PROCEEDINGS

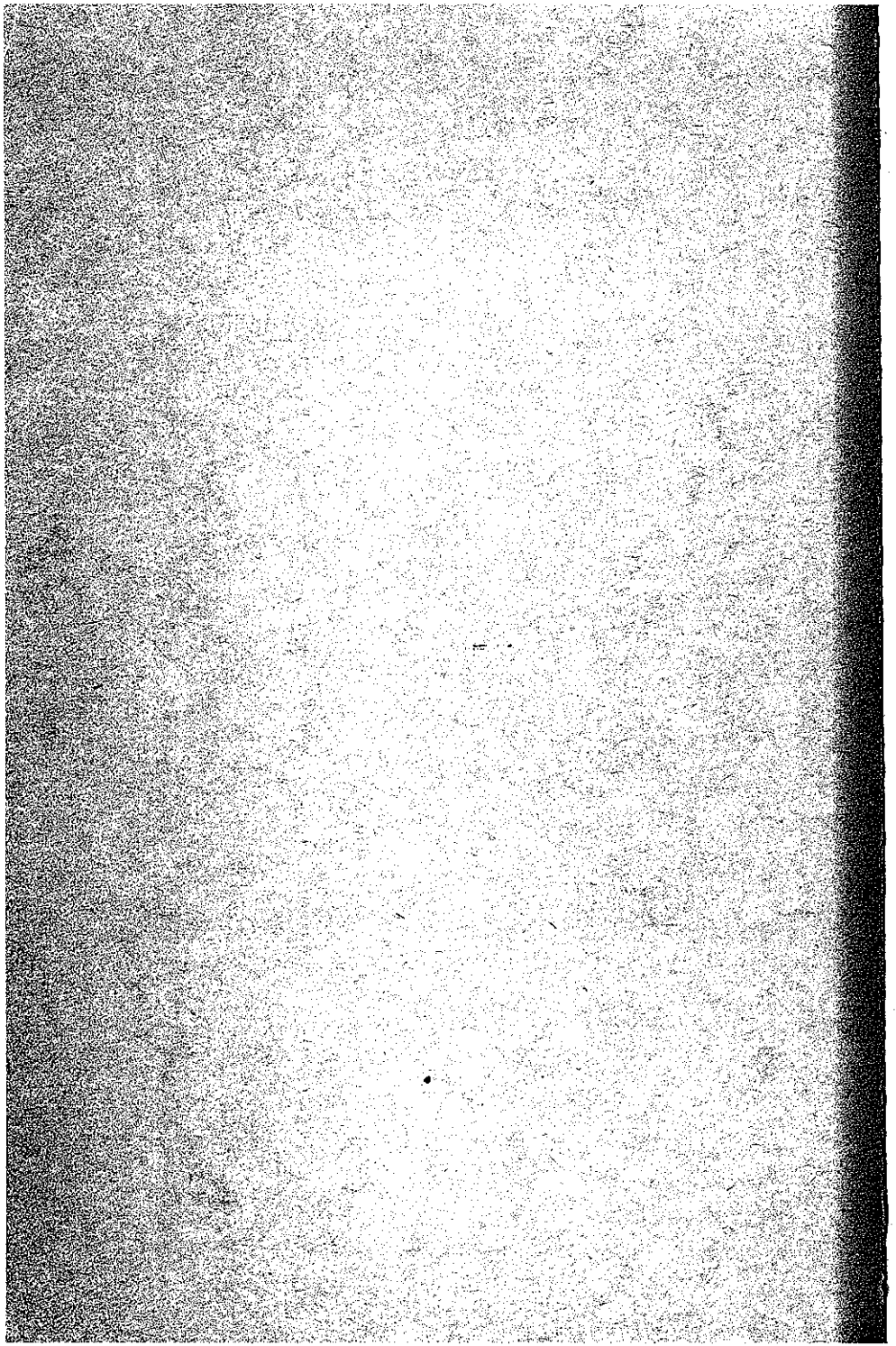
of the

IDAHO STATE BAR

Volume V, 1927

Fifth Annual Meeting

Boise City, Idaho, August 3rd, 1927



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Volume V, 1929

Fifth Annual Meeting

Idaho Falls, Idaho, August 9-10, 1929

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, Chapter 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

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
SAM S. GRIFFIN, Boise, Secretary 1923-

JUDICIAL COUNCIL

Alfred Budge, Justice, Supreme Court, Boise, President
Frank Martin, Boise, Secretary
Wm. E. Lee, Justice, Supreme Court, Moscow
Ralph Adair, Judge, District Court, Blackfoot
Wm. F. McNaughton, Judge, District Court, Coeur d'Alene
Dana E. Brinck, Judge, District Court, Boise
James R. Bothwell, Twin Falls
James Harris, Weiser
A. L. Merrill, Pocatello
Eugene A. Cox, Lewiston

OFFICES OF THE COMMISSION

36 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 and Northern Divisions will hold Division meetings in 1930 at times and places to be fixed, respectively, by Commissioners Owen and Truitt.

Annual meeting of the Idaho State Bar will be held in the Western Division in 1930, at a time to be announced later.

An election of a commissioner for the Western Division will be held in 1930.

Proceedings of Idaho State Bar Meeting, Held at Idaho Falls, Idaho, August 9th and 10th, 1929

Friday, August 9th, 1929,
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 Court room of the District Court, at the Court House, in Idaho Falls, Bonneville County, Idaho, on the 9th day of August, 1929, by the Hon. Jess Hawley, of Boise, vice-president.

Hon. B. W. Clark then welcomed the Bar to Idaho Falls, followed by vocal numbers by the male quartet. Thereupon the following proceedings were had:

VICE-PRESIDENT: I think it would be a good idea, as the Secretary has suggested, that each attorney arise and introduce himself. The introduction speech, let us have it understood, will be limited to the name and address.

Thereupon each attorney present in the court room arose and gave his name and address.

VICE-PRESIDENT: The President of the Association was to have been here today, and was scheduled to deliver an address on Probate Procedure. He wired to Mr. Owens yesterday that it was impossible for him to be here. I am very, very sorry, indeed, as Mr. Potts is a very learned member of the profession; and, personally, I have a great store of curiosity to know something about the proper procedure, as anxious clients are constantly inquiring just what the legislators meant when they wrote certain things, and the legislators who wrote the certain things seem to be in doubt as to what they meant.

I understand that the Pocatello members will be here later.

It falls to my lot, therefore, to make some suggestions at the opening of this meeting.

I hope that I will not bore you by riding a hobby. That hobby has been for a number of years the organization of the members of the bar. We found out that it was not possible in our small state to organize voluntarily, so the compulsory bar act was born, and after the Supreme Court had operated on it several times it assumed something of shape and form.

The fundamental thought backing those of us who were interested in the bar was the bringing of the bar itself to the summit or standard of idealism, which, as young men in the bar, we are taught to adopt as the standard in our profession. I doubt sometimes that the bar is fitted now to carry on its great purpose, that of assisting in administration of the law, and the improvement of the art, and also probably the science of administration. I doubt sometimes very seriously that the profession can compete against the powerful, wide current of materialism and of commercialism in which we are all placed today. The law profession, as that of medicine, engineering and in fact all of the learned professions, must be considered in two lights: First of all, the special learning, the special training that is required. And on that point I

think that the legal profession has not progressed as other professions. We have been too prone to bring into our ranks men who are illy equipped, from the standpoint of general education, and from the standpoint of special training in the law. It has been too easy to become a lawyer.

Whenever standards are attempted to be raised we are met with the cry, the stock phrase: "Lincoln never would have been a lawyer had education been a condition precedent." Of course, the reply to that is that a Lincoln would have procured the necessary education in some way. That lack of general education, or sometimes of special training, probably accounts for the lack of proper conception in the minds of many of our men of the dignity, and of the usefullness, and of the purpose of our profession.

