. The thought can be elaborated, but I think you are familiar enough with the necessity of having closer contact with the bar of the state than we now have as a commission.

"3. Authorizing our legislative committee to work to the end that a code be rebuilt for Idaho, and most important, that it be rebuilt by experts and not by local commission.

"There are many other things, of course, such as the securing of correspondence among local bar associations, to the end that the minimum fee schedules be compared and revised to something like state uniformity, if possible. There are probably other things, but these are definite recommendations I make.

"If I were there I would emphasize the importance of a strong Judicial Council, as establishing in the public mind that the profession can be relied and counted upon to furnish of its best minds for the public service of improving the science of jurisprudence, and the administration of justice through court procedure.

"I would also emphasize the wisdom of holding fast to all we have gained by the Shattuck decision, the possibility of fairly and kindly disseminating the facts to laymen that they are debarred from office practice of law. The importance of the legislative committee

should be emphasized as an extremely important function of the Bar Commission, and therefore the call to that committee recognized by the bar as both an honor and a duty.

"I know of nothing which I regret more than my inability to really participate in the meeting, which marks the close of my connection with the Bar Commission.

"I want you to thank the other commissioners and the bar, and please include in this yourself, for courtesies, forbearance, and needed backing in those things which have fallen to my lot to do as President of the bar.

"Sincerely, Jess Hawley."

MR. OPPENHEIM: I move that the letter be referred to the resolutions committee.

Whereupon, the motion having been duly seconded and put, was carried.

THE VICE-PRESIDENT: We had better proceed at this time with the program as outlined; one of the important divisions or committees of the Judicial Council, is the committee on civil procedure. The subject, suggested changes in civil procedure, will be discussed by the Honorable Dana E. Brinck, chairman of the committee on civil procedure of the Idaho Judicial Council. Judge Brinck. (Applause).

THE HONORABLE DANA E. BRINCK: Mr. President, and gentlemen of the bar, I have received two compliments in the printed matter to which I am not entitled. I am not chairman of this committee, but I am making this report in place of General Frank Martin, as chairman, because he is absent from town. In the report of the Judicial Council prepared by the president, it was stated that I had interested myself in the formulation and work of judicial councils, and presented that matter to the bar association. That is another compliment to which I am not entitled. I did not have the zeal to do that. In 1927 I was appointed chairman of a committee to investigate and report to the bar relative to judicial councils. We failed to do anything that year, and in 1928 they insisted that we get busy, and last year we did examine all the reports that were available, and made a report to the bar on the judicial council, which resulted in the organization of the present Judicial Council.

From a study of these reports, and the study that we have made, I failed to see that there is any indefiniteness about the idea of a judicial council, as was suggested by Mr. Eberle. Of course it is true that the details are different in the different states, the membership is somewhat different; in one or two states no one is eligible but judges. California, I am told by Mr. Webb, took care of this mistake in that respect by having a committee of the bar sit with the Judicial Council and lend balance to the council. The purpose and the function of all the councils are practically the same. The purpose

—I am repeating this from our former report—the purpose is no better expressed anywhere than in the report of the commission which brought about the organization of the Massachusetts council. That commission said this: "It is not a good business arrangement for the commonwealth to refer the study of the judicial system, and the formulation of suggestions for its development, almost entirely to the casual interest and initiative of individuals. The interest of the people for whose benefit the courts exist calls for some central clearing house of information and ideas which will focus attention upon the existing system and encourage suggestions for its improvement—some central official body is needed for the continuous study of questions relating to the courts." And that is the central idea of all of the councils. In the councils that actually got started, I see no hint of failure. Ohio, which in 1923 organized their judicial council, having taken the idea from the Massachusetts provisions, so far as I know, has never functioned, but aside from that state, I think all of the states are functioning, and that some of them have done a great work, which is manifest from the reports they have put out. Massachusetts, which was organized in 1924, has put out five annual reports. Just so that you can see what that amounts to, I have brought along some of these reports. Many of their reports have been adopted by the legislature, although Massachusetts complains of a lack of co-operation by the bar, which makes legislative action difficult. On the other hand, California, a newer council than Ohio, at the last session of the legislature had 35 measures before that legislature. Virginia, Washington, Rhode Island, Kansas, Connecticut, Oregon,—have all issued annual reports and I suppose other states have issued reports which we have not received because of their late organization. It is probably too early to say that any of them are successes or failures. But regardless of the success or failure of the Idaho council during the past year, I think it is safe to say that in other states the council idea has shown a remarkable efficiency and valuable results.

SUGGESTED CHANGES IN CIVIL PROCEDURE

The committee of the Judicial Council designated as the committee on civil procedure, received the suggestions for its work from two sources, the experience of its own members, and the work of judicial councils of other states. If the council and committee are to continue their work along this line, it is hoped that members of the bar will freely suggest matters for their consideration. Probably every practitioner has, in his own experience, discovered situations wherein the present rules of procedure are awkward or inadequate or inefficient; and if the bar association with the help of the Judicial Council can become a clearing house for ideas tending to the improvement of procedure, it will have accomplished much; and it is hardly to be

questioned that procedural statutes recommended by the bar association will be readily enacted by the legislature.

Several of the recommendations of the council are intended to permit the correction of errors by trial courts without the necessity of granting new trial, where this can be done in justice to all parties. Such are the recommendations contained on pages 28 and 29 of the report of the Judicial Council, giving to the trial courts the power to entertain a motion for a judgment non obstante veredicto, and giving the trial court powers in addition to those it now has in ruling upon a motion for new trial. These recommendations are designated in the report as new sections to Compiled Statutes, to be designated as Sections 6864-A and 6891-A, and an amendment by addition to Section 6888.

The recommendations I will not take the time to read, assuming you have all read them, and possibly have the report before you. But referring to them in substance, the one as to judgment non obstante veredicto after a motion for a directed verdict is made at the close of the case, when it is difficult for a court to take the time to examine into it, the court could submit the matter to the jury and later on determine with some degree of deliberation whether it should have been granted. Then if we determine it should have been granted, the judgment entered on the verdict may be set aside, and a judgment entered as it would have been if the verdict had been directed, and a new trial saved. To give such power to the trial court upon a motion for a new trial, if a motion has been made at the trial, is the subject of another recommendation.

Another difficulty that we have all experienced, trial courts particularly, is with regard to passing upon a motion for a new trial. It may be that the only error is in the judgment, but the findings are correct—through some mistaken notion of the law a wrong judgment has been made, or even an inadvertent error. It is a judicial error, and cannot be corrected; the only thing the court can do is to grant a new trial, and to give the court the added power which has been adopted by California at the suggestion of its council, would probably save a good deal of delay and extra expense in the requirement of a new trial.

The proposed Section 6849-A providing for settlement of instructions before they are read to the jury, and that in case such settlement is had, objections must be taken at the time or deemed waived, is of very considerable importance in the prevention of errors, and consequently new trials. At every other stage of the proceeding, even though by our statutes exceptions are deemed taken to adverse rulings, the court and adverse counsel are given an opportunity to understand and consider an objection, and to yield to it, or to deliberately reject it. As to instructions, however, the court is practically without the aid of counsel, who have of course studied the

case and the law germane to it much more intensively than the court can have done, and is given no opportunity to have objectionable matter contained in the instructions given pointed out to him, nor specific or any objection made. As a result, many cases are reversed on erroneous instructions which the trial court would not have given had objection been pointed out. A statute in Wyoming provides that before the instructions are read they shall be settled by submission thereof to counsel with opportunity to object. It was thought by the council that to leave the question of whether the instructions should be so settled to the discretion of the court would be desirable, for saving time in cases where he deems it unnecessary to call for examination and objection by counsel. In such cases, of course, exceptions to all of the instructions would still be deemed taken; but it was considered highly desirable that in cases involving complicated or abtruse questions of law, the court should have an opportunity to require objections to be made if at all before the jury is instructed, and that by providing for the submission to counsel of such instructions before they are read to the jury, it becomes entirely fair to all parties that such requirement be made.

California, at the suggestion of its judicial council, has adopted a statute providing that a motion for new trial must be brought on for hearing within sixty days. It is not uncommon in our courts to have motions for new trial delayed for many months, or even years, simply by the failure of counsel to call them up for hearing. The delay may be justifiable in particular cases, but in general is not necessary, and lends color to the popular complaint of the slowness in the judicial machinery. The council recommends a provision that a motion for new trial must be brought to a hearing within sixty days after the filing of the notice of intention, unless for good cause the court extends the time.

In my own experience as trial judge I have in several cases been compelled to permit a trial upon the merits, although a plea of former adjudication, or of another action pending, was interposed, which would have rendered a trial upon the merits unnecessary, if that issue could have been determined prior to the trial of the other issues. It is possible the court now has power to order a separate trial of such issues, but it is so questionable that the council recommends a statute expressly authorizing such a separate trial.

By pleading a written instrument according to its tenor and effect, a trial upon the merits is often required where the case could be determined on demurrer as a question of law if the instrument sued upon were set out in haec verba. The judicial council of California recommended the enactment of a statute providing that in all actions upon a written instrument, the instrument should be pleaded in haec verba. There may be cases where this would involve a voluminous pleading to no good purpose, and we think it should be within

the power of the court to require pleading in haec verba in its discretion; hence the recommendation of the proposed C. S. Section 6706-A.

Finally, as to our recommendations, under our procedure, if a defendant moves for non-suit at the close of plaintiff's case and prevails, he may again be subject to another suit upon the same cause of action. In many states the practice obtains of permitting a defendant to move for a directed verdict at the close of plaintiff's case, and upon such motion being overruled, to proceed with his defense; but such practice does not obtain in Idaho, so far as we know, and has never been recognized by any decision of our Supreme Court. It would seem that after plaintiff has presented all his evidence, and been content to rest his case, a non-suit then granted should be final, and this is the basis for the proposed amendment to C. S. Section 6830. A clerical error has crept into the proposed statute as embodied in the report of the Judicial Council. The words "fourth and" should be stricken from the last sentence of the proposed amended statute. As to the fourth subdivision, which now permits the plaintiff to suffer a voluntary non-suit at any time before the final submission of the case, it was thought that plaintiff is amply protected if he has the right to suffer such non-suit at any time before he rests his case, and that the plaintiff should not be permitted, after the defendant has proceeded with his defense, to have a judgment other than on the merits. (Applause).

THE VICE-PRESIDENT: I am sure the subject just presented is of vital interest to all the members of the bar, and the further discussion of the subject will be led by Frank Ryan of Weiser.

MR. FRANK RYAN: Mr. President, and gentlemen of the bar. What few remarks I have to make are largely extemporaneous in character. I have studied the report of the Judicial Council to some extent, but I did not know just how far Judge Brinck's discussion would go, so what I have to say is largely on the spur of the moment.

However, as I view the proposition, the fact that the amendments are necessary only emphasizes the necessity of some means of scientific and continuous revision of the code of civil and criminal procedure. Just what steps should be taken to accomplish that, we possibly will not all agree upon. It has occurred to me, however, as a matter of suggestion, or argument, that the Judicial Council, which we are now trying out, may possibly serve the purpose of doing this. It would seem to me that the power to initiate—not necessarily the sole power to initiate, but it should have the power to initiate amendments to the code of civil and criminal procedure—this power should rest with the Judicial Council, and that we probably should take that away from the legislature and put it upon a more scientific and workable basis. The legislature only meets every two years, and this should be a matter that could be worked out as the occasions

required it. To that end I would suggest, for discussion, at least, that we authorize the Judicial Council by proper legislative enactment, to initiate procedural reforms of various characters. I would not, as a general thing, be in favor of those reforms being enacted, without first submitting them to the bar for their suggestions, and the bar at the same time have the privilege at all times of submitting to the Judicial Council suggested changes, just as the council have now solicited suggested changes from all of us to include in this report. That occurs to me as a necessary reform that we are going to come to. I do not think the bar generally are satisfied with the method that is now available to us of having the legislature periodically attempt these corrections in criminal and civil procedure. It seems to me that the science of law is a science, and it should be handled in a scientific way, and possibly that affords the machinery to carry it out. I at one time visited the capital of Minnesota, and I remember seeing there in the rotunda this statement: "The science of law is but the collected wisdom of the ages", and I sometimes wonder if in our desire for change we do not forget that the provisions of law, and for its administration, are almost as old as time, or as old as civilized time; and that all legal principles that have survived through this period are based on more or less sound reason, and should not be lightly upset. For that reason, I think procedural change, or change in basic principles should be very carefully and thoroughly considered by the bar before they are made.

Now, as to the suggested changes that are in the report of the committee, I have not a great deal to say about them. Many of them I presume we will take as a matter of course, that they would probably better the practice that now exists. In regard to the first matter submitted, relative to exceptions to instructions, I haven't any quarrel with the particular recommendation, except that it occurs to me that where a court is required to submit its instructions to attorneys, and then have them make their objections, that ordinarily, in the average case that comes before the court, that is not feasible without considerable delay to the trial, and that a good deal of the time the courts will not know, outside of the stock instructions, what particular instructions to give, until practically all of the case is submitted to it, then under this rule submitted here, if counsel must have a reasonable time in which to consider the instructions offered by the court, as to what would be a reasonable time might be a question, and what would be necessary to consider such under the circumstances, to give an attorney sufficient time to consider the instructions the court might offer him—it does not seem to me that it is going to be practicable. I cannot say that I particularly favor that suggestion, although it would be highly desirable for the court, in instances where the court could do so, that the attorneys would have the instructions available. However, I believe most attorneys, in cases of

very much consequence, make it a practice to submit to the court early in the trial the particular instructions they are going to ask, and let the court be considering those instructions, and as a result of good practice and being a well-prepared attorney, he will have his ideas on the instructions before the court. Of course, if he has any citations of authority, I think that he should make a notation. I think when he submits his instructions to the court that it is only fair to the court, if he has authorities, that they be made available to the court.

Now, there is another provision mentioned that was not discussed by Judge Brinck. That is in regard to comments by the trial judge, to the jury, following the Federal court practice. I do not know whether that was meant for discussion on this occasion or not. I presume all of the attorneys would be very dubious about having that put into practice, possibly because we have been so long the other way. While it might be a good practice in the Federal court, I can see many reasons why I would be reluctant to have it in effect in the state; and if it should be considered here, I think the bar should approach it very carefully. I cannot say offhand that I would be in favor of seeing it put into effect.