The standards for Idaho, I think, are being raised, but it is a slow, slow process, and the men who constitute the Bar Commission are quite loath to move in a different way than the bar wants to move. Yet, it is apparent that the commission must direct the steps necessary to raise the standards, pre-legal and legal, required for membership in our profession. And the Supreme Court is also of the same rather general, idea of the rest of us—it hesitates to bring about great changes. Therefore, we all are fighting, inch by inch, to change the requirements to make them more rigid to the end that those who follow us in this profession may generally be better educated, and also specially better educated. I know that a number of us, if it required very special education, would not be practicing law today. But, that is not the point. The point is that we as members of the profession must have more care and more thought of our profession. The medical profession is far above ours, in so far as training of its members is concerned. Our change has been rather limited, and you could hardly see it from year to year, but when you look back ten years then you may see that we have increased the requirements, and we propose presently, so soon as the Supreme Court has passed upon rules which we have submitted, and which they have been very carefully considering, to further increase the educational requirements. I might state that this will meet with the approval of the bar as a whole. The fact that practically twenty-five to thirty-three and one-third percent of the young men who assay admittance fail in the examination, is an indication that our standards have been raised. I doubt that that percentage—I know that that percentage did not prevail five years ago and prior to that time. It does not increase the respect of the people for the bar, to know that anybody can be admitted. The older men here know of instances where men have been admitted because they were good fellows, and they have been allowed to practice in the District Courts, and finally in some way, in the Supreme Court, without really any qualifications. At this time I might tell you of an incident that happened in the Challis country many years ago, but you no doubt have had experiences of your own which indicate that if the gentleman answered two thirds of the questions correctly that he should be admitted. For instance, if he answered one question incorrectly, and the other two by saying "I don't know," the committee would say that he answered two-thirds of them correctly, and would admit him to the bar.

That special learning, I think, will be taken care of, and the standards increased, and the young man will know that he has to know something before he gets into the bar. It is not necessary, probably that he know much after that, either to be a lawyer or to be a judge, but to get in he must know something.

There is another fact which is probably more important in distinguishing a profession from a business, and that is the idea of rendering some sort of assistance and service to the public that cannot be rendered by any other class or type of men. Our particular type of service, as I suggested in the beginning, is the administration of justice. I don't know that we can bring about much along that line. I know that ten years ago so soon as we suggested to the state legislature anything which was an improvement the legislature was against it. I know, however, today that when we suggest something to the state legislature in the way of improvement in the administration of justice the mere fact that we have an organized bar adds weight, and the legislature of the State of Idaho has come to look upon the bar as somewhat worthy to render service, and there is a decided improvement in that. Those of us who have attempted to secure the passage of laws have found a very, very marked increase in respect and in trust.

That really brings me to a development of 1929. The study that we had begun of a change in our procedure, or rather in a rediversion of power, sending the power to control procedure back to the place where it belongs, the courts—a study which was begun a couple of years ago—has taken the attention of laymen, and some of the men high in officialdom were very anxious to see it put into law—the power in the courts to make rules of procedure. And I may state that had the bar itself arisen from the lethargy that bound it, and had it expressed its desire as it should have, the legislature would have passed just such a law.

One of the features of the program here will be a discussion of the report on rule making and the judicial council.

The passage of an act which shows that the laymen have confidence in the bar, and which shows they desire to have our advice and assistance, and will respect it, mark to my mind an important station on the road of the bar of Idaho to public esteem and confidence. This is the new section to which I refer:

"The Governor, Supreme Court, or the Legislature of the State of Idaho, may request of the Board an investigation and study of and recommendations upon any matter relating to the Courts of this State, practice and procedure therein, practice of the law, and the administration of justice in Idaho, and thereupon it shall be the duty of said Board to cause such investigation and study to be made, reported to an annual meeting of the Idaho State Bar, and after the action of said meeting thereon, to report the same to the officer or body making the request. The board may, without such request, cause an investigation and study upon the same subject matters, and after a report thereon to an annual meeting of the Idaho State Bar, report the same and the action of said meeting thereon to the Governor, Supreme Court, or Legislature of the State of Idaho. (Laws 1929, Chap. 98, Sec. 4.)

"The Idaho State Bar and its Board of Commissioners shall

have the power and authority to aid in the advancement of the science of jurisprudence and in the improvement of the administration of justice." (1929 Laws, Chap. 98, Sec. 5.)

Gentlemen, it is, as you know and realize from your own feelings and experience, an up-hill job to get the bar of the State of Idaho together on any point—to get them physically together is impossible, to get them mentally together is possible, but most difficult. The lawyers have not yet awakened to a sense of their individual importance as members of the profession, or to a sense of their duty to serve that profession. I have in mind the Corporation Code Commission which asked advice from the lawyers of the state—asked them repeatedly—and got half a dozen—just half a dozen—suggestions, until after the law was passed, and then, of course, there were many criticisms.

It is a pleasure to know that in the matter of discipline there seems to have come to the lawyers of this state a realization that the bar is not going to tolerate blacklegs or unethical practitioners of the profession; and as a result of that knowledge the complaints made against members of the profession have very greatly increased. I believe that there were, at one time, over fifty complaints pending against lawyers. Now, when you realize that there are only between six hundred and seven hundred lawyers in the state, and they are not all active, you can realize to what a pass we had come when practically ten percent of the active membership were accused by clients or by others of unprofessional conduct or misappropriation of funds, or carelessness and indifference to clients' interests. Now that condition is changed, and I doubt that we have at the present time ten per cent of that number of complaints. So, it shows that within the bar there is beginning to germinate some notion of the importance of the bar, and some examination by the members themselves of their conduct in this respect.

The progress of the bar reminds me of the progress that I made in a machine a couple of years ago, while on a hunting trip. We came to the top of the mountain, or close to the summit, and the snow was very, very deep. The driver of the car was a wonderful driver, bucking his way a few inches at a time, then backing up and bucking the snow again to gain another six inches, and so on, in that manner, never killing his engine, always going forward a little. To me that is a source of consolation and inspiration when I get discouraged, because while we are going so slowly, gentlemen, we are going ahead.

There will be no doubt many suggestions that will come as a result of this meeting, and I hope that the members here will participate in the discussions of the various papers that will be given.

There is a set schedule which requires the appointment of committees on resolutions, and canvassing, and I am appointing now on the committee on resolutions:

James R. Bothwell, J. M. Lampert, O. A. Johannesen, C. E. Crowley, Arthur W. Holden.

and on the canvassing committee:

Laurel E. Elam, F. A. Wilbur, G. W. Soule.

The next order of business is the report of the Secretary, Mr. Griffin.

SECRETARY: (Sam S. Griffin) I have here a rather formal report. It has been the practice of the Secretary to make a report of the activities of the Commission. You, of course, get the activities of the bar at its meetings through the proceedings which are published, and which will be published in this instance and mailed to you. But the activity of the Commission at its meetings, I suppose, is very little known to the members of the bar, and the work that is required of the Commission is very little known to the members of the bar.

I think the tendency at the beginning of this organization was to think of the Commissioners as the president of the old voluntary bar association used to be thought of—that is, it was a purely honorary position. As a matter of fact, however, the Commissioners of the bar spend less time with the honor, than they do in actual work. If you could observe the Commission meeting, sometimes as long as three days at one time, and often times until midnight, trying to clean up business which accumulates in an organization of this kind, you would realize that the Commissioners are really busy men, and that they are giving great service to the bar, in connection not only with the admittance of new members to the bar, but in connection with disciplinary proceedings.

I think it should be made clear to the members of the bar that a disciplinary proceeding is often times as important to be had by the member of the bar as it is to the complainant. It would surprise you, I think, if you could examine my files and see the number of informal complaints which are made against attorneys—complaints made by letters. Often times they are wholly unfounded, and in a great many instances are simply matters of misunderstanding between the client and the attorney, which only some outside body or person can iron out, because the client thinks the attorney is prejudiced against him, and the attorney is unable to explain to his client why his position in the particular matter is right. Those complaints are not formally entertained. The only complaints which are formally entertained are those which are verified by the plaintiff. And in a great many instances those are just misunderstandings between attorneys and clients, and adjustments generally result in benefit to the attorney in restoring him to the esteem of his client and the public, in that they realize that the attorney was right in particular instances. They also realize that there is some one to whom they can turn when such a situation arises.

Turning to the purely formal matters of the report, which I have written, and which are taken from the minutes of the board, while they do not reflect the actual time necessarily spent in connection with them, yet I think there is enough of it to indicate to you what has been required of the board, and what the board has actually done on the occasions of its six or seven meetings each year.

Report of Secretary

Following the practice from the beginning of the present form of organization of the Bar of Idaho, a report of the activities of the Board of Commissioners as reflected in the official minutes is herewith presented for the information of the members of the Bar.

The election for Commissioner for the Eastern Division held at the Coeur d'Alene meeting of the Bar on July 23, 1928, resulted in the choice of E. A. Owen, Idaho Falls, as the successor of A. L. Merrill of Pocatello, who had completed the regular three year term. The Board at once reorganized in accordance with the requirements of statute, electing C. H. Potts, of Coeur d'Alene, as President, Jess Hawley, Boise, Vice-President and Sam S. Griffin, Boise, Secretary. Five formal complaints against attorneys were examined and referred for further preliminary investigation. Two matters relating to improper advertising were adjusted. The publication of 1928 proceedings was arranged for, and the publication subsequently made and mailed to all members. One applicant for admission to the Bar was recommended to the Supreme Court; and plans for an examination of applicants were formulated.

On October 1, 1928, the Board met at Boise. Two complaints, after investigation, were dismissed, one as settled, the other as not sustained; another complaint was referred for preliminary investigation. Delinquencies in payment of 1928 license fees were reported and each commissioner given the list of delinquents for his division with the purpose of securing payment. Consideration of appointment of committees of the Bar recommended at the annual meeting was had. Eight applications for permission to take an examination for admission were examined, of which seven were approved, and one rejected on account of lack of educational qualifications. A set of examination questions was formulated and time and place of examination, and examining committees were determined.

At this meeting the practice of appointing a special committee to draft an entire set of examination questions for each examination—a work requiring usually the entire time of the committee members for several days—was discontinued as imposing too great a burden upon the attorneys selected. In lieu thereof, the Board called upon approximately 100 attorneys, each to frame ten questions upon a particular branch of the law assigned therefor to him. It may be said that the majority of the attorneys thus requested, responded cheerfully, realizing that this distributed the burden more equitably, tho', regrettably, some failed.

At the November 9, 1928 meeting, the disciplinary proceedings against C. H. Edwards, and A. F. Downs, both of which had been before the Supreme Court, were referred to the necessary committees for further action in accordance with the remittitur of the Court. Committees recommended by the Bar were appointed; their reports have since been printed, distributed to all members of the Bar and newspapers, and are presented for discussion at the meeting. During the days and evenings of November 9th and 10th, the Board graded examination papers of eight applicants for admission, finally recommending admission of five and rejection of three.

Again at Boise on January 9, 10, and 11, 1929, the Board met and directed disciplinary proceedings against delinquents in payment of 1928 license fees unless payments were made within a specified time. In each division disciplinary and prosecuting committees for this purpose were appointed, but except in the few cases hereinafter mentioned, payment was made. Two applicants by certificate were, after investigation, recommended for admission. A special investigating committee was appointed to assist one of the commissioners in the investigation of a complaint; three other complaints were examined, one dismissed, in one proceedings were directed and committees therein appointed, and in the third action was deferred for further investigation. Consultation was had with the Legislative Committees of the Bar and plans formulated for presentation of legislation endorsed by the Bar; conferences were had also with the Supreme Court and the Governor. Subsequently, Commissioner Hawley, the Secretary, and members of the Legislative Committee were invited by the Judiciary Committees of the House and Senate to hearings on various occasions. The result of the Bar Committee's labors are reported to you at this meeting by the chairman. Further recommendations relating to rules for admission, conduct, discipline and general procedure of the Idaho State Bar were formulated and presented to the court, which is now considering them together with later changes recommended as a result of legislation passed at the 1929 session of the Legislature.

The meeting of March 21, 1929, gave attention to five disciplinary matters, in two of which, proceedings were directed and the proper committees of discipline and prosecution appointed; one complaint was dismissed, the investigation showing no ground therefor, and two were referred for investigation. Arrangements were made for an examination and, one applicant granted permission to take examination. Conference on the work of the Committee on Unified Courts was had, and a resolution expressing the regret of the bar at the death of Justice Herman H. Taylor was adopted and filed with the Supreme Court.

At the April 29, 1929 meeting permission to take examination was granted to ten applicants, time, place and questions for examination were fixed, and examining committees appointed; one complaint was referred for investigation, and one referred to Committees for disciplinary proceedings. Information indicating that S. E. Henry, previously disbarred, was continuing the practice of law, having been received, by direction of the Supreme Court, the Board instituted contempt proceedings and appointed a committee of the Bar to prosecute. Citation subsequently issued and the matter referred by the court to Hon. W. F. McNaughton of Coeur d'Alene to take testimony. One complaint was reconsidered, and dismissed. Disciplinary proceedings, theretofore instituted against attorneys delinquent in payment of license fees, were discontinued when payment had been made. Arrangements for Division and the Annual meeting of the Bar were commenced, distribution of committee reports directed, and the election of a Commissioner to succeed President Potts, whose term expires, was ordered. One applicant for admission was recommended, a resolution relating to the death of Hon. H. F. Ensign, adopted and ordered filed with the Supreme Court, and revised recommendations concerning Bar rules were made to the Court in line with recent legislation.

At Lewiston the Board met June 11th to 13th; granted permission to three to take examination, conducted an examination, and recommended six, rejecting three. Two of three complaints were dismissed as not supported by investigation; the third was defer-

red for further consideration. A tentative program for this meeting was outlined.

The papers of five applicants examined were graded at the Boise meeting of July 15th; four were recommended and one rejected; The final program for this meeting was adopted and one complaint given consideration.

Since the last report to the bar, 31 applications for admission to the Bar have been presented; four were upon certificate from other states and were recommended for admission; 20, together with two who had previously failed, were examined at the five examinations held, of whom five failed; two were re-examined, and passed; one failed to appear for examination, and one was rejected without examination; five are awaiting action of the Board.

Fourteen formal and three informal complaints were given consideration; 15 delinquency disciplinary proceedings instituted, and one contempt proceeding instituted. Two of the informal complaints were adjusted, one dismissed. Of the formal complaints, three are pending before the Board, five were dismissed, one resulted in suspension by the Supreme Court, five are in various stages of hearing before committees.

During the past year 48 members of the Bar, in addition to about 100 who prepared examination questions, have actively served on committees of the Bar.

The Board has continued the policy, inaugurated last year, of seeing that matters initiated by the Bar are not dropped, but carried through to a conclusion; witness of this are the continuation of discussions and studies previously instituted relating to Unified Courts, the Rule Making Power, the Judicial Council, and Probate Court jurisdiction, and the carrying through to legislation of the acts recommended by the Bar, all of which were approved by the Legislature, and all approved by the governor, save the one providing for increase of judicial salaries. That the general public regard for the Bar has increased is evidenced by the attitude of the Legislature, which officially recognized the responsibility and ability of the Bar, as now organized, respecting the administration of justice in Secs. 4 and 5 of Chapter 98 of the last Session Laws, whereby the governor, Supreme Coort and Legislature were given power to request studies and recommendations by the Bar, relating to the Courts, practice and procedure, and the administration of justice, and the Bar itself authorized to aid in the advancement of the science of jurisprudence and in the improvement of the administration of justice.

Since the last meeting of the Bar, the death of an unusually large number of prominent Idaho judges and lawyers has been reported. My list is doubtless incomplete, but reported to me are Hon. Herman H. Taylor of Sandpoint and Boise, Justice of the Supreme Court; Hon. H. F. Ensign, of Hailey, Judge of the 4th Judicial District; Hon. Edgar C. Steele, Moscow, Judge of the 2nd Judicial District; Hon. James H. Hawley, Boise, former governor of Idaho; Harry O. McDougall, Boise, Asst. Attorney General of Idaho; Richard H. Johnson, Boise, Thos. S. Jackson, Caldwell and Wm. P. Hanson, Idaho Falls.

The status of the appropriation follows: (1928 figures are from July 30, 1927 to July 16, 1928: 1927 figures are from July 10, 1926 to July 21, 1927.)