The next proposition, for judgment notwithstanding the verdict; there is much merit in that, and very probably it ought to be in our provisions, that on the motion being made it stays execution pending a ruling of the court on the motion.

On the question of a motion for a new trial, I think that is highly desirable that it be brought to a hearing within a limited time, although where attorneys want it brought to a hearing on both sides, there is really no practical difficulty in the practice as it exists now, of calling it up and having it disposed of. Sometimes a motion for a new trial may be filed for various reasons, and it is not always that a limitation of time works toward the carrying out of justice. However, I have no real meritorious objection to fixing a limitation of the sixty day period as suggested.

The next suggestion, with reference to pleas in abatements, as Judge Brinck has suggested, it is possible or probable that the court has that power now. I can see no reason why not—in fact I think there are some authorities that uphold that as the inherent power of the court at the present time, to hear and set for trial the matter raised by pleas in abatement, and I doubt very much whether a statute is necessary on it. In any event, if a trial court did set a plea of former adjudication for trial, no doubt it would be heard, and tried in the trial court, and I cannot see any reason why the other party should raise any error, or have any just cause of complaint. I do not believe it would be reversible error if the trial court did assume that authority if it did not have it, but I think it has. If,

however, it is desirable to make certain by statute something that might possibly be uncertain; I see no particular objection to it.

Then the next provision in regard to dismissal on motion for non-suit, the suggested changes are in my opinion desirable, except the fourth provision that provides upon the trial, and before the plaintiff rests his case in chief, the plaintiff abandons it. I think it ought to be limited to when the plaintiff rests his case. There may be occasions, and quite frequently are, when the plaintiff is surprised by the failure of an important witness to appear. He may have started on his trial expecting that witness to be there, in the course of the trial, and finds he is not. He may have been surprised in other ways, in his testimony, and he should have the privilege at any time, before he rests his case, of dismissing it with the right to bring it again. With that limitation on the fourth provision, there is no objection to that phase of the recommendations of the committee. I think, gentlemen, that about covers the matters that I had in mind. (Applause).

THE VICE-PRESIDENT: Gentlemen, is there any one of these suggestions submitted by the Judicial Council that you would care to discuss? If so, the meeting is open for that purpose.

MR. HACKMAN: There is one subject here that I would like to speak on to this body, and that is in regard to instructions to the jury. Up to thirteen years and a half ago, I was in the habit of seeing cases where the plaintiff, if he wanted instructions, would submit a copy of them to opposing counsel. The defendant would submit a copy of those he wanted to plaintiff's counsel, a copy also to be given to the judge, and when the arguments were concluded, the judge would retire to his chambers, excuse the jury, and would ask the defendant, "Have you any objections to plaintiff's requested instruction number one?" "No, sir". "Two?"—"No." "Three?"—"No." "Four?"—"Yes, I have, to the last clause". "Give your reasons". And the court asked the plaintiff's counsel, "What reason have you for asking it?"—"Section so-and-so". "I will grant, modify, or refuse the instruction." And so on down the instructions. Then, take the defendant's instructions, and go through them in the same way, the court asking the plaintiff's counsel for his objections, and asking defendant for his authority in requesting such instructions. We would then know what instructions the court would grant, and when we went out to argue our case we would be able to say to the jury, "His Honor is going to instruct you thus-and-so, and he is also going to instruct you thus-and-so; these instructions mean thus-and-so;" then we took up the evidence, and the law as applied to the evidence.

But in my practice in Idaho, where opposing counsel is not required to submit his instructions to you, and where you do not know what instructions the court will give, you have to say to the jury, "I

think the court will instruct you so-and-so" and then endeavor to argue the facts as you think the court will instruct the jury. And when you get through, the court reads his instructions, something that you never heard about, and you are discredited before the jury. A man can never be a trial lawyer, and try cases as thoroughly when he must do that, as he can when he knows what the instructions will be, and he can argue the law as well as the evidence, do it with confidence, and that is what is going to hold a jury. Now, then, because some attorney might misconstrue an instruction, or might dwell upon one particular one, and not others, the court would always if he thought it was necessary, give a final instruction after the argument had been had, instructing the jury further as to that feature.

MR. RYAN: In civil cases the instructions are given before the argument is had.

MR. HACKMAN: In my district they won't do it. The Supreme Court of this state has held that we are entitled to have that done, and I will say frankly to this bar that I tried to get it done in my district and cannot do it.

Now, I have examined the authorities throughout the United States, and I find every authority holds you are entitled to that right as a constitutional right, and grant that no attorney has a right to secret communication with the judge—and when one attorney can hand up requested instructions, and the other does not know it. that is secret communication. A man is entitled to an open, fair, and free trial, and his lawyer is entitled to know everything that passes between the other attorney and the judge on the case. Now, just briefly, some authorities. From Alabama, Alabama L. S. R. Co. vs. Arnold, 2 Southern 337 (Ala.):

> "It is difficult to conceive any step or proceeding taken in open court by either party in the conduct and progress of a trial, of which the adversary party has not the undoubted right to be informed, and the opportunity to examine and deny or avoid. Concealment and secrecy in such cases are violations of the rights of litigants, and contravenes the policy of public trials, and the right of every party to be heard. There is no error in the court having permitted the attorneys of the plaintiff to examine the written charges requested by the defendant. An examination was proper and may have been necessary to enable them to determine whether to waive, except, or ask explanatory or qualifying instructions."

In Missouri, this question was up. The court says:

> "The theory on which the court denied this reasonable request of plaintiff's counsel does not appear—"

that is to say, the other instructions—

> "and indeed, no valid one can be formulated. Obviously it was but the arbitrary exercise of a power which may not be justified or condoned in a court erected for the purpose of trying causes between litigants which is declared by our constitution to be open to every person for the purpose of administering right and justice without denial. * * ** When a court refused to counsel the right to examine instructions, and exception is taken to that course, we can deal with that case when here."

The majority opinion in that cause is silent on the question because it was not made there, and it seems Judge Lamm merely referred to it because it was raised by way of argument in Judge Woodson's dissent. Touching this matter, Judge Woodson said:

> "Has it come to pass, where counsel, sworn officers of the court and the representatives of litigants therein, where their lives, liberty, and property are involved, dare not ask the trial court the privilege of seeing and reading the instructions before they are given? I think not. I know of no such judge. * * * Nor have I ever heard of a court refusing counsel the privilege of seeing the instructions asked by the counsel for the opposite party prior to the court's ruling thereon; but, upon the other hand, my experience and observation has been that courts invariably request counsel for the respective parties to exchange instructions prepared by them in order that they may assist the court in arriving correctly at the law of the case by pointing out any error they may contain, and thereby enabling the court to avoid error in declaring the law. It is here where counsel can best serve their clients' interest, and better aid the court in the proper administration of the law than anywhere else. * * * Every litigant of this state has a constitutional right to be heard, either in person or by counsel, upon both the law and facts of his case, and that means a real hearing, not merely a hearing in name. * * * Instead of encouraging such practice and usurpation of power, if it exists, this court should, in unmistakable terms, place its seal of condemnation thereon, and require the trial courts to give counsel a respectful hearing upon the law of the case, and furnish them reasonable opportunities to see and read the instructions before they are given, in order that they may point out any error they may contain and make intelligent objections thereto, just as is done in passing upon the evidence of the case."

I won't read more, but the court says it may take a little time, but in the long run it will save time. Now prior to locating in this state, I never in all these years of practice saw as many instructions offered to a jury in a case as I have in my practice in this state here. Because I knew my opponent would have to show me his instructions, if he offered an instruction on a phase of the case I had not prepared, I could then prepare a proper instruction, and attorneys drew as few

instructions as possible. My opponent, likewise, drew as few as possible . But in the practice here of knowing nothing, and seeing nothing, I have done what other lawyers do, and I am ashamed of it, and that is to get a book of instructions, and a form book, and hunt up everything conceivable that I could think of to meet what I thought the other fellow would offer, and the other fellow does likewise, and then the judge goes out and has to guess what the law is, and guessing, gives a number of instructions, some of them conflicting with one another, and even if they do not, I say to you, do you know it? No jury on God's earth knows what the instructions mean, and half the time the judge doesn't, seventy-five per cent of the time the lawyers in the case don't know.

Now, you are talking about wanting to help the procedure, to simplify the practice of law. Go back to the procedure in the old states and you will find that you are fifty years behind the time, doing the way you are, and you will be getting up to date if you will enact a law that requires instructions to be exchanged as a matter of right. Now, therefore, I respectfully submit to this body here of my brother lawyers, that all reason, common sense, and the right to a fair, free, and open trial for the litigants, demands that we put in mandatory form and ask the legislature to adopt this provision, that we may be able to represent a client from the time we are employed until the case is submitted to the jury, that we knew exactly what is going to be asked by opposing counsel, and that we be able to be prepared to say what we believe the law of the case to be, and so that the judge may draw the instructions correctly as to the law of the case. If this is done, you know what the instructions will be, and you are able to go to the jury and say to them with confidence that the law will be, and I submit, from my personal experience, if you do this, you will have better jury trials than you have now.

MR. FELTHAM: Mr. Hackman's experience hasn't been so very different from the rest of us, in my experience. When we draw instructions and hand them to the judge, he throws them in the waste basket and gives his own instructions, ignoring our instructions entirely. I take it for granted that a lawyer who is trained in the practice, prepares his case, knows the facts, and when he goes into court to try his case that he has not only prepared the testimony, but he has prepared in his own way the manner in which he is going to try that case, he has prepared his instructions, he has drawn a list of instructions after careful study of the case from his standpoint. The fellow on the other side has done the same thing and when they go into the trial of a case, he hands to the trial judge his instructions, each and every one, and the judge takes them and reads them probably, and then throws them in the waste basket, and he never knows when he has tried a case, whether the judge is going to follow his

instructions, or give any of them, until the final reading, and then discovers he has been ignored entirely, nothing has been stated in the instructions that he has requested, and no opportunity is given under the practice in this state for one to review them before the final submission of the case. I think it is pre-eminently necessary in our practice to have a change. Possibly in the rush and hurry of the business the court has had no opportunity to study that phase of the case, and he must resort to his own initiative and use his own judgment, or he can resort to the information imparted to him by counsel to help him out. I take it for granted that every lawyer intends to assist the court, and it is his duty to assist the judge on the bench in every way he can.

THE VICE-PRESIDENT: There is no desire on the part of the presiding officer to limit these discussions. They are instructive, but due to our limited time we must pass on, and the discussions can be carried on further at the time the resolutions committee makes its report.

The report of the committee on criminal procedure, the subject being "Suggested Changes of Criminal Procedure", by James Harris, chairman of the criminal procedure committee of the Idaho Judicial Council. Mr. Harris. (Applause).

SUGGESTED CHANGES OF CRIMINAL PROCEDURE

MR. HARRIS: Mr. Chairman, and gentlemen of the bar. The committee on criminal procedure of the Idaho Judicial Council, and the Idaho Judicial Council itself, were actuated largely in their recommendations to the bar by the results of the work of the survey committee. We felt after an examination of that survey, and a study of it, that we could well afford to go slowly in matters with reference to the administration of justice in criminal cases. We felt that the people of Idaho were not confronted by any serious situation such as prevails probably in many of our larger centers of population. Secondly, our recommendations have been few, and our steps in that direction hesitating, but I believe we have acted with caution and circumspection. The basis of our investigation was the recommendations of the Prosecuting Attorneys' Association which last year made a number of recommendations to the state bar. Some of us also proposed ideas that were the result of our own experience, but largely the recommendations of the prosecuting attorneys were the matters considered. Mr. Hawley has suggested that in this report I take up and discuss briefly these recommendations as made by that association, because they were made to the bar association as a whole, and are reported upon by us only as a subcommittee of that council; and the council itself feels deeply appreciative of the suggestions, and feels that they are worthy of consideration. For that reason, I will take them up in the form suggested.

They are:

1. That Section 8829 of the Compiled Statutes be amended to read the same as Section 954, Kerr's Penal Code of California:

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

Now, the subcommittee of the Judicial Council, after consideration of the recommendations, recommended to the Judicial Council as a whole that the proposed statute be amended in some regard. This was due to the interpretation of the statute in the Supreme Court, in the case of The People vs. Miles. There the Supreme Court decided that what the statute meant was that when those offenses, stated under separate counts, all grow out or relate to the same transaction and events—so these words were added to the present statute, as recommended by the Prosecuting Attorneys' Association. Now, that recommendation of the subcommittee to the Judicial Council was also adopted by the council and is contained in its report which you have before you.

The second recommendation made by the Prosecuting Attorneys' Association was, "it is further recommended that Section 6842 of the Compiled Statutes of Idaho be amended to read as follows:

"It shall be the duty of the trial court to examine the prospective jurors, to select a fair and impartial jury. He shall permit reasonable examination of prospective jurors by counsel for the people and for the defendant."

This recommendation was concurred in by the committee, although changed somewhat as to form, and the recommendation was submitted by the civil and criminal subcommittees of the Judicial Council, collaborating together. The form in which it is finally submitted is as follows:

"It shall be the duty of the trial court to examine the prospective jurors, to select a fair and impartial jury. The court shall permit reasonable examination of prospective jurors by the attorneys for the respective parties."

The actuating idea in the suggestion or the recommendation was that many matters of formal investigation might be quickly and briefly covered by the court itself, and there should be a safeguarding clause which would render it possible for the court at any time in its discretion to permit such examination as counsel may desire touching the qualifications of the jurors, or as possible grounds of challenge.

MR. FELTHAM: Will you permit a question—what was the object of that, to save time, is that it?

MR. HARRIS: To save time as to matters of formal investigation which are often repeated time after time, but not to limit the right of examination of jurors as a possible ground of challenge.

It was further recommended by the Prosecuting Attorneys' Association that Section 9131 be amended to read as follows:

"A defendant in a criminal action or proceeding to which he is a party is not, without his consent, a competent witness for or against himself, but his failure to testify may be considered by the court and jury, and may be the subject of comment by counsel. When a defendant takes the witness stand in his own behalf, he may be cross-examined after direct examination, to the same extent as any other witness."

This recommendation was not adopted by the Council as a whole for submission—and principally, I believe, for the reason as stated in my opening remarks here, that we felt that we could very safely proceed with caution and circumspection in this regard, and there was no necessity for proposing matters that might be controversial in nature and concerning which there might be any doubt as to the advisability, in the minds of any of us.