OFFICE EXPENSE	7-17-28—8-1-29	1928	1927
Secretary's Salary	$ 975.00	$ 835.00	$ 830.00
Stenographer	195.00	118.22	102.81
Stamps, stationery, etc.,	216.61	218.59	335.74
Travel Expense	757.73	536.49	766.44
Bar Meetings	408.40	516.30	311.04
Publication Proceedings	275.00	549.60	(Combined with 1928)
Examinations	67.00	95.50	70.96
Discipline	56.00	412.45	1,353.58
	$2,951.42	$3,272.11	$3,770.57

Balance in appropriation, July 17, 1928, ... $5,144.75
License fees received to Aug. 1, 1929, ... 3,285.00

Total $8,429.75

Less expenses as above $2,951.42

Balance in appropriation Aug. 1, 1929 ..... $5,478.33

Membership—June 30, 1929

Northern Division	134
Eastern Division	146
Western Division	296
Out of State	27
	603

Delinquencies 1927—1
Delinquencies 1928—4

License payments for 1929 received:

Northern Division	115
Eastern Division	115
Western Division	235
Out of State	24
	489

VICE-PRESIDENT: The financial report of the secretary will be referred to the bar commission.

Our revolving fund is audited regularly by an auditor, and all the expenses of the bar are paid through the regular channels of the general fund of the State Treasurer, and of course come from the $5.00 fee that we all pay, and all our claims are approved by the State Board of Examiners.

The progress of the bar in legislative matters, I think, will be

shown by the report of the Legislative Committee. Now, I have not myself prepared a report here on the progress of the bar, because that is the work of the president each year, and his rather sudden conclusion not to come prevented my doing that, because I only knew of it this morning.

I might suggest to the resolutions committee, among other matters which they may consider, this question of judicial salaries. Idaho ranks along with the very poorest states; we have not changed salaries since 1909, and everyone who knows anything about living conditions knows that the dollar today is worth about sixty cents. The judges are certainly inadequately paid. I might state that there are many judges who would like to quit the bench today if it were possible to do so. We know of men who have resigned not later than a week ago, because of the inadequacies of the salaries of the district judges. Our judges are not paid according to their ability, or according to the importance of their positions. And it is a crime and a shame and a disgrace to the State of Idaho that it takes men and puts them on the bench—takes them out of the practice where they can make a living at least, and which is a permanent sort of thing—puts them on the bench where they must sever all their connections had in private practice, and at an inadequate salary, and then, after the expiration of their term of office dumps them back into a financial hole. I say it is a disgrace to the State of Idaho that such a thing should occur.

Idaho's bar has realized that, and we were able to pass two years ago an act increasing the salaries, but that act was vetoed by the Executive on the ground that Idaho's financial condition did not warrant it. To my mind, and speaking as one who has been and is most friendly to the Executive, I think that was a very trivial excuse, and anyway not a good reason. The last session of the legislature, almost unanimously so far as the house was concerned, and by a big majority in the senate passed an increase in salary to the supreme and district judges, but, notwithstanding the importunities of the laymen of the State of Idaho, that act again met death at the hands of the Chief Executive.

I might say that the bar will again pass an act—or see that it is passed—increasing these salaries.

While there is a great honor in being a judge, many of the gentlemen, after the flush of the honor has died away, realize that the matter of judicial honor is a mighty poor substitute for money, and that honor fills no craving stomach.

The point that I had particularly in mind in connection with this resolutions committee, is that one of the reasons given by people interested in causing our judges to exist in somewhat respectable poverty is that we have too many district judges. Now, I don't know whether we have or not. We tried to get someone to tell us where we had too many, and the only district that was said to be too small was the First District. And I am informed—and you will probably hear the statistics later—that there are over one hundred cases pending in Shoshone County, the First District.

There should be a study made of the redistricting of the state; we should have men appointed in every district to go into the matter thoroughly, and find how many cases have been before the courts

in past years, and find how many are pending; to study the geography of the districts, and come to some conclusion prior to our first meeting next year with a thoroughly prepared, detailed report. Then we will know whether this State should be redistricted, and then we can take the facts to the Executive and the legislature and lay them on the table, so that they may know.

That is one very important suggestion that I think should be followed.

Another suggestion was this: That probate procedure—that is our system of probate jurisprudence—is all wrong; that instead of probate work being carried on, as is constitutionally required, by a probate judge, often times not a lawyer, there should be given probate jurisdiction to the district Court, with offices of probate in each county.

That was a suggestion that has found favor. In other words, the abolition of the probate court. That is a matter that should be studied and reported at our next meeting.

Then the legislature following will be in a position to change the system, and change the salaries, and do, I think, a great good to the state.

You will pardon me for making these suggestions. I know that you realize that the president's absence imposes upon me the duty to make some suggestions along these lines.

I will ask Mr. Griffin to read the report of the legislative committee.

SECRETARY: This is the report that was submitted by the legislative committee.

To the Hon. Commissioners and Secretary of the Idaho State Bar, Boise, Idaho,

Gentlemen:

I have the honor to report to you on behalf of the Legislative Committee of the Idaho State Bar that the Judiciary Committee of both Houses of the Twentieth Session of the Idaho State Legislature, not only welcomed, but invited the Legislative Committees of the State Bar to appear before them for the purpose of suggesting and discussing needed Legislation in regard to those matters in which the Bar is particularly interested.

The following Bills, prepared by the Commissioners and the Legislative Committee of the Bar were passed hy the Legislature and approved by the Executive, to-wit:

1. A Bill to bring about conformity in the provisions relating to liens of state and federal judgments. S. L. 1929, Chapter 51.
2. A Bill amending the statute in regard to foreclosure of mortgages so as to permit joining with the foreclosure action, an action to cure defects in title. S. L. 1929, Chapter 113.
3. A Bill strengthening and improving the organization of the Idaho State Bar. S. L. 1929, Chapter 98.
4. A Bill amending the statute for service by mail so as to conform to modern transportation conditions. S. L. 1929, Chapter 86.

A Bill to increase the salary of Supreme Court Justices to $6500, and of District Judges to $5000 was passed by both Houses of the Legislature and vetoed by the Executive.

From my observations during the session of the Legislature I am convinced that body is willing to cooperate with the officers of the State Bar in regard to all matters of legislation, relating to the judiciary, procedure, and the Bar.

Respectfully yours,
CHARLES P. McCARTHY,
Chairman Legislative Committee.

VICE-PRESIDENT: The report will be filed, and made a part of the report of this meeting.

The next order of business is communications from the Prosecuting Attorneys' Association. Mr. Wilbur.

MR. WILBUR: Mr. Chairman, and members of the Idaho State Bar. I was delegated to assist in the preparation of communications from the Prosecuting Attorneys' Association for presentation at this meeting. For the convenience of the resolutions committee it has been prepared in triplicate. It was not our intention, however, to read it, at this time, but merely to file it.

VICE-PRESIDENT: It is probably better to read it now, so the resolutions committee may take some action about it, If there is no objection that will be done.

MR. WILBUR: This is the communication of the Idaho Prosecuting Attorney's Association to the Idaho State Bar:

Communication of Idaho Prosecuting Attorneys' Association to the Idaho State Bar

The Idaho Prosecuting Attorneys' Association having been in convention at Idaho Falls, Idaho, on August 8, 1929, and having considered the Report of the Committee on Criminal Reforms, of such Association, the following constitutional and legislative changes embodied in such Report, were adopted by the Association as proper subjects of recommendation by it, and such changes are herewith submitted to the Idaho State Bar, for its consideration.

1. It is recommended that Section 8829 of the Compiled Statutes of Idaho, be amended to read the same as Section 954, Kerr's Penal Code, California, which latter reads as follows:

'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 be filed in such cases the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information, but the defendant may be convicted of any number of the offenses charged, and each defense 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.'

2. It is further recommended that Section 9131 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.'

3. It is further recommended that Section 8810 of the Compiled Statutes of Idaho, 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.'

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

'All information 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 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.'

5. It is further recommended that Section 8944 of the Compiled Statutes of Idaho, be amended (conforming to Section 1096, Kerr's Penal Code, California, as amended in 1927) to read 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 moral 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".'

6. It is further recommended that a new section be added to Article 2, Chapter 321, Title 60, of the Compiled Statutes of Idaho, to be known as Section 8944-A (conforming to Section 1096-A of Kerr's Penal Code, California, as amended in 1927), which shall provide 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.'

7. It is further recommended that Section 8947 of the Compiled Statutes of Idaho, 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.'

8. It is further recommended that Section 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.'

9. It is 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 the technical errors or defects or to exceptions which do not effect 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.'

10. It is further recommended that Article 1, 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.'

11. It is 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 witnesses, to the same extent as is now permitted in the Federal Courts.

12. It is further recommended that Section 2624 of the Compiled Statutes of Idaho, be so amended as to permit the joinder of all offenses under the State Prohibition Law in one information.

VICE-PRESIDENT: Mr. Wilbur, of course, I don't suppose that this meeting can do more than consider generally this report, and that probably it will be printed and referred generally to the bar, and probably committees appointed for its consideration, and the action of the bar as a whole taken at the next years meeting. So that whatever becomes of it the recommendations of the bar as a whole may be heard.

MR. WILBUR: That is the recommendation.

VICE-PRESIDENT: I think in the few minutes we have left before the adjournment, it might be well to suggest the reason that you have for the earlier recommendations. I think the latter recommendations are matters of more knowledge, and that we all have more or less views on those. But as to some of these recommendations you have made I think your notion in making them would be of value to us.

MR. WILBUR: These recommendations all came from the committee, and I think perhaps it would be well to turn that matter over to Mr. Reid Millar of Blackfoot.

MR. MILLAR: The Prosecuting Attorneys' Association last year appointed a committee to make an investigation and make recommendations for reform in our criminal procedure and in our criminal law where apparent defects were, in order that we might cope with the greater crime wave throughout the United States.

These recommendations, I might say have been taken largely from the suggestions and investigations by the various crime commissions in the various states. You noticed when Mr. Wilbur read the recommendations most of them are taken from the California Code as it now exists. Some four years ago two outstanding lawyers in California were appointed for the purpose of revising the criminal code there; and they spent some two months at Sacramento for this purpose, making some fifty amendments in the criminal code. And after comparison with our code and the defects in the administration of justice under our criminal law, we have made these suggestions.

The first suggestion, regarding the joinder of charges or several offenses against the same defendant in one indictment or information, was adopted in California for the purpose of speeding administration of criminal justice; and disposing of the cases exactly in the same way as they are disposed of now, except that they may be consolidated and proved at the same time. This has resulted to a great degree in speeding up criminal cases through the courts in California.

The next suggestion, that it shall be the duty of the trial court to examine prospective jurors, came as a result of a suggestion by a district judge in this state, that probably our state laws as they now are, did not prohibit that right and that the district judge should be allowed that privilege. I think there need be no comment on the fact that a district judge as he sits as a trial judge in the state courts has his hands tied by rules and regulations, until he becomes a mere referee under our law in the administration of justice. The report comes from the chairman of the Committee on Criminal Law and Criminology of the American Bar Association that it has resulted in the speeding up in the selection of juries to a very, very limited time; that the jurors are examined as to their general qualifications by the court, and then with regard to the particular characteristics upon which the defense or prosecution counsel wishes to examine the jurors, under the direction of the court.

The next recommendation regarding the privilege of a defendant to withhold himself from the witness stand. The same recommendation in regard to this has been made all over the United States, and has gained momentum until today it has found its way into the constitution of three states, and into the statutes of several other states. It is a subject of comment throughout all the United States, but I do not think anyone can give any good reason why such an enactment should not be made. A defendant, of course, if he is guilty, will not take the witness stand, unless it is absolutely necessary; and a defendant who is innocent is anxious to take the witness stand to prove his own innocence. The recommendation as it stands proposes that this failure to take the stand may be subjected to comment by counsel; and when he does take the stand he may be cross examined as any other witness. The recommendation regarding the filing of the names of the witnesses by the prosecuting attorney, and also requiring the defendant to furnish the names of his witnesses, is one that has come as a suggestion on the part of the prosecutors here, and on the part of the prosecutors of Washington and Montana. Why should a defendant be given the privilege and opportunity of obtaining all of the facts and evidence of the state's case, and all the names of the state's witnesses, and not have the responsibility of doing anything but to make his plea or file his demurrer? The state is entirely shackled and handicapped by this method of prosecution to determine the defense of the defendant, and often times miscarriages of justice have occurred, and criminals have escaped as the result of some alibi or frame-up that has been sprung as a surprise on the prosecutor, and the matter disposed of without an opportunity for the prosecutor to prepare himself thereon.

The recommendation with regard to the presumption of innocence. Of course, that is used mostly to befog the minds of jurors. One juror in a criminal case which was heard not long ago, after the close of the trial, walked up to the prosecutor, and made this remark: "I believe that man is guilty, all right, but you didn't prove him guilty." He was asked if he knew any of the facts of the case before the trial, and he said that he did not. Yet he was the man who hung that jury, and was the sole man on the jury who was balled-up about this reasonable doubt to such a point that though he believed the man guilty, yet, through a misunderstanding of reasonable doubt, he held out for acquittal and resulted in a hung jury. The change proposed in the recommendation conforms exactly to the code adopted in California, that the effect of the presumption of innocence is only to place upon the state the burden of proving guilt beyond a reasonable doubt, and then give the statutory definition of reasonable doubt, and giving the court the right to give that definition as the one instruction on reasonable doubt. That, in my mind, and in the minds of the prosecutors assembled yesterday, would allow the jurors to receive more freely than any other way the clear and simple principle of reasonable doubt.

Now the recommendation that two or more defendants, jointly charged with any public offense must be tried jointly. There is

only one word necessary to be changed in this recommendation, and that is the word "must," where the word "may" should be used. Thus giving the court more latitude in the right to charge and try those jointly who have been jointly implicated in crime.

The next provision having to do with the reversal of judgments is one that has been adopted throughout the United States to a great extent, to overcome technicalities of the old common law which have crept into our administration of justice as a shield or cloak, a means of release, probably, for more criminals after conviction than any other way. This recommendation as here presented is in precisely the same language as the recommendation of the American Bar Association in a bill which was presented to Congress some years ago. It is almost word for word with the provisions on this subject that have been adopted recently in California. And, as I say, it strikes directly at the cloak of technicalities that the defendant has used to escape punishment for his crime.

The other recommendations I think it will not be necessary to discuss, particularly, as they are self-explanatory. But in offering these to this Bar—these recommendations—we want to assure you that it is after careful thought, and after a good deal of consideration that these things have been recommended. Changes must come, as we advance and progress.

I think before a great while this body should take upon itself the responsibility of sponsoring somewhere in this state a central bureau of identification, and that the legislature should provide an appropriation for a state organization to assist in combatting criminals and men who commit crime in one county that is not so flush with finance, and whose officers are not skilfully trained in the detection of crime and the methods of criminals, and consequently sorely handicapped, if not absolutely helpless to cope with the problem. This spring there have been four burglaries with explosives, safe blowing, between Shelley and Ashton, and not one clue as to the identity of the burglar or burglars has been discovered. There are other crimes that have been committed, not by local criminals, but by men who travel in high powered automobiles, from county to county, and state to state, and who are trained and skilled in their method of obtaining a living, and the officers of the state and counties are absolutely helpless to cope with their scientific methods of work.

Something must be enacted by the state for the employment of a bureau of identification, as a state unit to serve the entire state, and to employ men therefor who are trained and skilled in the the detection of crime. Instead of calling Luke May or someone else to come down here at the rate of $100.00 a day—an expense that is prohibitive in many instances in counties in which crimes have been committed.

Gentlemen, it is with this view, and with this attitude that the prosecuting attorneys of the state make these recommendations, I thank you.

SECRETARY: I move that the communication of the prosecuting attorneys be submitted to the resolutions committee.

Motion duly seconded.

VICE-PRESIDENT: It has been moved and seconded that the

recommendations of the Prosecuting Attorneys' Association be submitted to the resolutions committee.

MR. MARTIN: Would that be with the thought of securing some report on these recommendations at this meeting?

VICE-PRESIDENT: I don't know. I think that it would be with the idea of securing some sort of recommendation on them. Probably they will be submitted to the next meeting, and then we will come to a decision.

Any further discussion on the motion?

If not, all in favor signify by saying aye.

Carried.

SECRETARY: I move you that the resolutions committee be directed to prepare appropriate resolutions relating to the Honorable Herman H. Taylor, H. F. Ensign, Edgar C. Steel and others of the members of the bar who have died since the last meeting of the bar.

Duly seconded.

VICE-PRESIDENT: You have heard the motion. Is there any discussion? If not, all those in favor kindly signify by the usual sign.

Carried.