It is further recommended that Section 8810 of the Idaho Compiled Statutes be amended to read as follows:

"All informations shall be filed in the court having jurisdiction of the offense specified therein by the prosecuting attorney as informant. He shall subscribe his name thereto and endorse the names of the witnesses known to him at the time of filing the same, and at such time before the trial of any case, as the court may rule or otherwise prescribe, he shall endorse thereon the names of such other witnesses as shall then be known to him. The defendant or defendants at the time of his or their arraignment under said information, unless a plea of guilty is entered thereon, shall make known to the prosecuting attorney all witnesses known to him and at such time before the trial of any case, as the court may by rule or otherwise prescribe, he shall make known to the prosecuting attorney the names of such other witnesses as shall then be known to him or them, provided that the witnesses called by the state or defendants in rebuttal, need not be endorsed upon the information."

The subcommittee and the Judicial Council have changed somewhat the form of the suggested provision of the law, permitting Section 8810 of the Compiled Statutes to read as at present, but proposing a section to be known as Section 8810-A, reading as follows:

> "The defendant or defendants named in any information or indictment shall make known to the prosecuting attorney, all witnesses known to him or them at such time, and who are intended to be produced upon the trial, as the court may by rule or otherwise prescribe; provided, that for good cause shown the court may in its discretion permit additional witnesses to be called by either the state or the defendant."

It appears to the Judicial Council that the same reasons exist for the defendant disclosing the names of his witnesses as exist for the prosecution disclosing the names of their witnesses.

The next recommendation of the Prosecuting Attorneys' Association was that Section 8944 of the Compiled Statutes of Idaho be amended to conform to Section 1096 of Kerr's Penal Code, California, as amended in 1927, reading as follows:

> "A defendant in a criminal action is presumed to be innocent until the contrary is proved and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal, but the effect of this presumption is only to place upon the state the burden of proving him guilty beyond a reasonable doubt. "Reasonable doubt. Reasonable doubt is defined as follows: 'It is not a mere possible doubt; because everything relating to human affairs and depending on oral evidence is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge."

The subcommittee recommended to the Judicial Council, and the Judicial Council concurred with us, that the statutory definition of reasonable doubt we believe to be unnecessary at this time, as the matter is sufficiently covered by the judicial construction in the statutes, and by the recognized practice.

It was further recommended by the Prosecuting Attorneys' Association that a new section be added to Article 2, Chapter 321, Title 60, to be known as Section 8944-A, conforming to Section 1096-A of Kerr's Penal Code, providing as follows:

> "In charging a jury, the court may read to the jury section 8944 of this code, and no further instruction on the subject of the presumption of innocence or defining reasonable doubt need be given."

The same reasons exist against the adoption of this recommendation as the previous one.

It is further recommended that Section 8946 be amended to read as follows:

> "When two or more defendants are jointly charged with any public offense, whether felony or misdemeanor, they must be tried jointly, unless the court order separate trials. In ordering separate trials, the court, in its discretion, may order a separate trial as to one or more defendants and a joint trial as to the others, or may order any number of the defendants to be tried at one trial and any number of the others at different trials, or may order a separate trial for each defendant."

As I recall the present statute, it does not include misdemeanors, and requires that the case may be tried separately or jointly in the discretion of the court, and provides nothing with reference to the separate or joint trial of any of the remainder of the defendants. The recommendation of the subcommittee, concurred in by the Judicial Council, is that we believe the matter covered in this recommendation of the Prosecuting Attorneys' Association is now adequately covered by Section 8946, and therefore recommend that it be rejected, the idea being that there was no necessity for the inclusion of misdemeanors, and that the matter was already covered. It was further recommended that Sec. 8947 of the Compiled Statutes of Idaho be amended to read as follows:

> "When two or more persons are included in the same indictment, the court may, at any time before the defendants have gone into their defense, on application of the prosecuting attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people, and his name at that time may be indorsed on the information or indictment by the prosecuting attorney without any other showing, and the motion shall be entered into the record."

As to this suggestion, or recommendation, the present statute of course provides that on application of the prosecuting attorney, the court may direct any defendant to be discharged from the indictment that he may be a witness for the state. No provision is made with reference to his testifying or being indorsed on the indictment. It seems to be the opinion of the council that the matter was of little importance to the prosecuting attorney, and that it would be quite likely that the defendant may be, in some instances, taken by surprise when it was known for some time that the prosecuting attorney intended to use a witness, and his name was not indorsed on the information, and that that existed also in the subsequent use of one of the defendants.

It was further recommended that Section 9084 of the Compiled Statutes of Idaho be amended to read as follows:

> "After hearing the appeal the court must give judgment without regard to technical errors or defects or to exceptions

which do not affect the substantial rights of the parties, and no judgment shall be reversed or set aside or a new trial granted in any case on the grounds of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure unless after an examination of the entire cause, including the evidence, it should manifestly appear, and the court therefrom should be of the opinion that the error complained of has resulted in a miscarriage of justice."

The present statute does not go so far, but provides in substance that a reversal shall not be had for technical errors or defects, or exceptions which do not affect the substantial rights of the parties. The Judicial Council is of the opinion that the matter was sufficiently covered hy that provision, and that the addition of the other words did not change the situation in any regard, or the duty of the court with reference to the determination of the matters on appeal.

It was further recommended that Article I, Section 7, of the Constitution of the State of Idaho be amended to read as follows:

"The right of trial by jury shall remain inviolate, but in civil actions three-fourths of the jury may render a verdict and the legislature may provide that in all criminal cases except those punishable by death, five sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases except those punishable by death, by consent of both parties expressed in open court, and in civil actions by the consent of the parties signified in such manner as may be prescribed by law. In civil actions, the jury may consist of twelve or of any number less than twelve upon which the parties may agree in open court. In criminal cases in justice and probate courts, the jury shall consist of six jurors."

The Judicial Council postponed the consideration of that matter for further consideration and thought. It was considered to have some merits, but the reference to existing law was considered such that no recommendation could be made at this time until a thorough study had been made and the manner determined by which it can be enacted in the law.

It was further recommended that such constitutional changes be made and such legislation enacted as shall give the district judge in our state courts the right to comment on the evidence and credibility of the witnesses, to the same extent as is now permitted in the Federal Courts.

The council submits this matter to the consideration of the bar, without recommendation as to the advisability of a statutory provision in that regard.

In closing, I wish to repeat that the Judicial Council felt itself obliged to go slowly in the recommendations of any changes. We found that after we had deliberated for any considerable length of time, that

no one of us seems to be inspired as law givers; but we recommend serious consideration of the matters presented, and that we go slowly as to any changes not absolutely necessary to remedy conditions in the administration of criminal law. I thank you. (Applause).

THE VICE-PRESIDENT: At the annual meeting held at Idaho Falls last year, certain recommendations were made by the prosecuting attorneys. Those suggestions were, as Mr. Harris states, considered by the subcommittee of the Judicial Council, and after a thorough consideration of those suggestions made by the Prosecuting Attorneys' Association, these changes as to amendments in our criminal procedure code were the outgrowth. One of the most active members of the Prosecuting Attorneys' Association will now lead the discussion on these various questions presented to you by the chairman of the criminal procedure committee. I take pleasure in introducing Z. Reed Millar of Blackfoot, who will now lead the discussion on the proposed amendments. Mr. Millar, will you come forward?

MR. Z. REED MILLAR: In making some comment on the suggested recommendations that have come to you from this committee on criminal procedure, by way of preface I want to say that the Prosecuting Attorneys' Association, in making the recommendations that you have heard discussed and read by Mr. Harris, felt too that they should make a careful study of criminal law in making the recommendations that they did; and I feel that a careful comparison, and a careful study of those have been made. It is true that Rome was not built in a day, and we do not anticipate that all of our recommendations will be accepted, especially when we are on one side of the fence on so vital a question, and are overwhelmingly outnumbered by those on the other side. We do wish to appeal to you from our point of view, and probably we are slightly overbalanced in that direction. We do not believe, that simply because crime is not so particularly prevalent in Idaho, that we should go slowly in changes in our criminal law, any more than we should in the changes in our civil law, which show a similar lack of efficiency.

Commentaries throughout the United States today, the men who have made an impartial study of this proposition of changing both civil and criminal law and procedure, to do away with its cumbersomeness, have not drawn the distinction on the necessity of these changes between the civil and criminal law that you would think ought to be drawn. In fact, they are emphatic on the proposition that there is no good reason why the procedure concerning the rights and liberty of one should be greatly different than the procedure protecting the property rights, and those rights that are protected by the constitutions and laws throughout the country, because they are fundamental rights that go to the nature of human existence.

I have been gratified in learning that the American Bar Asso-

ciation, through its committee on criminal procedure, has adopted in a model criminal code practically every recommendation that we made to the bar association last year, and have compiled that code in some two volumes. The commentaries on every recommendation have been compiled throughout the United States, so that you may know that these recommendations are not the outgrowth of the Prosecuting Attorneys' Association of the state of Idaho only. On the recommendations that were made last year, I was particularly active on the committee on criminal reform of our association, and made a thorough research into the provisions adopted in other states of the Union, and there was not one of these recommendations that was suggested to your body at Idaho Falls last year but what had been accepted by one or more jurisdictions, either in legislative enactments, or by constitutional amendment. The one which to my mind goes farther, if you want to put it that way, into the radical invasion of the rights of the defendant, is that which we suggested giving to the prosecuting attorney the right to comment on the failure of the defendant to take the stand on his own behalf. Up to the 1929 meetings of the legislatures, that provision had been adopted in three states, Ohio, Wisconsin, and South Dakota, and had been adopted unanimously by the American Bar Association, so that even in that recommendation we have not stood alone in our radicalism. In calling these things to your attention, gentlemen, and to your consideration, I want you to understand that we have not attempted to be arbitrary in presenting things that we considered necessary for the conviction of criminals or defendants that come before us. Our great interest in the matter has been to correct the cumbersome procedural rules that have been adopted more for the protection of the defendant himself than for the protection of society, and in these recommendations we have tried to look at the matter from a point of view of saving for the defendant every right, and assuring to him every protection to which he is entitled, and yet not shackling the hands of the prosecution to the point where a guilty person could not be convicted. So we do not feel that we have asked for an undue advantage over the defendant. We are only asking that some of the shackles that are thrown about us might be lifted. For instance, I am calling attention first to the first recommendation. I am not going into a further discussion of the recommendations that were made last year, because we have been trimmed of them so far, and there is no use of further discussion of them. We are content now to take part of the loaf, and go on with the thing that we feel is proper, than to urge as an issue at this time any further action on the other recommendations.

In this first recommendation, on page 25 of the report, concerning the offenses that might be charged in an indictment or information, this, as Mr. Harris stated, was recommended first in the identical

words of the California statute, but changes were made wherein two or more offenses could be charged if they are connected together in their commission, or different statements of the same offense. I have a case pending now in the district court having to do with the issuance of a fictitious check. In the elements of this particular offense, there are at least three specific crimes committed. There is the element of issuing this fictitious check; at the time of the issuance of this particular check, and as a part of the outgrowth of the issuance of the check, false representations were made as to the check and account, as to the person, and as to the property that he owned; and as a further outgrowth of the case, a forgery was committed. Under our present statute, the prosecuting attorney is limited to charging but one offense, and yet under the rules of evidence, the offenses being so closely connected together, evidence as to the other offenses cannot be kept out, and if there is a shadow of doubt in the minds of the jury as to whether this is an offense under a fictitious check statute, then of course the jury will give him the benefit of the doubt; while if, under the same facts and the same evidence that is introduced, we had the privilege of charging those offenses—see how much time and trouble would be saved and yet, throughout the whole thing, every right that the defendant has as to the admission of evidence, as to the rulings, and so forth, could be protected in all of these cases. This is typical of the difficulty we run into. In this code of criminal procedure that the American Bar Association has adopted,—recommended,—they have recommended a statute that is even broader than this, in that it provides that no indictment or information shall be quashed unless it appears that there is a misjoinder of parties. There are a great many states that have such statutes as we are recommending, or similar in form. There are some, however, who, as Idaho does, hold that only one offense can be charged at a time. California, Washington, have very broad statutes on this subject—that is, California did have until the Supreme Court turned it down on their rulings. The states having statutes providing that offenses of the same character or class may be joined in one indictment are Wisconsin, California, Colorado, Connecticut, Indiana, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Utah, Vermont, Virginia, and Wyoming.

The next recommendation, concerning witnesses that are to be indorsed on the information, it seems to me, and I do not know how anyone can conclude otherwise, that fairness to the prosecution requires the indorsement of the names of witnesses by the defendant. It does not necessarily protect any right that he may have, it does not necessarily save to him any constitutional right, but it is one of those things that I referred to as shackles on the prosecution. Why is it any more than fair for the defendant to be compelled to name his witnesses to use at the trial of his case? I think the matter could

be argued at great leugth, but it is simple, it is a matter of balancing the rights of the two parties, and there is as much to be said for it as there is to be said for requiring the prosecution to name its witnesses.

Now, the matter of examining trial jurors which comes under both civil and criminal procedure, I find that the code of criminal procedure from the American Bar Association also adopts this in a little fuller form, but practically in the same wording: "The jurors shall be sworn, either individually or collectively as the judge may decide. He shall theu examine them with regard to their competence to serve as trial jurors. The judge shall then examine each juror individually except that with the consent of both parties he may examine all of them. The judge iu his discretion may permit either party to examine, and each party may submit questions to the judge which in his discretion he may ask a juror."

This matter has been takeu up in the commentary, and a compilation made as to the states that have such au enactment. The states which provide that the court shall examine the individual jurors are Alabama, California, aud Utah.

That the court shall on the request of the attorneys examiue the jurors, Maiue, Massachusetts, New Hampshire, Rhode Island, West Virginia, and Wisconsin.

In the following states it is provided that the court shall ask specific questions of the juror, and then pass on to the party for further questions; Georgia, and Texas.

That the state or the defendant may examine the jurors on their voir dire; Iowa, Montana, Nebraska, New York, North Dakota, Pennsylvania, South Dakota, Vermont, and Washington.

In some states the only provision fouud for examination of the jurors is that upon the trial of a challeuge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge: California, Idaho, Iowa, Kentucky, Montana, Nebraska, Nevada, New York, North Dakota, Oklahoma, and South Dakota.

In the followiug states there in an indication that some examination is made, but nothing to show who conducts it: Colorado and Delaware.

In the following states the court makes a preliminary investigation of the juror's fitness. It was said that the parties had uo right to examine until a challenge for cause was interposed, but the court may grant permission: Alabama and Maryland.

In the following states it is said that a party has no right to interrogate the jurors before interposing a challenge: Georgia,

Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New Mexico, New York.

So you see this is a matter which is quite widespread now throughout the states, and seems to be gaining momentum. It was adopted a few years ago in California, and the report there is that all cases, both civil and criminal, in the trial thereof, are speeded up wonderfully.

In this matter of commenting on the weight of the evidence and the credibility of the witnesses by the court, this was also adopted by the Code of the American Bar Association, and in connection with that there is an article published in the June number of the Journal of the American Judicature Society by Owen J. Roberts, which is very enlightening in this matter, and which probably would assist us if it were read here. It is very short.

> "Now, with respect to trials generally. You are familiar with the fact that there has been in congress, session after session, a statute which has gotten pretty far in one or two of the sessions, to deprive federal judges of any right or power to outline the evidence or comment on the facts to a jury. You are familiar with the fact that in a number of states that is now the law. Indeed, there are some states, as I understand it, where a judge is permitted to charge before counsel address the jury and to charge only on points of law, and therefore the learned gentleman, after having acted more or less as a referee during the rounds of the battle, sits up and reads a legal essay, and then must subside into silence while counsel roam over the field and do pretty much as they like.
>
> "That is not our idea of trial, as lawyers, certainly. If you are going to have judges, have confidence in their ability and their integrity. If the judge is worth the powder to blow him up and has been sitting in a court, he has known something of how matters ought to go to a jury. He has learned something of how things get twisted to a jury. And in the interests of right and justice he has a right to set out the facts as he sees them, the conflicting claims, and to comment on the evidence.
>
> "Of course he can do it unjustly; of course, if he is clever, he can bring about an unjust result by these comments. Certainly he can. But because some man will do an injustice, because some man does not recognize his obligations, shall you take away from all the upright judges—thank God they are legion—the right to guide a jury's mind toward a just result, particularly in a complicated case where the evidence has gone over a pretty big field? It seems to me to ask the question is to answer it.
>
> "And it seems to me it ought to be made letter-clear by the laws of our states that a judge presides over and guides a trial,

and that the lawyers are merely ministers to assist him to guide the trial right, and that anything that takes away the power of that judge to give his help and guidance to the reaching of the correct result is simply crucifying the administration of justice and making a mockery of it."

With reference to the matter of instructions, and the provision that exceptions be taken before the reading of the instructions to the jury and if not to be deemed waived, it seems to me that is a simple matter that there should not be a great deal of objection to, because if this matter is presented to the attorneys before the instructions are given, it gives the judge an opportunity to correct possibly an erroneous instruction before it gets to the jury. It seems to me that this is the greatest benefit in this matter. It therefore saves the matter from going up to the Supreme Court on that erroneous instruction that he would have given otherwise, and possibly a reversal. If either party after having an opportunity to read these instructions does not agree with them, then he can make his proper objection and still raise it in the Supreme Court. If the matter is made mandatory as this statute provides, and he has been given an opportunity to examine these instructions, he can more intelligently make his objections, and tell whether he wishes to object at the time they are given to the jury, in order that it may be in the record.

You remember that we made some recommendations last year on jury trial, and on the number that was necessary to render a verdict, waiver of jury trials, and so forth. This has been discussed by Robert M. Collins concerning the jury and its reformation. The subject is very well discussed, covering the field of that subject throughout the United States, and giving specific reasons why the time has come for a change in the jury trial system. The topic has been suggested or recommended in the discussion of civil and criminal procedure, reducing juries in civil and misdemeanor cases to six men, and there is a great deal of merit in that, which possibly we won't get at in the way it is presented to this body. I find, however, that in this code of criminal procedure as the American Bar Association has adopted it, they have included just such a matter. They have adopted as the most important changes, first a simplified form of indictment and pleading; two, the emphasis of prosecution by information; three, recognition of a verdict by less than unanimous vote in all except capital cases; four, requirement that names of witnesses be indorsed on indictment or information; five, power of the court in its charge to the jury to comment on the evidence and the testimony and credibility of witnesses; six, the waiver of jury trials in all but capital cases; seven, proceedings to determine mental condition of the defendant; eight, simplified appeal; nine, power of appellate court to reduce and correct sentence on appeal by defendant. We wish, gentlemen, on these recommendations, that you thoroughly

examine them. I suppose, from the experience we had at Idaho Falls during the sectional meeting, this may start some very lively debate and argument because of the very nature of the recommendations, but we want you to examine them, we want you to determine if these changes are not as necessary in our procedure in the face of these statistics, and all the things that the Judicial Council have brought to your attention, as the changes are necessary in your civil procedure, and it is only with this idea that we offer them, not to take away any substantial right of the defendant, but to make these things for the protection of the public simpler and more easy to get at. I thank you. (Applause).

THE VICE-PRESIDENT: Gentlemen, the hour has arrived for adjournment. Are there any announcements, before we take that action—if not, a motion is in order.

Whereupon, on motion duly made and seconded, this meeting was adjourned until two o'clock P. M. of this day.

AFTERNOON SESSION
2 O'CLOCK P. M.
SATURDAY, JULY 12, 1930.

THE VICE-PRESIDENT: Before we proceed with the regular program, Mr. Griffin, the Secretary, has an announcement.

SECRETARY: The bar has received a telegram reading as follows:

"The Montana Bar Association now meeting at Helena sends greetings to the Idaho State Bar Association and expresses the hope that your annual meeting may be a most successful one. Walter L. Pope, President; Enor K. Matson, Secretary." (Applause).

THE VICE-PRESIDENT: The chair at this time will appoint Judge Brinck and Ben Delana to formulate a telegram in reply to the one just received from the Montana State Bar Association.

The Idaho State Bar includes in its membership every practicing attorney within the state, some six hundred active in the practice of law. The Bar Association created by legislative enactment brought the members of the Idaho bar together. The fact that there is such an association in and of itself does not mean that we do not have further problems to meet and solve. We have, and we will continue to have problems as an association. One of our neighboring states has a membership in its bar association of upwards of 11,000 practicing attorneys. The problems of the bar in the state of Idaho are in a similar measure the problems of the bar of the neighboring state of California. We are to hear at this annual meeting of the Idaho State Bar a talk on the genesis and achievements of the California self-governing bar. The gentleman who presents this to the bar association is a man of experience, a past President of the California

State Bar, and one who knows the state bar organization of California thoroughly and intimately. It is certainly a privilege and a pleasure for me at this time to introduce to the Idaho State Bar Association here assembled the Honorable Joseph Webb, past President of the California State Bar. Mr. Webb. (Applause).

MR. WEBB: Mr. President and members of the Idaho State Bar: It gives me a real, genuine pleasure to be with you today, and I bring the greetings and best wishes of the State Bar of California.

It may be well to spend a few moments outlining some of the facts which really caused the enactment of the State Bar of California, and you will see that the conditions which prevailed there are not dissimilar to the conditions which prevailed in other states.

In 1918, I believe it was, a member of one of our courts was publicly charged by one of our prominent daily newspapers with having accepted a bribe. It gave the dates when the money was supposed to have been paid and the person who paid same, and naturally it caused excitement throughout the state. The President of the local bar association of San Francisco went to the editor of this paper and said, "You have made these statements, either this man is guilty or he is not guilty; if he is guilty he should not remain in the legal profession; if not guilty he should be vindicated; in any event we desire to have you come before our disciplinary committee and give us what information you have." The editor replied, in substance, "To with the Bar association, and the public; these articles have served my purpose, and I am not coming before the bar association or any other organization of your kind." The legislature was in session shortly after that—we did not have at that time power to subpoena witnesses—and we went before the legislature and asked them to give authority to subpoena witnesses. This same influential newspaper went to the legislature and defeated our efforts.

Shortly after that a similar condition arose, and we were again confronted with a similar situation; we had no authority or power to subpoena witnesses or proceed satisfactorily; later on, in the southern part of California, in the vicinity of Los Angeles, the bank and trust companies were practicing law, as we thought. Through the efforts of the associations in Los Angeles and San Francisco, and our state organization, then a voluntary organization of some thousand members, we had introduced a bill and secured the passage of an act known as the Unlawful Practice of the Law Act, which prohibited the practice of law by said banks and trust companies. We have the referendum in California, and after the approval of this measure by the Governor, the banks appealed to the people through this medium; we went into the campaign, the bar on one side, the banks on the other, and we soon discovered that we had no real bar organization. We thought we had, but we had neither an organization, nor funds, nor the confidence of the public—and as a result of that campaign we were hopelessly defeated. We fully realized then, if not before, that we hadn't the confidence of the public.

Shortly after our defeat, there was a meeting in San Francisco, at which were some members of the bar who had taken an interest in the campaign, probably 25 members of the voluntary organization. We discussed the general situation, the lack of confidence on the part of the people in the bar as a whole, and the thought was advanced at this meeting that before we could go into a successful campaign of any kind we should endeavor to regain the confidence of the people of our state. We should attempt two things, first, eliminate from the bar those unfit and unworthy; and secondly, improve the administration of justice. We have, of course, in the larger centers problems you do not have in the State of Idaho. We have about 11,500 lawyers in the state, in the county of Los Angeles, 4500, in San Francisco, 2500; thus you can understand our difficulties and how an attorney can be lost in the multitude.

The question was asked, how can we accomplish the desired results. The suggestion was made that perhaps through an all inclusive, statutory bar we could get the bar together and into a cohesive organization. As a result of that conference a committee was appointed to investigate the statutory form of organization, which committee commenced corresponding with probably fifteen other states in the United States that had given this subject some thought; we found similar conditions, they reported the same lack of confidence on the part of the people and the same lack of funds with which to carry on an energetic, thorough campaign, and they also reported that the bar itself lacked cohesiveness. From that time on the voluntary organization gave its strength and whatever power it had to the enactment of the self-governing measure. We secured the passage of our bill in the 1925 legislature, but it was vetoed by the governor; we went to the 1927 legislature, were again successful in securing our legislation, and we had a governor who favored the act, which became effective July, 1927. We have been in operation about three years.

Now the problem, gentlemen, that confronts the bars of every state in the Union, and the bar of America, is the administration of justice. The disciplinary work is just a minor phase of our activity, and our problems of this character will gradually become less and less. However, it is of concern to the public . And gentlemen, the people of America are having their attention directed to the bar and its problems. To show you what the laymen think, there is an organization known as the National Economic League, composed of members throughout the entire country. They took a vote in the early part of the year, and, reading only excerpts from the St. Louis Star of March 18, 1930, we find the following:

"One of the most significant expressions of opinion ever made

in the United States is that of the membership of the National Economic League, which took a vote on 77 problems confronting the American people, and placed the first half dozen in the following order: 1, the administration of justice, number 2, prohibition, number 3, disrespect for law, number 4, crime, number 5, law enforcement; and number 6, world peace . . ."

You will notice that out of these subjects, voted by the members of this league, composed principally of laymen, four have to do with the administration of justice.

It goes on to say:

"But it is not so obvious that defective administration of justice ranks as the deepest and most fundamental evil in the United States. One must delve below the surface to see how our antiquated court procedure, our absurd rules of evidence, our decisions on technicalities, slow down and pervert justice and foster crime and lawlessness."

Now, gentlemen, that is the bar's problem. Such men as our present Chief Justice Hughes, former Chief Justice Taft, Elihu Root, and men of that type, have been constantly referring to this subject and telling the bar they must seriously study the conditions that exist throughout the country, and attempt to improve this administration of justice.

In fact, gentlemen, from the beginning of our government to the present time, our presidents have considered the judiciary the most important arm of our government. Washington, in selecting the first justices of the Supreme Court, said:

"Considering the judicial system as the chief pillar upon which our National Government must rest, I thought it my duty to nominate for the high office in that department such men as I have conceived would give dignity and lustre to our national character."

Now, gentlemen, I think we will all agree with the fact that it is important. The next question is, what is the bar going to do about it. Charles Evans Hughes, at the conference of the Bar Association held at Washington, May, 1926, spoke truly when he said:

"The administration of justice is the concern of the whole community, but it is the special concern of the Bar. We are ministers of justice, and no lawyer is worthy of any reputation in the profession, whatever his ability may be, if he does not regard himself, first and last, as a minister of justice in the community in which he practices."

I think also, gentlemen, we will agree with that statement; but what the people want to know is what the bench and bar are going to do about it.

The bench throughout the country is endeavoring to improve the administration of justice through more efficient court organization;

and the solution, at present, is thought to be in the Judicial Council.

If I may say a few words in passing, we have a constitutional Judicial Council in California, which has existed but a few years, yet has accomplished excellent results. Apparently a mistake was made when they placed on that Council only judges, but we have tried to rectify that, as it has been recognized that there should be close co-operation between Bench and Bar. The state bar has appointed a committee of attorneys that sits with the Judicial Council. So we get indirectly what we don't get through actually being members of the Council. Considerable progress has been made in a short time. The Chief Justice of the Supreme Court can assign and bring into the larger counties the judges from the smaller counties where there is a minimum of business, and thus we manage to keep up the calendars; they sit with the judges in the larger centers. At first judges of the rural districts objected to the practice, feeling it might injure their standing in their own districts, but they find it does not, and we now have no difficulty in getting judges to come into the larger centers; they also receive an increase in compensation.

The Judicial Council has adopted many procedural rules which the bar approved, and were passed by the state legislature at its last meeting, and there are others which we will present at the coming session next January.

Now I come to the state bar organization itself, and I think, in order to better understand its workings, you should know the theory of the first board of governors.

We have 15 members on the board of governors; we elect one from each congressional district, eleven in number, and four at large. We believed that the problem rested with the bar itself, and in the first annual message—I wouldn't say this to the Idaho bar, but when at home I can talk freely to the members of my own bar—I stated that "one obstacle in the way of administration of justice is the bar itself," and the board believed that before anything could be accomplished there would have to be a fundamental change in the attitude of the bar itself.