SECRETARY: I wish to make an announcement at this time. Mr. Frawley, of Boise, on a special committee of the American Bar Association to secure members to that association, asked me to bring to the attention of the members of the bar here, those who are not members of that association, the matter of becoming members of the American Bar Association.

If any one here is desirious of joining, or intending to join the association, I have the application blanks here. Those of you who are members know something of the American Bar Association Journal, and those who are not I am sure would appreciate receiving this journal. The Journal has some very remarkable articles, from time to time, on different matters of interest to the bar—legal reform, and things of that character—and I am sure you would feel yourself well repaid. If anyone here desires to sign one of these applications, the forms are here on my desk.

VICE-PRESIDENT: There are on the desk a number of copies of Committee Reports and Announcements, also a number of programs, and when you leave you may get them.

The afternoon meeting will convene at two o'clock.

Thereupon the meeting adjourned for the noon recess.

At 2:00 o'clock P. M. the meeting reconvened for the afternoon session, and the following proceedings were had, to-wit:

VICE-PRESIDENT: Gentlemen, during the recess there were several of the attorneys discussing a matter, which might be well to have in mind, the fact—for it is a fact—that in many places in the state real estate dealers, bankers and possibly others are doing very important legal work, such as drawing deeds, contracts, wills and so on. The bar commission feels that it would like to know of such cases, and would like to test out whether such men who carry on work that requires legal knowledge, can carry on that way or not. We have a provision of law which makes it contempt of both supreme and state courts to practice law, or to hold oneself out as

capable of practicing law, unless he be a licensed attorney. Now that isn't possibly generally known. And possibly some of you do not know that we have no standing discipline committees at all, but that every lawyer is, in himself, a disciplinarian, and in the event anything is wrong it should be reported to the bar commission; and then the bar commission appoints for each case a separate prosecuting committee. In the event you know of cases of that type let us know, so that we can test them out. Of course, I am rather of the opinion myself that some of the trouble arises from the fact that a good many of us are printing press lawyers; that we ourselves pay no attention to the printing of a deed, we buy it from some printer, have our stenographer fill in the data, and let it go at that. That is true of mortgages, and it is true of other instruments, which really require some thought. We do not give it enough thought, and we are somewhat to blame because we have let the printer do our work.

Report of Committee on Judicial Council and Rule Making Power

To the Honorable Commissioners of
The Idaho State Bar.

This committee was appointed in 1928 to consider the organization of a judicial section of the bar association, and to suggest uniform district court rules and to report on the legality and advisibility of adopting the judicial rule making power in Idaho.

Our state constitution requires district judges to report to the justices of the Supreme Court, and they in turn to the governor, defects in our existing constitution and laws, but without machinery for organized effort along this line the good that comes from a compliance with these requirements is at best desultory and unsystematic. In the short time this committee had prior to the 1928 meeting of the bar association to consider the matters referred to it, their views crystallized into the recommendation that the constitutional function of the judges in this respect be vitalized by providing for an annual meeting of all the district judges with the justices of the Supreme Court and with the state bar commission or a committee of the association, for the purpose of making a full survey of the field of procedural needs and of systematically formulating needed changes for adoption by the legislature. The further study we have been able to make since the report of last year has convinced us that the judicial conference so suggested should be incidental to a smaller and more compact judicial council.

The situation calling for reform in legal procedure is by no means so critical in this state as in the states containing large cities, where the very density of population and complexity of business and industrial organization has brought about a flood of litigation with which the trial courts have been powerless to cope for lack of time—a situation that does not exist in the less crowded sections of those states, nor generally in the trial courts of Idaho. Nevertheless, we are operating under fixed rules, in the main adapted to conditions existing in the middle of the last century at a time when the sys-

tem of court procedure became congealed by the adoption of the Field Code and its offspring in the various states. While since then governmental institutions other than the courts have made rapid progress consistent with the evolution of government and society generally, but little change or improvement has been made in court procedure. This situation has often been ascribed to the fact that by the practice acts courts were deprived of the power to regulate their own procedure. It is probably rather due to the fact that regardless of where rests the ultimate power to adopt the rules of procedure, there has been in existence no body, either legislative or judicial, adapted to the scientific study of court procedure and its revision to meet changing conditions. Had such a body existed, it is probable that legislatures would in general have adopted their work in greater or less measure.

Ideally each court should be free to formulate its own procedure. That this is true has been recognized by legislative bodies generally, whenever a new board or commission exercising quasi-judicial functions has been created. Practically every board or commission established by congress or by the state legislatures is given the power to adopt its own rules of procedure, and is held accountable only for the substantive results. However, it is of course not practicable for our trial courts to each adopt its own procedure. The paramount necessity for uniformity, recognized by Constitution, Art. V, Sec. 26, demands that rules for the trial courts be in the main fixed, either by such courts acting in accord, or by some agency outside of them. The Supreme court, by training and understanding of the problems should be better adapted than is a legislature to the task of regulating court procedure; it, however, is already overburdened and is besides out of direct contact with the daily problems of the trial courts and of lawyers, practicing in them. In the Journal of the American Judicature Society for June, 1928, p. 19, a contributing editor says: "This society has argued repeatedly that the making of rules generally in the procedural field is not naturally a function of the supreme courts. They exist for other work of paramount importance. They are overworked. Our history is full of examples of the reluctance of supreme courts to exercise the rule making power. In England there was the same condition in the early years under the Judicature Acts, and not until a Rules Committee was created was the power energetically exercised." Professor Whittier of Leland Stanford University, in the same journal for June, 1927, points out that though the highest courts of Alabama, Colorado, Delaware, Michigan, New Hampshire, Virginia, and other states, have for periods varying from a few years to upwards of half a century had the power to prescribe procedure in inferior courts, practically nothing had been done to that end. We think it evident that to give to the supreme court of this state, overburdened as it is with appellate work, the added burden of initiating a revision of the rules of procedure for trial courts, would necessarily result as it has resulted elsewhere.

Faced with a grave condition of congestion and delay in the trial courts of its cities, in 1919 the Massachusetts legislature appointed a commission to investigate the judicature of the commonwealth. In 1921 this commission reported its conclusions and recommended the establishment of a judicial council. In its report it said: "It is not a good business arrangement for the commonwealth to leave the study of the judicial system and the formulation of suggestions for its developments 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 court." In conformity with this recommendation, in 1924, the Massachusetts Judicial Council was established, consisting of judges and lawyers. Already the Legislature of Ohio had, in 1923, following the report of the Massachusetts committee, established such a council; and though only six years have intervened, more than one-fourth of the states have adopted similar measures. Such councils now exist, or have been authorized, in Virginia, Kansas, Connecticut, California, North Carolina, North Dakota, Ohio, Rhode Island, Oregon, Washington, Kentucky, Michigan and Massachusetts; in Wisconsin a conference of judges has been established, which in some of the other states named exists in connection with the judicial council, but in addition thereto. The bar associations of Missouri, Oklahoma, Pennsylvania, Colorado, Illinois, and probably other states have recommended the establishment of judicial councils. The purpose of the councils generally is to make a survey of existing conditions, and to formulate remedial statutes or rules and recommend their adoption. They commonly consist of the chief justice of the highest appellate court, with other judges of that and of lower courts, and a designated number of practising lawyers; and include variously in different states other members, such as the chairman of the judiciary committees of the legislature, the attorney general, a prosecuting attorney, and in some of the states the dean of the law school of the state university. The judges are commonly selected by the chief justice or by his court, the lawyers are selected in the same way, or are appointed by the governor, or where, as here, the bar is well organized, by the executive committee of the bar association. Their terms vary from one to four years, with varying dates of expiration, calculated to give permanency and continuity to the personnel of the council. Their meetings are fixed at varying periods, with other meetings subject to the call of the chairman. Quite universally their expenses and their clerical assistants are paid; in none of the states save Kentucky, where they receive a salary of $600, do they receive other compensation. A paid secretary is provided in some cases.

The Massachusetts council has been the most active for the longest period. Its meetings are very frequent and its work apparently almost continuous. It has published four annual reports, a total of over 500 pages. Much of its reports has been devoted as have the reports of other councils, to surveys of the condition of the dockets of all the courts, and much of the recommendation has had to do with the relief of congestion of the calendars. The recommendations of that council have totaled 34, of which, up to the

present year, but 10 have been adopted by the legislature, and the bar association of the state is endeavoring to awaken among lawyers the importance of securing the adoption of the recommendations.