Quoting from the Honorable Joseph M. Proskauer of New York:

"Civil practice acts and simplified rules of practice are at best steps in the right direction, and are even steps only; if all of us, lawyer and judge alike, avow and discharge our obligations to the profession and to the community to practice and administer the law, no longer in a spirit of contest or chicanery, but in a spirit of one who is above the quest of justice, nothing short of an aroused professional opinion, markedly different from our class consciousness of today, and backed by a popular support, for which we must educate the public, will achieve our goal."

Gentlemen, the first board believed that the problems before the bar were far more difficult than amending rules of procedure, or

formulating rules of professional conduct; we thought that our success rested largely upon a fundamental change in the attitude of the legal profession toward its function. And we also believed that results could not be accomplished by dictation, but rather by education of the members of the bar; I wish I had the time to give you all the details of our efforts, but time will not permit. We also believed we had to accomplish results gradually, without radical changes hastily made. That formed the basis of our first year's activity, and I will now point out how we endeavored to carry out that theory. We believed that the board of governors should contact with the members of the bar as far as possible, and to that end, we held meetings in every congressional district. We held monthly meetings, lasting three days, to which we invited members of the bar; then at an evening meeting, as guests of the local bar, and that meeting was attended, not only by members of the local bar, but by the members of the entire district, and it would surprise you to know, gentlemen, that men drove as high as 250 miles to come to these meetings. On these occasions we frankly discussed our problems. We told them what our problems were, what their problems were, and invited full discussion, also any criticism that they had to make. Before the evening was over, we understood them better, and they understood us better; they realized the board of governors was not going to dictate to them, but that it was going simply to point out to them their problems, and that the success of the State Bar of California depended upon the active, whole-hearted co-operation of the members of the state bar, and that unless they gave to the board of governors their sincere support and study of the problems, the board could accomplish but little. And I may say, gentlemen, that the board of governors took no stand on any problem. It was simply submitted to the bar. We didn't want the bar to feel, as many did, that here was a board telling them what to do; that wasn't our theory, and we soon disabused their minds of that fact.

So at these meetings we thoroughly discussed our problems with them, and then, gentlemen, we also endeavored in every conceivable way to enlist the actual services of every member of the bar. We did that in two ways. One of these was in the matter of discipline. As I stated, in our larger centers we have problems that you do not have. We appointed small but many administrative committees, and we also have an administrative committee in every county in the state. That committee handles not only grievances, but also all matters pertaining to the state bar. If we have a question of procedure to be studied, we send that to the administrative committee of each county and ask them to study this question and report their conclusions. We did not believe it was the function of the local committee to act as prosecutor, but as judges, so we appointed examiners; one member of the bar was appointed to investigate the case.

He acted as the attorney, you might say, for the complaining witness, presented the evidence, interviewed the witnesses, came before the board and presented the matter, and if well presented, and that case went before the Supreme Court, he represented the State Bar in the Supreme Court. I might say that we have settled every constitutional question in connection with this legislation, the latest decision having been handed down a few days ago, in which our Supreme Court held that the rules of professional conduct passed by the board of governors of the state bar, and approved by the Supreme Court were binding rules. One attorney was reprimanded for advertising for business. As I have stated, we have felt and we have stated to the bar that the state bar was their organization, that they had to do the work; and the response was very generous.

I shall briefly outline the Board's procedure in regard to disciplinary matters. When the local committee makes its findings, it reports to the board; one member of the board reviews the findings, prepares a written report of the case, which is sent to every member of the board before the monthly meeting. At this meeting, before the case is called for argument, the facts are reviewed and when the attorney commences his presentation he is told that we thoroughly understand the evidence in the case. After it is presented, the board approves or disapproves, and it has the power—and very frequently does—to increase or decrease the punishment, and then the entire record goes to the Supreme Court.

Another plan we have is what we call the section plan. Its principal purpose is to make every member of the bar study the problems presented, and when they study them, they realize what the problems are as they never did before. The board created five sections: criminal procedure, civil procedure, courts and judicial officers, regulatory commissions, and professional ethics. The section on civil procedure was divided into seven subsections: One, rule-making power; two, shall demurrers be abolished; three, summary judgments; four, simplification of method on appeal; five, shall findings be abolished; six, delay in bringing cases to trial; seven, simplification of probate procedure.

Then we prepared a letter signed by every member of the board outlining our plan, the subjects for consideration, and also sent a postal card showing the sections and subsections, and asked every member of the bar to indicate the particular section and subsection upon which he wished to work. The first year there were three thousand lawyers that responded to the call of the board of governors. When these cards were returned they were segregated and classified, and the sections and subsections brought together. They selected their chairman, and we indicated the subjects for them to consider. Take as an illustration, the rule-making power. We did not tell them that the board was for or against the rule-making power, but we

wanted them to give that subject consideratiou. Certain phases of the topic were assigned to different members, who prepared papers, and discussed it. You would be surprised at the study and serious consideration the members gave to the questions. Then, when that section or subsection made a report, either for or against, with its reasons for its decision, its conclusion went to every section in the state considering the same matter, and we asked them to either approve or disapprove of the findings and report of that particular subsection. Then, when we had received as many of the section reports as we could in the limited time we had, we had what we called a co-ordination committee to gather these reports, and then they prepared a final report which was submitted to the annual couvention, and there again the matter was taken up. It was the policy of the board, also, not to discuss anything from the floor of the convention, as we desired the members of the bar to realize that it was the convention of the bar, not the convention of the board of governors. At the annual meeting the matter was thoroughly discussed, and if the bar unanimously agreed on any given subject, then we felt that we had obtained the sentiment of the entire bar, and then the board went to the state legislature and endeavored to have the proposed legislation passed.

And in the same way we considered matters that were submitted to us through the Judicial Council.

I may say in passing also, that we publish a journal. I know some of your members have received this. It is sent monthly to every member of the bar. In it, the first few pages are devoted to what the board of governors has done, different cases that have come before it. I have with me the journal for May of this year. Here we have the report of the adjusters committee. That has to do with ambulance chasing. Then an argument on the rule-making power. Then follows the president's message, in which he outlines what in his opinion is the important matter to be considered; and also a part of it is devoted to meetings of the local bar; what men appear before the local bar; next we have a report of our section work, in which we give the questions submitted and the results. The journal is open to the members of the bar. If a member has an article he considers worth while, he may send it in, and it will be published, whether it is for or against any given subject; we make no discrimination, provided it is a well prepared article. In this way we have endeavored to obtain the cooperation of the entire bar.

We found, although we realized it in the beginning, but experience has demonstrated that we were correct, that the active practitioners haven't the time nor the inclination, nor are they able, to do thorough research work. So we have evolved another scheme. We have gone to our three major universities, the University of California, Stanford, and the University of Southern California. We have

asked the University of California, because it is a state institution, and we believe that the administration of justice is a problem for the university as well, to give us the services of a full-time professor, who will give all of his time to research work. The state bar is to furnish to each university a man, probably a student who has shown himself to be qualified and who wants to devote a year or more in the university along such lines as this; he studies the subject under the research professor, who is connected with the state bar of California. The department is controlled by a committee appointed by the board of governors, consisting of three practising lawyers, and one member of the board, and the research professor.

If, for instance, the question of appeals was submitted to the research department, we ask the research department to obtain all data upon this subject, the experience of other states, the action of legislatures taken; analyze them, and give to the state bar of California the results of their research. That will be studied by the research amateur in each university. Then, when the data is gathered, when they have reduced it to an accurate, concise statement of facts, that goes out to every member of the state bar with the suggestions of the research department, and we ask the bar to give us the benefit of their practical experience. Along with the suggestion may go a tentative draft of a proposed measure. We hope to get in that way the members of the bar of California vitally interested in these problems, and we believe we will create a situation within California that has never existed before. I may say that in the short time the state bar of California has functioned, there has been created a much better feeling among the members. I will refer to one or two newspaper clippings on this subject later on.

I shall say a word about the annual meetings here. Prior to the inauguration of the State Bar of California, our usual annual meetings were attended by probably 125 members. I remember the meeting of the voluntary association, at which the state bar act was proposed, there were propably 75 men present—75 members out of ten thousand lawyers. At our first annual meeting of the State Bar of California, lasting three days, there were over a thousand members present. That showed a revival of interest in the workings of the bar. We feel, gentlemen, as I have indicated before, that the success of the State Bar of California, and the success of the Idaho bar, depends, not upon your board of governors, or your commissioners, but upon each and every member of the bar, giving to these problems the benefit of his experience and consideration; and when that is done, gentlemen, although we may differ, we are succeeding; for when we get together and talk things over, just as we did in California, you will find we are not so far apart after all. Through that method we feel we will create a solidity of organization and when we go to the legislature they can no longer say to us, as

they did before the state bar was organized, "You are simply a small clicque of men who run this organization, but you do not represent the bar."

So, gentlemen, that is in substance the plan that we are trying to work out in California. We are particularly anxious, gentlemen, to take the young men, when they come out of the law school, and bring them within the fold of the state bar, not merely as a member, but as an active member. Whenever we hear of them getting together for a luncheon, or any meeting of that kind, we encourage them to organize. We have in Los Angeles and San Francisco junior bar associations, and we were surprised at the active interest taken by these organizations.

We insist that the members of the board do their part of the work. California is a long state. As you know, it is nearly a thousand miles from the northern to the southern boundary, yet during the first year, gentlemen, out of 15 members, there were 13 members present at every meeting—at no meeting were present less than 13 members, and at some meetings we had a full membership present. These men act without compensation. They get their expenses paid, but we have limited ourselves even in this to the amount allowed to state officers, which is eight dollars per day.

Now I would like to refer to one or two newspaper clippings that show what they think of the activities of the State Bar of California. This is from a rural district, and I may say this, gentlemen, also, as a part of our efforts, we try to educate not only the members, but also the public as to what we are trying to do; we always, at the district meetings, invite the members of the press to be present. They criticized us very severely in the past. We went to them when the state bar act was passed, told them our purpose, and asked for their support. "We want you to help us if you will. We are sincere and we want to enlist your aid." And we also invite to our district meetings any local members of the legislature; and they have visited with us, and they now understand with greater particularity what we are trying to accomplish. This clipping comes from a rural paper. It says:

> "Legal fraternity has got new vision. There are signs of new life in the California State Bar. It appears that the law fraternity has received a new vision of its responsibility, new faith in its inherent goodness, renewed courage to attack the problems. It is the most hopeful sign that has come into the life of the State in over half a century."

Again, from one of our larger metropolitan centers—a conservative paper. This was written in 1928, after the bar had been active about six months.

> "Enough has been accomplished by the board of governors of the California State bar, since the State Bar Act of 1927 became effective, to justify this legislation. The meeting of the board in Oakland last week brought out ample proof that the foundation is being laid for a system of procedure and practice in our courts which will facilitate the administration of justice without impairing the rights of citizens before the law."

It concluded its article with these words:

> "The law is always conservative, and reforms connected with its practice must continue to come slowly. But the State Bar focuses intelligent thought on the problems hitherto faced in only a haphazard fashion, if at all, and thereby gives promise of cutting loose from the archaic forms whose usefulness has been outlived.
>
> "A great step forward has been made toward bringing the courts abreast of the times, and the energy and spirit displayed by the State Bar augurs well for future achievements."

And at the close of our first annual convention, the Los Angeles News carried this editorial:

> "The Los Angeles News, October 13, 1928:
>
> "The bar executive and the Board of Governors have nursed the bar through. It is a success. The present convention wipes away all doubts.
>
> "Weak-voiced at first, even incoherent, its strength has gained through the year. On the convention floor here at Pasadena the voice of the bar has swept forth with full confidence in the permanence and integrity of its organization.
>
> "Dissensions have been smoothed down as never before when lawyers gather. There has been more amity. Even were there no steps into definite action, the bar, nevertheless, would have benefited to an immeasurable degree in the education it has acquired from the study of the problems before it.
>
> "The thing which is most gratifying perhaps, and which is a safe assurance of its future integrity, is the appearance here at the first convention, of a fine and sensible minded esprit de corps."

And I might say in passing, gentlemen, that it is this esprit de corps that has helped to solidify the bar, make it realize that the administration of justice is their problem, and that they must study these problems and attempt to simplify procedure. It is true that the slowness with which matters have moved in the courts in the past has resulted in commissions such as we have today, the Industrial Accident Commission, the railroad commission, and countless others; and they are now advocating a commission to try personal injury cases, because our courts are clogged with them. We cannot say we are not interested. Even selfishly and as a matter of self-preservation it is incumbent upon us to simplify procedure so that we can retain business that is now going to other sources. Business men have

their methods of arbitration. They do not go to the members of the bar to litigate matters as they did in the past. They call up the secretary of their organization, and say,"So and so sent me a car of silk which was not up to sample", and they tell this secretary they want it arbitrated. The secretary calls up the shipper, and says "Do you want me to arbitrate this". He says, "yes". They select an arbitrator and inside of 48 hours it is adjusted. The business man feels he can afford to take a loss and have done with it. And we must in some way amend our procedure, our attitude, so that we can settle matters promptly and efficiently; and when that is accomplished the bar will regain the confidence of the public.

Let me also add this: the state organization does not interfere with the local bar association. On the contrary, the state organization has strengthened the local organizations. There are many matters that should be given attention by them. For instance, in San Francisco recently a movement was made to establish municipal courts, to increase the jurisdiction of the lower courts, and thus take away work from the superior court or necessarily higher court. That was a matter for the local association. We considered it, appointed committees, went before the legislature, and went before the board of supervisors and advocated these things. There are many things that the local bar is interested in that the state organization feels is not directly within its province. In any county where there is no local bar association, we endeavor to have them form an organization, and try to get the entire bar together to act as a committee. Sometimes, in the smaller communities, when we have a complaint, the members there do not wish to examine into it, and we have to appoint a committee from another county.

These are some of the problems. I wish I had time to go over many of the matters that come before us. We had a gentleman from France address one of our meetings, and he gave us many interesting facts about their bar. He said that in France, which is of course a highly organized self-governing institution, you cannot have a business card or a telephone, and you cannot have a partner, you cannot solicit business, and you cannot send a bill; things of that kind. And also, if you have documentary evidence—all these gentlemen belong to a club, and they have lockers, and you put your evidence in your locker, and opposing counsel puts his in his locker, and they are free to see it; and he said with a wry smile, "We never miss our evidence, it is always there when we come back." They have confidence in each other.

I will point out one of the questions that the board considered. What should a trial lawyer do if he has evidence that he knows may affect his case? Should he sit by and say nothing, or should he present the evidence to the court? We know how we do and we know theoretically what should be done. We know as lawyers we

should help the court in arriving at a just conclusion, and we know generally speaking that we consider ourselves pretty good lawyers if we can manage to keep that evidence out, through some objection. We merely discuss these problems, which present very interesting subjects for thought—not yet for action, but for thought; and the more you think over them, the more you see why commissions are created. I was very much interested when I went before the industrial accident commission, to see how they handle their matters. In this case that I was interested in there was the testimony of doctors to be taken, and I went to the clerk and said, "I want some subpoenas, I want to get the testimony of some doctors." And the clerk said, "You don't need a subpoena, go and get their statements." I was a little bit surprised to think that I could go and get a doctor's statement and introduce it in evidence; but I went before the commission and we sat around a table and discussed it frankly and put in the statements, and in an hour the matter was decided. I don't say we are going to go that far in the practice of law, but at the same time it is food for thought.

Now, gentlemen, I have just about taken up my time and I must conclude. I like the words of Charles Evans Hughes spoken at the conference of Bar Association delegates—and when I have concluded, if there are any questions, in the few minutes remaining, I shall be glad to answer. Mr. Hughes said:

> "The dream that we have, the vision we have—don't let that fail—of lawyers together feeling that we are members of a profession, feeling that the interests of the profession are not the interests of a minority, but are the interests of all, feeling a duty to establish and maintain standards and willing to discuss with anybody the way to do it, but intent on getting it done."

I want to repeat in closing that I have enjoyed meeting the members of the bar of Idaho; I know that we are all working along the same lines, in the hope of improving the administration of justice, which is the ultimate aim of bar organization. I thank you. (Applause).

THE VICE-PRESIDENT: Mr. Webb, I am sure I express the sentiment of the bar when I say that we are very grateful to you for this splendid address, and I know it will be helpful to the members of the State Bar Association. Are there any questions?

MR. FELTHAM: If Mr. Webb would permit, I would like to ask a question about the practice in his state—I understand they are working and proceeding under the superior court system, and I would like to ask him how satisfactory that is in his state.

MR. WEBB: Well, of course, it has been the system with us for fifty-odd years, and we have but that one court, the superior court, which is a court of original jurisdiction. We do move our

judges around, and it has worked, we feel, satisfactorily. We are not satisfied with our appellate procedure; we feel we can modify and simplify that, but insofar as trials are concerned, we have a fairly simple method at the present time; I think we are gradually improving.

THE VICE-PRESIDENT: Are there any other questions?

The President of the bar has received a communication from the American Bar Association, and the Bar Commission, in taking up this communication, reached the conclusion that it would not be justified in sending a member of the State Bar Association to the conference of the American Bar Association delegates in Chicago, in August; therefore, if there is any member of the bar who expects to attend the conference of delegates of the American Bar Association at Chicago, I am sure we would be pleased to have that individual represent the bar of this state.

Shall we pass on to the next order of business?

We will have at this time, instead of the further discussion of the Judicial Council report, the report of resolutions committee, Mr. Graham.

MR. GRAHAM: Mr. President, and members of the bar.

I listened with much interest to the address of Mr. Webb of California, with regard to the trials and tribulations of the bar of California. I have been fortunate enough to attend a number of state bar meetings in Idaho, and every time I go away discouraged, and think there is no hope, by reason of the lack of interest manifested in our bar. However, I am glad to see at this meeting a slightly larger crowd than usual, but still a meeting in the city of Boise, with 125 members of the bar in this city, it is not very complimentary to the State Bar Association to see so few from the city of Boise present today.

I wish you would refer to your report of the Judicial Council, because I am going to refer to that in the resolutions which have been unanimously signed by the members of the resolutions committee.

WHEREAS, at our meeting at Idaho Falls a year ago, this association authorized the creation of the Judicial Council, and that thereafter the membership of said Judicial Council was appointed, and said Council undertook its work and has rendered to each division of this association and to this meeting constructive reports,

NOW, THEREFORE, BE IT RESOLVED:

I.

That the Idaho State Bar Association in annual convention assembled commend the Idaho State Bar Commission for its efforts in creating a Judicial Council, and that this association express to the Judicial Council its appreciation for its efforts in

the investigations heretofore made, and the obtaining of valuable information in the way of statistics for future use, and that we urge the continuance of said Judicial Council and its activity with full confidence in the ultimate benefits to be derived in the administration of justice as a result of its activities.

II.

WHEREAS, during the last fifteen years the cost of living has greatly increased and the present salaries of the members of our state judiciary were fixed at a time prior to the increase in the cost of living, and said salaries are not commensurate with the ability, education, experience, and services demanded of the members of the judiciary;

THEREFORE, we urge that the salaries of the justices of the Supreme Court and of our district judges be increased.

III.

That the question of the manner and method of selecting members of our judiciary be referred back to the Judicial Council for the purpose of having the Judicial Council work out the machinery for the nomination by the organized bar of this state of the candidates for judicial positions.

IV.

That we approve the idea of the transfer of probate court work to the district court, the machinery for accomplishing the same to be worked out in detail by the Judicial Council.

Some of you members who have been wondering whether the Judicial Council should remain, will very readily see the necessity why the Judicial Council is still remaining in office.

V.

That we are unalterably opposed to any plan for the division of the state into three or four judicial districts.

VI.

That we are opposed to the suggestion that in misdemeanor cases and civil cases the jury in the district court consist of six jurymen or of any other number less than the present statutory number.

VII.

We approve the suggested statutory amendment providing in certain instances for the combining of two or more different offenses under separate counts in an indictment or information, with the proviso, however, that in such case conviction can be had on only one of such counts.

VIII.

We are opposed to the suggested statutory amendment requiring the defendant to produce the names of his witnesses.

IX.

We are opposed to the suggested statutory amendment mak-

ing it the duty of the trial court to examine prospective jurymen.

X.

We approve the suggested statutory amendment relative to the giving of instructions in either criminal or civil cases as set out on page 27 of the report of the Judicial Council.

XI.

We are opposed to the suggested statutory amendment that in civil or criminal cases the trial judge may comment on the weight of the evidence and the credibility of the witnesses, or either.

XII.

We approve the proposed statutory amendments authorizing the rendering of a judgment non obstante veredicto.

XIII.

We approve the suggested statutory provision for hearing and disposition of motion for new trial set out at the bottom of page 28 of such report.

XIV.

We approve the suggested statutory amendment relative to ruling on motion for new trial as set out on page 29 of such report.

XV.

We approve the suggested statutory enactment relative to a plea in abatement as set out on page 29 of such report.

XVI.

We approve the suggested statutory enactment relative to pleading written instruments in haec verba as set out on pages 29 and 30 of said report.

XVII.

We approve the suggested statutory amendment having to do with dismissal or nonsuit as set out on page 30 of such report.

JUDGE BRINCK: May I interrupt?

MR. GRAHAM: Yes.

JUDGE BRINCK: Did the committee, in the last recommendation, have in mind the clerical change that was suggested—in the last sentence of that proposed statute, the fourth subdivision was incorporated in that last sentence through inadvertence. It was intended that that last sentence apply only to the fifth subdivision of the statute.

MR. GRAHAM: I do not know that I quite get you?

JUDGE BRINCK: It was intended that the provision that voluntary non-suit suffered by the plaintiff at any time before he rested his case should result in a judgment that was not a judgment on the merits. The way the statute is drawn, and appears in that report, the judgment in such case would be one on the merits. The last sentence should read: "A dismissal under the fifth subdivision",

referring to a non-suit, the motion of defendant shall operate as a bar to another action, but not that dismissal suffered by plaintiff upon the trial and before he rests his case, or abandons his case, it was not meant that that should be a judgment on the merits.

MR. GRAHAM: Oh, no—that was not the intent of our committee.

XVIII.

It appearing that the enforcement of the criminal law of this state will be greatly aided by the establishment of a comprehensive criminal identification system in connection with the state penitentiary, and that such system can be created and maintained at very slight expense,

BE IT RESOLVED that this association favor the establishment of such a system and that we lend our assistance to secure the same.

I might suggest that in the discussion of this, the members of the committee felt that the power should be exercised with some discretion, that it should not be used, fingerprinting of every misdemeanor, every man convicted of a misdemeanor, but that it should be confined to felony cases, after conviction.

XIX.

RESOLVED that a determined effort be made by this association to secure greater co-operation from the local bar associations of the state to the end that greater interest may be taken by individual lawyers of the state in the activities of the state association, and that wherever possible local bar associations be created, and that closer co-operation be had between this association and the American Bar Association, and that all members of this association be urged to become affiliated with the American Bar Association.

The idea being to link up the local bar associations, the state bar, and American Bar Association for co-operation.

XX.

The present supply of printed statutes and session laws being practically exhausted, necessitating the reprinting thereof, we recommend that an expert recodification, annotation, and indexing of our laws be had.

XXI.

RESOLVED that the association approve the publication of a law journal by the College of Law, University of Idaho.

The question was suggested that we link the College of Law and the bar association together in the publication of this journal, but the committee took the view that the matter ought to be a publication by the College of Law, with such assistance as the members of the bar can render to the College of Law, without any legal obligation resting upon them for the expenditure of money.

XXII.

We recommend that the power now given by statute to the Governor for the transferring of district judges be vested in the Supreme Court, and that the Judicial Council of this state make a further investigation and recommendation as to the condition of the dockets in the several district courts, in order that the Supreme Court may exercise closer supervision of the work in the various districts.

XXIII.

We recommend that the Bar Commission appoint a legislative committee for the purpose of drafting and causing to be enacted legislation carrying out the recommendations adopted by the association.

XXIV.

We take this means of thanking the members of the local bar association for the many favors and courtesies extended to the members of this association during this convention, and to make their visit in Boise a pleasant one.

XXV.

We hereby extend our thanks to the Honorable Joseph Webb as President of the California Bar Association for the splendid address which he delivered to us.

I now move you the adoption of the report of the committee on resolutions.

A VOICE: Second the motion.

MR. MERRILL: I would like to move to amend that motion that the recommendations be acted upon one by one, not as a whole.

A VOICE: Second the motion.

THE VICE-PRESIDENT: The motion to amend the original motion is before you. All of those in favor of the amendment will say "aye". Those opposed "no".—The ayes have it.

MR. GRAHAM: Let me suggest, in order to expedite matters, I will reread them section by section, and then they can be acted upon. Will that be satisfactory?

(Mr. Graham read Section I of the report of the resolutions committee).

On motion, duly made and seconded, this section was adopted.

(Mr. Graham read Section II of the report of the resolutions committee).

On motion, duly made and seconded, this section was adopted.

(Mr. Graham read Section III of the report of the resolutions committee).

MR. MERRILL: I would like to know if it is the thought of the resolutions committee that the Judicial Council be limited in any respect in that regard? The survey committee recommended, as you will recall, the theory of electing the members of the judiciary on a non-partisan ticket, and the theory of the non-partisan ticket was all that was suggested, not the machinery—in other words, whether or not the theory of electing judges without reference to political affiliations be approved. If that is the thought underlying number three, I am in accord.

MR. GRAHAM: To a limited extent, that the power of nomination be vested in the bar.

MR. MERRILL: I would like to propose a substitute motion;

RESOLVED, that the theory of electing judges without reference to political affiliations be, and the same is hereby recognized to be sound, and

BE IT FURTHER RESOLVED that the Judicial Council be, and the same is hereby requested to give special study to the methods by which this theory may be given practical effect, and report such plans to this association for further consideration.

THE VICE-PRESIDENT: The question is on the substituted motion.

MR. KAHN: May I ask if that is a recommendation of the Judicial Council?

MR. MERRILL: No, it is my own.

MR. KAHN: Or of the survey committee, rather, I mean.

MR. MERRILL: It is the theory of the survey committee.

MR. KAHN: May we have the original section read once more.

(Section III of the report of the committee on resolutions was read).

MR. GRAHAM: I am opposed to the substituted motion. It does not mean anything—we recognize the principle of non-partisan election. Provided it is linked up with the power of our organization, yes. If you want to go back to the old system of selecting judges, I am opposed.

MR. MERRILL: That can be a matter for future consideration. This has to do with the theory.

MR. GRAHAM: We think our motion is specific, that the question of the manner and method of selecting the members of our judiciary be referred back to the Judicial Council.

MR. MERRILL: For what purpose?

MR. GRAHAM: For the purpose of having the Judicial Council work out the machinery for the nomination by the organized bar of the state, not by the laymen. Now you have the question as to whether the bar are going to nominate these non-partisan judges, or whether laymen are going to do that. The Judicial Council can bring in any report it desires, and it is not limited. We recommend that the bar and the Judicial Council work out a plan of the bar making the nominations.

A VOICE: The question.

THE VICE-PRESIDENT: All those in favor of the substituted motion will stand.

(Nineteen members vote in the affirmative.)

THE VICE-PRESIDENT: Those opposed.

(Twenty-three members vote in the negative.)

THE VICE-PRESIDENT: The chair declares the substituted motion lost.

Whereupon, on motion duly made and seconded, the adoption of the section read by the resolutions committee was carried.

(Section IV of the report of the Resolutions committee was read).

MR. GRAHAM: In other words, all we do is indorse the principle of the transfer of the work from the probate court to the district court.

Whereupon, a motion was made for the adoption of the section, and duly seconded.

MR. GIBSON: I think we should have a chance for a few remarks on that.

THE VICE-PRESIDENT: If there is any discussion, I will be glad to recognize you.

MR. GIBSON: I have no discussion except, I doubt the workability of it. Suppose I was a resident of Elmore county. The court meets there twice a year. Suppose I have some probate matters, and I must take these to the district court. We all know that in probate matters there are very many preliminary steps—many things that ought to be done by the judge, not the clerk. I can see many objections to the transfer of the probate work to the district court. It must necessarily be left, there are other branches, the juvenile, and so forth, and there are a number of things that won't work out where you have not a district judge, or some judge, sitting in the same county at that time.

MR. HACKMAN: Mr. Chairman, that is a matter which will have to be worked out.

MR. GRAHAM: I think the objections have to do with the machinery, rather than the principle.