The Rhode Island council, on the other hand, recommending in 1928, 11 measures, saw them all adopted by the legislature.

The California legislature this year enacted, with some amendments, and the governor approved, some 35 out of 50 bills introduced at the instance of the judicial council of that state.

In Washington the rule making power has been conferred on the supreme court, and all of the recommendations of the council contained in the first report of the commission have been adopted.

In Kansas the supreme court has the power to make the rules; the council has proceeded slowly and carefully, making elaborate surveys of existing conditions of the dockets, sending out some 5,000 form letters to the judges and the bar asking for suggestions including their views upon specific suggestions of the council and from the replies formulating a set of concrete recommendations which they have subinitted to the trial judges before asking their adoption by the Supreme Court. The care and deliberation of this council seem especially calculated to secure satisfactory results.

The Connecticut council in its first report in November last has recommended some twenty measures, the success of which we have not learned.

In North Carolina, North Dakota and Kentucky, all of the judges of the supreme and the trial courts are members of the council. In North Carolina the number is thus about 50, and is said to be unworkable because of its size and the further fact that the appropriation was entirely inadequate. Kentucky's law is too recent to demonstrate its efficiency.

Among the subjects considered by the councils that have been formed and upon which they have made recommendations are methods of temporarily transferring judges from one court to another to relieve congestion in the latter; relief of appellate courts; waiver of jury trails in civil and criminal cases; correction of errors by trial judges without necessity of new trial; rendition of declaratory judgments; selection and instruction of juries; and a multitude of matters relating to pleading, evidence and trial practice generally, with a view to rendering the administration of justice more speedy and efficient.

In the nature of things the body should be sufficiently small to permit of ready meeting and narrowed responsibiity. Our suggestion for this state would be that the council consist of two justices of the Supreme Court and three district judges, all to be selected by the Supreme Court; and five lawyers to be selected by the commissioners of the bar association, preferably to include the commissioners themselves, except insofar as by reason of undue burden thereby imposed upon them they should consider it unwise to act. There are some considerations favoring the selection of the lawyer members by the supreme court out of a larger number selected by the bar commissioners. Any bill should include a provision for expenses, for it is the history of the councils organized that without it they cannot properly function, and a non-functioning

council would be of less value than none. Kansas obtained an appropriation of $1,000, but that council say that $6,000 is required. California appropriated $50,000. The older councils urge that a secretary who can devote his time or a large portion of it to the work, and with suitable salary, be provided.

None of the judicial conncils have been given the power to themselves adopt rules for the courts, except in California, where the council may adopt rules not inconsistent with law. The American Judicature society favors the judicial council as a rule making body. On the other hand the secretaries of some of the councils have written us advising against incorporating the rule making power in a bill for a judicial council, largely, however, as a matter of expediency in securing its adoption. The logic of giving such a body the power of adopting the rules for courts to operate under is not readily apparent. Logically it would seem that the Supreme Court, as the final interpreter of the rules, should have the power of adopting them or not; and that the vice involved in the courts not being self-governing would exist in as harmful a manner, theoretically, as it does now, if the power to adopt procedure were transferred from the legislature to some other extraneous body such as a judicial council. It seems eminently fitting that the supreme court, as the head of our judicial system, should be the enacting power as to rules.

From the success which the legislative committee of this association has had in procuring the enactment of measures it has proposed to the legislature, we can probably expect that a like success would follow the recommendations of a judicial council, if it operates as sanely and advisedly as it should. The provision made by the twentieth session of our legislature that the governor, supreme court or legislature may request investigation and report by the Bar Association of matters pertaining to court procedure and the administration of justice indicates a friendly attitude of the legislature towards this organization and its confidence in an organized bar. The more specialized judicial council would no doubt meet with equal respect. However, it is quite apparent that its recommendations would meet with a readier understanding if the rule making power be vested in the supreme court.

Whether the rule making power can be conferred upon the supreme court for trial courts without a constitutional amendment admits of much question. Our constitution provides that the legislature shall provide a proper system of appeals and regulate by law when necessary the methods of proceeding in the exercise of their powers of all courts below the supreme court. It may be that the power to prescribe procedure is not such a power as may be delegated by the legislature to the supreme court; this is a question we cannot decide. In any event the establishment of a judicial council is of prime importance and the vesting of the rule making power for all the courts in the supreme court should not precede the creation of a judicial council.

Such investigation as we have been able to make of purely judicial conferences does not indicate that they can operate as efficiently as a judicial council constituted as here suggested. A

smaller body is more wieldy and the assistance of practicing lawyers is of obvious importance; and a selection with the specialized function of a judicial council in view is also desirable. However, in addition to the regular meetings, a meeting of the council, annual or biennial, attended by all the judges of the supreme and district courts, would be of immense value, and if it were made possible by an appropriation to defray the actual expenses, would provide the much needed judicial conference which has been of value in other states, and would give life to the constitutional duties of judges mentioned at the beginning of this report. Such a system is in operation in Kansas and other states, and the secretary of the Kansas Judicial Council reports that much in the direction of uniformity and bettering of procedure has been accomplished by their judicial conference.

We submit herewith copies of the laws, or, as in California, the constitutional amendment, establishing judicial councils in other states.

Respectfully submitted,
DANA S. BRINCK,
RAYMOND L. GIVENS,
CHARLES P. McCARTHY,
Committee.

California

Sec. 1a. There shall be a judicial council. It shall consist of the chief justice or acting chief justice, and of one associate justice of the supreme court, three justices of district courts of appeal, four judges of superior courts, one judge of a police or municipal court, and one judge of an inferior court, assigned by the chief justice to sit thereon for terms of two years; provided, that if any judge so assigned shall cease to be a judge of the court from which he is assigned, his term shall forthwith terminate. The chief justice or acting chief justice shall be chairman. No act of the council shall be valid unless concurred in by six members.

The judicial council shall from time to time:

(1) Meet at the call of the chairman or as otherwise provided by it.

(2) Survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.

(3) Submit such suggestion to the several courts as may seem in the interest of uniformity and the expedition of business.

(4) Report to the Governor and Legislature at the commencement of each regular session with such recommendations as it may deem proper.

(5) Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force; and the council shall submit to the legislaure, at each regular session thereof, its recommendations with reference to amendments of, or changes in existing laws relating to practice and procedure.

(6) Exercise such other functions as may be provided by law.

The chairman shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred.

The clerk of the Supreme Court shall act as secretary of the council.

The several judges shall cooperate with the council, shall sit and hold court as assigned, and shall report to the chairman at such times and in such manner as he shall request respecting the condition, and manner of disposal of judicial business in their respective courts.

No member of the council shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such. Any judge assigned to a court wherein a judge's compensation is greater than his own shall receive while sitting therein the compensation of a judge thereof. The extra compensation shall be paid in such manner as may be provided by law. Any judge assigned to a court in a county other than that in which he regularly sits shall be allowed his necessary expenses for travel, board and lodging incurred in the discharge of the assignment.

Sec. 6. There shall be in each of the organized counties, or cities and counties of the state, a superior court for each of which at least one judge shall be elected by the qualified electors of the county, or city and county, at the general state election. There may be as many sessions of a superior court at the same time as there are judges elected, appointed or assigned thereto. The judgments, orders, and proceedings of any session of a superior court held by any one or more of the judges sitting therein, shall be equally effectual as though all the judges of said court presided at such session.

Sec. 7. The judges of each superior court in which there are more than two judges sitting shall choose, from their own number, a presiding judge, who may be removed as such at their pleasure. Subject to the regulations of the judicial council he shall distribute the business of the court among the judges, and prescribe the order of business.

Sec. 8. The term of office of judges of the superior courts shall be six years from and after the first Monday of January after the first day of January next succeeding their election. A vacancy in such office shall be filled at the next succeeding general state election after the first day of April next succeeding the accrual of such vacancy by the election of a judge for a full term to commence on the first Monday of January next succeeding his election. The governor shall appoint a person to hold such vacant office until the commencement of such term.

Connecticut

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state, the work accomplished and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme court of errors or some other justice or former justice of that court appointed from time to time by him—one judge or former judge of the superior court, one judge of a common pleas court and one judge of a city court, all to be appointed from time to time by the chief justice of the supreme court and not more than four practicing attorneys at law and one state's attorney to be appointed by the governor. The appointments by the governor shall be for such periods, not exceeding four years as he shall determine.