MR. McKEEN MORROW: It seems to me that the section as presented by the resolutions committee—Mr. Graham will correct me if I am wrong—they have just approved of the recommendation of the Judicial Council in that regard, and make no reference in the resolution to the detailed matters being handled by the clerk, and I do not think the way they have the resolution worded it is broad enough to cover that phase of the machinery. Perhaps the committee has considered it, but as I recall the reading of the resolution, it does not. I would like to have Mr. Graham explain the views of the resolution committee as to that phase, as to the detail, orders and notices,

all that sort of thing, which the council recommended be handled by the clerk.

MR. GRAHAM: I think your objection deals with the machinery, and we did not attempt to go into that. We were not interested in the machinery,—we recognized that the means to be employed do not appear, so we refer it back to the Judicial Council to work out the details of the plans to carry it into effect.

THE VICE-PRESIDENT: Read the question before we call for the motion.

(Section IV of the report of the resolutions committee was read).

THE VICE-PRESIDENT: It has been regularly moved and seconded that we adopt the resolution, the recommendation as read by the chairman of the resolutions committee. All those in favor say "aye"—those opposed will say "no". The motion is carried.

(Section V of the report of the resolutions committee was read, as follows:)

> "That we are unalterably opposed to any plan for the division of the state into three or four judicial districts."

It was duly moved and seconded that the section be adopted as read.

MR. OPPENHEIM: Inasmuch as the committee feels that way about it, all right, but I do not believe in putting in this Scotch word, "unalterably". Why can't you let us swallow it a little easier?

MR. GRAHAM: Would that help you any?—We might pacify you by dropping that, knowing your proclivities.

MR. OPPENHEIM: I will say that the committee has adopted a snbstitute a little later, in the resolution having to do with the transfer of district judges, and if this is the view of the majority, I can stand for it, but I do not like to go on record that I am unalterably opposed, even if the chairman is Scotch!

MR. MERRILL: The members of the bar do not like that idea. It would seem to me that it would be the most gracious thing simply to pass it by, bearing this in mind, that the northern division met and approved it, and recommended it to us, and the eastern division met and approved it, and recommended it to the state bar. Now, here we are slapping both of them in the face by using the words "unalterably opposed". If we don't want it, let's keep still, and pass it by.

MR. KAHN: May I interrupt long enough to ask, with reference to the last section adopted, when we say we approve a plan, would that authorize the Judicial Council to draft a bill for submission—what was the effect of adopting the resolution?

MR. GRAHAM: The effect was to refer it back to the Judicial Council to work out the machinery.

MR. KAHN: Then they would submit the machinery?

MR. GRAHAM: At the next annual bar meeting, for approval.

The result of adopting this resolution would simply defer it till the next bar meeting. That was the purpose of the resolution.

In answer to Mr. Merrill, let me suggest this reason why the committee thought—why we are not in favor of passing it over. We could not do that conscientiously and in justice to the bar association, by reason of the fact that two divisions had approved of it,—we do not want any inference drawn that we are in favor of it.

MR. BURKE: I do not feel, after the consideration that has been given to this subject by this Judicial Council, that this association at this time should go so far as to say they are unalterably opposed to it. There must be some merit in the suggestion, otherwise the Judicial Council, who have given thought and attention to this, and the other two divisions that have approved it, certainly would not have approved it. I do not think it is right for the committee after the consideration that has been given, to take that stand, because I, personally, feel that there is some merit in the suggestion, and we might want to retrace our steps, and by crossing the bridge in this manner we certainly commit ourselves, the bar association, to such an extent that if, after more mature consideration, we should desire to adopt it, I think the bridges would be burned behind us, having opposed this recommendation.

MR. GRAHAM: May I suggest that the Judicial Council did not recommend this plan. The survey committee did. The Judicial Council simply set it up as a recommendation of the survey committee.

MR. FRAWLEY: There is absolutely nothing in the suggestion that was an attempt to slap any division, or any section of the state, in the face. From the facts as presented to us, there was no necessity that the suggestion as made by the subcommittee be adopted. There were no facts, or anything given in their report, from cover to cover, that would give any reason why the district judges, who are performing their duties today—why their districts should be changed, and we simply desired to put it straight before this association that we were not in favor of that change, or making these suggested changes unless good cause was shown. (Applause).

I think we must all admit that the survey committee was acting in good faith. I do not think there ought to be any feeling with reference to their finding, and if the chairman would consent to it, I would suggest that this resolution be deferred until we get to the resolution of the transfer of judges, and perhaps at that time we can work it out without any difficulty.

MR. McKEEN MORROW: The thought occurs to me—I agree entirely with Mr. Oppenheim with reference to the use of that word "unalterably"—but this further thought occurs to me along the lines of Mr. Oppenheim's discussion yesterday, that before we can get any action on this matter of district judges, the practical matter, we will

have to have two sessions of the legislature, because before the legislature convenes we will have elected district judges for a four year term, so either the 1931 session, or the 1933 session can take some action if by that time it is found necessary, with reference to the matter of redistricting. So it seems to me that the wise course for the association, in view of the recommendations of the survey committee, and the action taken by the two divisions of the bar, would be to refer this matter back to the Judicial Council, in connection with the matter of the later resolution there, regarding the transfer of judges from one district to another, and give the bar, the bench, and the litigants a chance to see how that works out, and not go on record at this time, with insufficient information, and in view of what has already been done, as unalterably opposed to that proposition. I myself feel, therefore, as the resolution is worded, constrained to vote against it.

MR. WALTERS: As mover of the adoption of the resolution, and since there seems to be serious objection to the nationality of the word "unalterably", I ask consent for the substitution of the word "ferninst"!

MR. OPPENHEIM: I move that the further discussion on this section be deferred until we arrive at the discussion on the resolution relating to the transfer of judges from one district to another.

MR. GRAHAM: Let me suggest, rather than to defer this, let us consider that in conjunction with this resolution.

(Section XXII of the report of the resolutions committee was read).

Whereupon, it was duly moved and seconded that the resolution be adopted.

MR. OPPENHEIM: I move that these two resolutions be referred to a subcommittee of three, for the purpose of redrafting them for the record, to render them more palatable.

MR. GRAHAM: Second the motion.

A VOICE: I move to amend the first resolutions read by Mr. Graham by striking out the word "unalterably".

MR. GRAHAM: With the consent of the other members of the committee, we will strike out the word "unalterably", as it seems to grate on somebody's nerves. I wish to assure you, however, that the resolutions committee had no intention of slapping anybody in the face.

MR. BURLEIGH: I move the adoption of Resolution number IV with the word "unalterably" stricken out.

MR. KAHN: If it would be permitted I would like to make the suggestion that this should be deferred. I do not feel competent to say at this time whether we should change this system of districts or not. This manner has been in force for so many years, and I do not see any absolute need for a change, but it seems to me that it is a matter which should be given careful attention, and therefore, if it is

in order, I move that all action on the question of redistricting the state into judicial districts be deferred until the next meeting of the State Bar Association. That would give us all, I think, further time to carefully consider it and stndy it. I feel it is a very important matter to the bar, and to the judiciary, and to the laymen as well, and frankly I confess I am not conversant enough with the system to say what should be done, and for that reason I move the adoption of the motion which is in accordance with the idea advanced by Mr. Morrow, and that the matter be given most careful consideration.

JUSTICE BUDGE: As chairman of the Judicial Council, I hesitated to vote upon any of these questions, and have not done so. This subject, as well as other subjects that have been presented during this meeting, was very carefully studied and considered by the members of the council. I do not know, of course, what would be the best to do in view of the situation that presents itself here at this time, but there is one thought that I want to leave with you, and that is this: It might be found wise to change the districts, not to redistrict them in the sense that the word may be used, but you may find in possibly one district they have too many counties, the work is burdensome and cannot be attended to by the judge in that district as it should be, and you may find that there is another district where you could add a county onto that district, or two counties, and thereby equalize the work. The only thought I have in mind is this, that we do not put this association in the position, or put the council in a position, so that something of that kind cannot be done if it is found advisable to do it.

MR. PARIS MARTIN: I want to second Mr. Kahn's motion, and my thought is that after having received the report and the recommendation of this survey committee, and having made their recommendations, and the other divisions have passed favorably upon the matter, that we should be very slow to act in an arbitrary way and slight what they have done. I think this should be referred back for further consideration.

MR. GRAHAM: I am sure those who have been taking part in this discussion are not doing it to in any way condemn what has been done by this Judicial Council, and this bar association is deeply grateful to that committee, but the Judicial Council did not recommend this. It was a question suggested for consideration. There isn't anything else in the report of the Judicial Council advising its adoption, and there is no need to take the position that we are going to insult the Judicial Council by acting upon it. Every man in this room feels thankful for the service rendered by the Judicial Council, but we have a right to take up and consider all of these questions as they come up. There is no logical reason, also, why this convention, which is a state convention, has to be regulated by what the other divisions have done.

MR. MERRILL: Is there a motion, and if so, may I know what it is?

THE VICE-PRESIDENT: There is an original motion, and a substituted motion, the substitute motion having been made by Mr. Kahn and seconded by Mr. Martin.

MR. MERRILL: Perhaps, in the discussion, due to the interest many of us have in this proposition, more heat than light has been displayed, and for which I am responsible, undoubtedly. In my first statement I did not mean in any sense of the word to exhibit heat. That merely came out as a natural way of expression. I merely want to say this, gentlemen, that we must remember we have certain rules and regulations by which we are all bound, and one of those, as I now remember it, is this: that where there is a state bar meeting, and no division meeting held, that meeting is also a division meeting of that district, and that when divisions disagree on any proposition, the matter must be referred to the members of the bar by method of a referendum, and therefore it would not be possible, it seems to me, under the rules of the bar association, for this resolution, expressing yourselves unalterably opposed—

MR. GRAHAM: The word has been stricken out.

MR. MERRILL:—for this resolution, expressing yourselves opposed to the stand taken by the other districts, to be acted upon. The most that ought to be done should be to refer the matter to a referendum of the entire bar, but if the motion as urged by Mr. Kahn is passed, it seems we will be relieved of that duty, and the matter will go back to the committee, which will give the committee a great deal more time to assemble the facts and make its report again, with recommendations. If those recommendations are not satisfactory, the matter could not in any event be passed.

MR. FELTHAM: You mean a referendum to the lawyers?

MR. MERRILL: Yes.

THE VICE-PRESIDENT: Shall we get down to business on this matter and vote on the substitute motion?

A VOICE: The question.

THE VICE-PRESIDENT: The substitute motion is to defer action on the motion for redistricting until the next bar meeting. All those in favor of the substitute motion will say "aye"—those opposed "no". The chair will call for a standing vote. All those in favor of the substituted motion will rise.

(Twenty-seven voted in the affirmative).

THE VICE-PRESIDENT: Those opposed.

(Fifteen voted in the negative).

THE VICE-PRESIDENT: The chair declares the substitute motion passed.

MR. OPPENHEIM: Now, I move the adoption of the second resolution that we were discussing, for the transferring of judges,—

number XXII, I think it is.

(Section XXII of the report of the resolutions committee was read).

MR. FELTHAM: What does that mean, to take the matter out of the hands of the Governor, as it is now, and place it in the hands of the Supreme Court?

MR. GRAHAM: Yes.

Whereupon, the motion was duly seconded, put, and carried.

(Section VI of the report of the resolutions committee was read).

It was duly moved and seconded that the section be adopted.

MR. BURKE: I move an amendment by adding the words, "but we approve of a jury of six members in the justice court". I may say that the prosecuting attorneys are more concerned with the situation of jurors in the justice court than in the district court.

THE VICE-PRESIDENT: Your motion is lost for want of a second. The question is, the original motion. All those in favor, say "aye"—those opposed "no". The motion is carried.

(Section VII of the recommendations of the resolution committee was read).

It was duly moved and seconded that the recommendation be adopted.

THE VICE-PRESIDENT: Any discussion?

MR. OPPENHEIM: I want to ask the chairman—does not the proviso kill the intent of the recommendation?

MR. Z. REED MILLAR: Almost!

MR. SOULE: It is going to place us under considerable of a handicap in this, that it is going to require the state to accumulate a vast amount of evidence; assuming there be three counts in the indictment, two of which must of necessity be cast out. I move—rather, I shall state that if the members of the committee cannot negative my suggestion, my vote shall be vehemently against the resolution.

MR. MILLAR: I would like to move to amend the resolution to the effect that the proviso be stricken from the resolution.

MR. JAMES: The purpose of that proposed amendment, as I read it, is to make possible—or impossible, I should say, the miscarriage of justice, when it is very difficult to distinguish between certain offenses, such as embezzlement and larceny, but the committee is opposed to anything which makes it possible for a jury to convict the man of both. Personally, I am opposed to the practice of convicting a man from two to six times for one offense. We have had too much of that. This relieves the prosecuting attorneys of the difficulty which confronts them, and it seems to me it gives them all that they should ask. In the case I have suggested, if it developed on the evidence that it is larceny of which he is guilty, he can be convicted

of that offense; if it develops that it is embezzlement, he can be convicted of that; but in the name of common sense, let's not make it possible for him to be convicted of both.

MR. MILLAR: I would like to ask the committee, in view of the resolution as it now stands, as that is, as they recommend it, that a conviction could be had only upon one of these offenses, supposing as in the instances I cited this morning, that there were other crimes committed in the commission of or in connection with the particular offense, and that the jury returned their verdict of guilty, on one offense. Would the return of a verdict of guilty there stand as an acquittal or a bar to a prosecution on some other offense? Is that the intent of the committee?

MR. GRAHAM: To illustrate, suppose you take burglary, and larceny, two counts, and the jury may convict of one offense. We do not want it to be understood that the jury may find him guilty first of burglary and then of larceny, and have the court impose a double penalty; it is one act, one crime committed, and the court should punish him but once.

MR. MILLAR: My question is, suppose the jury has found the defendant guilty of one offense charged, does that stand as an acquittal, or as a bar to the prosecution separately on the other charges at some other time?

MR. GRAHAM: That would naturally follow.

MR. MILLAR: Under the circumstances suggested this morning, in the specific case of issuing a fictitious check, from the very nature of the case it will appear that another and yet a distinct offense was committed, though they were connected together in their commission; that is, the defendant could also be prosecuted for forgery and obtaining money under false pretenses, so the three were charged and the defendant was found guilty of the one of issuing the fictitious check.—Supposing that were the case, then that would stand as a bar to the prosecution of the other offenses.

MR. GRAHAM: Yes.

MR. MILLAR: Then I would be opposed to the adoption of any recommendation with that question in it.

MR. BURKE: This original section was taken from California, and has worked out very well in that state. As I see the proviso, it seems to me that we would be better off without it. There is a question as to whether it won't be a detriment to us. I don't think it is advisable to adopt the amendment with the proviso.

THE VICE-PRESIDENT: Are you ready for the question—the question is on the motion to adopt the recommendation.

MR. BURKE: I understood there was an amendment.

THE VICE-PRESIDENT: I did not understand there was a second?

MR. MILLAR: Yes, there was a second, I seconded the motion.

THE VICE-PRESIDENT: All right, the question is on the amended motion, striking the proviso. Those in favor of the substitute motion will say "aye"; those opposed "no". The motion is lost.

Whereupon, the original motion was put and carried, and the recommendation adopted.

(Section VIII of the recommendations of the resolutions committee was read.)

MR. BURKE: I have not the slightest doubt about the outcome of this motion; however, I want to say something.

As I look into the faces of several gentlemen around me who opposed me in the trial of these cases, I know what their votes will be. However, I think if this matter was given real serious consideration there is a lot of merit in the suggestion, and I cannot see why, if you are concerned with advancing the interests of justice, and the ultimate improvement of court procedure—I cannot see any reason why we have to be befogged with a lot of things that come up at the last moment. If it is sensible to require the state to give the defendants a list of its witnesses it is equally sensible to require that the defendants give a list to the state of their witnesses. We are as much at a handicap, certainly as a defendant. Perhaps, it will be said that the defendant's interests outweigh those of the state. If that is true, that is the only reason I can see why it is not just as reasonable for the defendant to give us his witnesses as it is for us to give him our witnesses. It seems to me that if you are going to adopt this resolution, to be consistent in the matter you should do away with the proviso requiring us to give our witnesses to the defendant. They have a preliminary examination, which discloses the state's case, and it seems to me as a matter of equality, to put us on the same footing, that we should not be required to give them a list of our witnesses.

MR. LARSON: In connection with what the prosecutor from Ada County has said, I might call this matter merely to the attention of the members of the bar, because I have been confronted with it frequently in the past. The state is largely in the dark as to the defense that will be interposed. When the defense comes on, they will probably have a dozen or more alibi witnesses, and you have no means of combating such a defense. You know nothing about who their witnesses are until the last minute, and the ends of justice are frequently defeated. This is one of the most serious difficulties confronting a prosecutor. If these witnesses were endorsed, or their names divulged to the prosecutor, the state would have the opportunity of checking up on these witnesses and checking up on its own case to meet the situation. As it is now, we are absolutely at the mercy of that sort of defense.

MR. FRAWLEY: I am a little surprised at the prosecutors, not very much surprised, however, that they try to make their duties

somewhat easier. Mr. Burke made the statement to the effect that he would nullify the provision that has existed ever since the time of the Magna Charta, that a man accused of crime would be confronted by his accusers. Now it has occurred to me that if you open the door —under the practice in this state, where a man is accused of an offense, a preliminary examination is held, and we find that the prosecuting attorneys do not make any disclosures whatever except of sufficient testimony to hold the party over to the district court or for trial. If you throw open the door and give to the prosecuting attorney a list of your witnesses, he might use it in the right way perhaps, but what about police officers, what about deputy sheriffs, what about those active and insisting upon the prosecution? Why, you could very readily imagine that these witnesses would be intimidated with a great array which is usually brought to the assistance of the prosecuting attorney. I say it is unfair, it is unheard of, in the practice of law. I mention this fact, also, if I may be permitted to do so, that I at one time was prosecuting attorney of this county, and I say that the machinery is sufficient for the officers to properly prosecute a party, without making definite disclosures or having disclosed or pointed out the defendant's witnesses.

MR. HUEBENER: Just one thought in connection with what Mr. Frawley has said. I, too, have had experience with police officers, and realize their zeal in endeavoring to coerce witnesses who may be brought on behalf of the defendant, and for that reason we should not adopt the resolution recommended by the Prosecuting Attorneys' Association.

MR. BURKE: Just a minute—I do not feel that that should go unchallenged. If that is the only basis you have for challenging this resolution, it seems to me that it is certainly wrong. I do not believe there is a man in the room that believes the sheriff or police officer in their county would abuse that privilege at all! (Laughter) If that is the reason why you are voting against this suggestion, it is all right with me. I may say that the same thought may apply to the defendant. There is a possibility that the argument should work both ways.

THE VICE-PRESIDENT: I think you all understand the motion. The question is on the original motion to adopt the recommendation of the resolutions committee.

Whereupon, the motion was duly put and carried.

(Section IX of the recommendations of the resolution committee was read.)

Whereupon, on motion duly made, seconded, and carried, the resolution was adopted.

(Section X of the recommendations of the resolution committee was read).

Whereupon, on motion duly made, seconded, and carried, the resolution was adopted.

(Section XI of the recommendations of the resolution committee was read).

Whereupon, it was regularly moved and seconded that the resolution be adopted.

MR. MILLAR: I am like Mr. Burke, I know how it is going to come out, but I can't refrain from saying something in favor of this resolution giving the court the privilege of commenting on the credibility of the witnesses and the weight of the evidence. It seems to me that there is a great deal of merit in this suggestion that will apply to civil cases as well as criminal cases, and the trend of the legislatures throughout the country is toward adopting it. I am satisfied that if this were tried—given a fair and impartial trial, that the result would be the same as in the other jurisdictions where it has been tried. It is a matter of history and a matter of common knowledge that without this provision the trial judge with his learning and his ability sits on the bench with his hands tied, while practicing lawyers worship at the shrine of form and go through with their procedure, and the trial judge has no more power there, with all of his training, and all of his experience as a trained judge, to do anything; and it seems to me that this body, in this intermountain country, with its consciousness of the development and progress in the administration of justice, should not sit here and lightly pass such a matter by. Let me suggest that if anything is done with either of these matters, that it should be referred back for further consideration upon it, but I do not think it should be laid on the table or be laid aside, for we are coming to it in a short time.

MR. JAMES—To my mind—I am not speaking for the other members of the committee, but to my mind this represents one of the attempts which are being made to eliminate the jury system. There seems to be a plan to bring that about, sponsored by people who have no confidence in the jury system. Personally, I have the greatest confidence in the jury system, and I believe that a jury can do justice where a court could not. A court is a man, just the same as the members of the jury, and sometimes a judge will inadvertently make a statement with reference to some of the facts of the case. What does the jury do? Every juryman hangs with bated breath upon the judge's remarks, to hear some word which will indicate the way the judge feels about it, and when he catches anything indicating that the judge has made up his mind, we all know what he does. Sometimes the judge will have indigestion, sometimes he may be prejudiced, and if he is accorded this privilege, to my mind it will eventually destroy the jury system, and I see no reason for casting away that system which has taken us so long a time to bring about.

MR. GRIFFIN: How can you say that, when in England it has been in force at least since the Reformed Procedure, and in the Federal court system since its foundation, and in many other states?

MR. JAMES: My recollection of that is that the language of this proposed amendment goes farther than the language of some of the statutes, and goes farther than even the Federal courts do. Now, this permits the trial judge to comment on the weight of the evidence.

MR. GRIFFIN: That is the rule in the Federal court; that is the rule laid down in the decisions; there is no statute.

MR. JAMES: I realize there is a tendency in various jurisdictions to do those very things, but I think it is possibly due to the influence of prosecutors. Why should anyone want the court to comment on the evidence, and the credibility of the witnesses? The jury are there to determine that question; why permit the court to poison their minds first with that matter? I think there is a function for both the conrt and the jury, and I am opposed to permitting either one to absorb the function of the other.

THE VICE-PRESIDENT: I think the members of the bar have made up their minds. The question is on the original motion to adopt the resolution. All those in favor of the motion will say "aye"; those opposed "no". The ayes have it; the motion is declared carried.

(Section XII of the recommendations of the resolution committee was read).

Whereupon, upon motion duly made, seconded, and carried, the resolution was adopted.

(Section XIII of the recommendations of the resolution committee was read).

Whereupon, upon motion duly made, seconded, and carried, the resolution was adopted.

(Section XIV of the recommendations of the resolutions committee was read).

Whereupon, upon motion duly made, seconded, and carried, the resolution was adopted.

(Section XV of the recommendations of the resolution committee was read.)

Whereupon, upon motion duly made, seconded, and carried, the resolution was adopted.

(Section XVI of the recommendations of the resolution committee was read).

Whereupon, upon motion duly made, seconded, and carried, the resolution was adopted.

(Section XVII of the recommendations of the resolution committee was read).

MR. RYAN: It is understood that that language does not apply only until the plaintiff's case has been rested.

MR. GRAHAM: The men on the committee did not have that in mind—you refer to dismissal prior to trial?

MR. RYAN: Prior to resting his case.

MR. HACKMAN: Strike out the words "fourth and".

MR. RYAN: Yes.

MR. HACKMAN: I move that the resolution be amended in that respect, and so amended to be carried.

Whereupon, the motion being duly seconded, was put and carried.

(Section XVIII of the recommendations of the resolution committee was read).

MR. FELTHAM: Does that provide for felonies only?

MR. GRAHAM: We did not limit it so, but that was the intention of the committee.

MR. SOULE: I advanced this idea in the Prosecuting Attorneys' Association, and perhaps to the surprise of some of the other nonmembers of our association, I wish to advance it again, and I would write a negative proviso in that resolution, that those guilty in misdemeanor cases shall not be included on the records of that bureau. It seems to me a greater injustice would be done by having those guilty of simple misdemeanors or the lightest grade of misdemeanors, and simply limit it to felony crimes; otherwise, those in the smaller counties guilty of the lightest crimes, even juveniles, would be photographed and fingerprinted.

A VOICE: Second the motion.

MR. GRIFFIN: What is the injustice? Does not the history of criminal law show you that the man who has a misdemeanor history is the one who gradually gets into the felony class? What does it hurt him if he has his fingerprints taken or his photograph?

MR. SOULE: I answer your question by asking if you would like to have your photograph taken and your finger prints made a record of for parking your car in the wrong place?

MR. GRIFFIN: I do not see why I should care why it is there.

MR. BURKE: The tendency seems to be to increase, rather than to restrict the use of fingerprints in misdemeanor cases. Often we pick up a tough looking individual simply on a misdemeanor charge, and after we get him identified, he is found to have previous records, and often we find men who are wanted at other places in that way. I do not think we have done any injustice if we adopt this resolution.

MR. MILLAR: I would earnestly urge that this identification system be not limited to felony cases. I think it is true, the statistics will bear out the proposition that very many of our misdemeanor cases grow into grosser crimes. Of course we do not desire those who are guilty of violating for instance some traffic ordinance, to be identified in this way, but where there is moral turpitude, where moral turpitude is involved, I think it is essential that we have some record there to check on.

MR. RYAN: Why not let us all be fingerprinted?

MR. BURKE: I do not believe this matter is a joking matter. We have these cases every day, and if we are not permitted to fingerprint these fellows, we will be under a considerable handicap. I think the courts hearing these cases are entitled to see the information we get from fingerprint records, I know we get information we use every day. If you are going to draw a distinction, it should perhaps be as Mr. Millar has suggested, that certain petty offenses might be omitted, but I do not believe it should be limited so as to cut out misdemeanors. We have a standard bureau of records at Washington, and we get a great deal of information from them, and we should have these records to furnish to that bureau.

THE VICE-PRESIDENT: After all this discussion, Mr. Chairman, will you read the question?

(Section XVIII of the recommendations of the resolution committee was reread).

MR. GRAHAM: That same question was considered by the committee, who came to the conclusion that as this resolution was drawn, it has nothing to do with whether the sheriffs of these counties make these records. It merely has to do with tabulation of whatever fingerprints came in, and they can be tabulated at the penitentiary.

THE VICE-PRESIDENT: I think the recommendation is clear.

Whereupon, the motion to adopt this recommendation was put and carried.

(Section XIX of the recommendations of the resolution committee was read).

Whereupon, upon motion duly made, seconded, and carried, the resolution was carried.

(Section XX of the recommendations of the resolution committee was read).

MR. KAHN: Will that necessitate a legislative codification, or is that extra—who is going to do this, the state or the bar association?

MR. GRAHAM: That would be by legislative appropriation.

Whereupon, on motion duly made, seconded, and carried, the resolution was approved.

(Section XXI of the recommendations of the resolution committee was read.)

Whereupon, on motion duly made, seconded, and carried, the resolution was approved.

(Section XXIII of the recommendations of the resolution committee was read).

Whereupon, on motion duly made, seconded, and carried, the resolution was approved.

(Section XXIV of the recommendations of the resolution committee was read).

MR. KAHN: I would like to ask the chairman how he recon-

ciles that with his first statement upbraiding the Ada County Bar Association for not having a better attendance?

MR. GRAHAM: Attendance and hospitality are not synonymous.

Whereupon, upon motion duly made, seconded and carried, the resolution was adopted.

(Section XXV of the recommendations of the resolution committee was read).

Whereupon, upon motion duly made, seconded, and carried, the resolution was adopted.

MR. OPPENHEIM: I now move that we extend to the resolutions committee and its chairman a vote of thanks and appreciation for its good work, Scotch words and all.

THE VICE-PRESIDENT: The last motion may be considered unanimously carried.

Don't forget transportation will be provided by the local bar for all those who wish to attend the dinner and dance at the Plantation.

MR. GRAHAM: One matter we have omitted, I think. I understand Jess Hawley, President, retires, and a new President has not been selected; I therefore move that it is the concensus of this association that we extend to President Hawley the thanks of this association for his honest, able, and untiring efforts for and on behalf of this association during his regime.

Whereupon, the motion was duly seconded, put and carried.

MR. GRIFFIN: I think before we adjourn, the Secretary should announce that a meeting of the Bar Commission was held, and E. A. Owen of Idaho Falls, who has so well presided at this meeting, was elected President for this year; Warren Truitt, Vice-President. I introduce Mr. Owen, who is already before you. (Applause).

THE VICE-PRESIDENT: Is there anything else to come before this meeting? If not, a motion is in order to adjourn.

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

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IDAHO STATE BAR COMMISSION

By_____,Secretary