Sec. 2. The judicial council shall report biennially on or before December first, to the governor, upon the work of the various branches of the judicial system, together with any recommendations it may have in connection therewith. It may also from time to time submit for the consideration of the judges of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable. The clerks of the various courts and other officials thereof shall make to the council such reports, from time to time, as the council may prescribe.

Sec. 3. No member of said council shall receive any compensation for his services, but said council and the several members thereof may be allowed such sum for clerical, travel, and incidental expenses as the board of control shall approve.

Kansas

Be it enacted by the Legislature of the State of Kansas:

Section 1. A judicial council is hereby established and created, which shall be composed of one justice of the supreme court, two judges of different judicial districts, each of whom shall have served in such capacity four years previous to his appointment, four resident lawyers, each of whom shall have been admitted to practice for not less than ten years previous to his appointment, the chairman of the judiciary committee of the house of representatives and the chairman of the judiciary committee of the senate. All members except chairman of senate and house judiciary committees shall be appointed by the chief justice of the supreme court. Of the members first appointed, one judge and two lawyers shall be appointed for a term of two years, and one justice, one judge and two lawyers for a term of four years. Upon the expiration of the terms of those first appointed each succeeding member shall be appointed and hold office for a term of four years and until his successor shall have been appointed and qualified. The terms of the chairman of the senate and house judiciary committees, and all other members shall terminate upon such member ceasing to belong to the class from which he was appointed. All vacancies except those of chairmen of the senate and house judiciary committees shall be filled by their successors as such chairman.

Sec. 2. The judicial council shall select one of its members as chairman for such period as it may choose, and shall meet semi-annually and more frequently, if necessary, upon call of the chairman.

Sec. 3. It shall be the continuous duty of the judicial council to survey and study the judicial department of the state, the volume and condition of business in the courts, whether of record or not, the methods and rules of procedure therein, the time elapsing between the initiation of litigation and the conclusion thereof, and the condition of dockets as to unfinished business at the closing of terms; to receive and consider suggestions from judges, members of the bar, public officials and citizens concerning faults in the administration of justice, and remedial rules and practice; to recommend methods of simplifying civil and criminal procedure, expediting the transaction of judicial business and eliminating unnecessary delays therein and correcting faults in the administration of justice; to submit from time to time to the courts or judges thereof suggestions as to changes in rules and methods of civil and criminal procedure as may be deemed by the council to be beneficial.

Sec. 4. The council shall submit to the governor on or before December 1st of each year a written report of the work of the council, the facts ascertained, the condition of business in the courts, conditions found to be defeating or deferring the administration of justice, with recommendations concerning needed changes in the organization of the judicial department, in rules and methods in civil and criminal procedure and pertinent legislation. Such report shall be printed by the state printer and copies thereof distributed to all members of the legislature and judges of the supreme, district, county, probate and city police courts, and justice of the peace in this state.

Sec. 5. The clerks of the various courts of record in this state, judges and justices of courts not of record, and sheriffs and police officers, shall on request of the judicial council and without charge, furnish such information relating to rules, methods and procedure in vogue in their respective courts, and the condition of legal business therein as may be deemed necessary by the council of performing its duties.

Sec. 6. All members of the council shall serve without compensation but shall be paid their actual and necessary expenses incurred within the state of Kansas in the performance of their duties. All bills and accounts of the council shall be approved by the chairman and shall be audited and paid as other claims against the state, authorized by law.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Kentucky

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1. That there is hereby established the Judicial Council of the Commonwealth of Kentucky. Such council shall consist of the Judges of the Court of Appeals of Kentucky and the Circuit Judges of said Commonwealth. The Chief Justice of the Court of Appeals shall be the presiding officer.

2. Said council shall meet on the call of the Chief Justice of the Court of Appeals. Said meeting shall be called at least once a year at some convenient time, and at some convenient place in the state. It shall be the duty of all members of said Council to attend such session.

3. It shall be the duty of said Judicial Council to study the organization, rules, methods of procedure, and practice of the judicial system of the Commonwealth of Kentucky, the work accomplished and the results produced by that system in its various parts; the problems of administration confronting the Courts of the Commonwealth and the judicial system in general. It shall be the duty of each Circuit Judge to prepare and submit to the Council at such sessions a report setting forth the conditions in the Circuit Courts over which he presides and of the business dispatched and pending in said Circuit Courts. It shall be the duty of said Council to report biennially to the general assembly of the Commonwealth of Kentucky concerning the work of the various branches of the judicial system of the Commonwealth together with any recommendations it may have for the modification or amelioration of existing conditions or for any amendments to the Codes of Practice and Procedure.

4. The clerks of the various Courts of the Commonwealth shall make such reports to the Council as the Council may demand. Said clerks making reports shall receive fifty cents for each page reported to said Council and shall be paid as other expenses of the Council are paid. The Council is empowered in its discretion to hold before the full Council or any committee thereof it may constitute for such purpose, public hearings on any question concerning which the Council may deem it proper to hold public hearings.

5. If any session of said Council shall be held between the time of the election or appointment of any Judge of the Court of Appeals or of any Circuit Judge and the time such judge-elect or so appointed shall take office, it shall be the duty of said judge-elect or so appointed to attend such session of said council.

6. Each member of said council shall receive as compensation for attending the sessions of said Council or of any committee thereof, and for his services as a member of such Council or any committee thereof, the sum of six hundred dollars ($600.00) per annum, payable in equal monthly installments at the same time as his salary as judge is paid; provided, however, that no member of said Council whose salary as a circuit judge, which is paid by the state, is supplemented by any county or district and no member of the Court or Appeals and no judge-elect or appointed but who has not at the time he attends any session of the Council been inducted into office shall receive any compensation for attending any session of the Council or of any Committee thereof or for his services as a member of such Council or any committee thereof. The said member and said judges who shall attend any session of said Council or that of any committee of said Council shall be allowed their necessary traveling expenses and such other actual expenses as do not exceed ten dollars ($10.00) per day for each day of any such session and for such days as may be reasonably necessary for them to reach and return home from the place of meeting of any such session. All claims for expenses as provided for in this act shall be allowed and paid as provided by law for the payment of other claims against the Commonwealth but before such claims shall be allowed by the Auditor, the same shall be presented to and approved by the Chief Justice of the Court of Appeals.

7. The Council and its committees shall be allowed from the State Treasury such necessary expenses for clerical and other services as the Chief Justice shall approve, the same to be allowed and paid as provided by law for the payment of other claims against the Commonwealth.

8. All laws or parts in conflict with any provision of this Act are hereby repealed.

Massachusetts

Be it enacted etc.:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections:

Section 34a. There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the Supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34b. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34c. No member of said council shall receive any com-

pensation for his services but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve.

North Carolina

The General Assembly of North Carolina do enact:

Section 1. There shall be created a judicial conference for the continuous study of the organization, rules and methods of practice and procedure of the judicial system of the State of North Carolina, and the practical working and results produced by the system.

Sec. 2. The conference shall be composed of the Judges of the Supreme and Superior courts, the attorney-general, and one practicing attorney-at-law from each judicial district to be appointed by the governor, for a term of two years. Any vacancy in the judicial conference among the practicing attorneys caused by death or otherwise, shall be filled by the governor. The chief justice of the Supreme Court shall be the president of the conference, and the clerk of the Supreme Court shall be the secretary of the conference.

Sec. 3 The conference shall report annually to the governor the work of the various parts and branches of the judicial system, with its recommendations as to any changes or reforms in the system and in the practice and procedure of the courts, and the governor shall transmit the report of the conference biennially to the general assembly with such recommendations as he may deem advisable. The conference may also from time to time submit such suggestions and recommendations as it may deem advisable for the consideration of the judges of the various courts with relation to rules of practice and procedure. The clerks of the various courts and other officials shall make to the conference such reports on such matters and in such form, periodically or from time to time, as the conference may prescribe.

Sec. 4. The conference shall meet twice each year, at a time and place to be fixed by the president of the conference. The conference may hold public meetings and shall have power to administer oaths and require the attendance of witnesses and the production of books and papers. A quorum for the transaction of business shall consist of not less than two of the justices of the Supreme court, six judges of the Superior Court, and six of the attorneys at law who are members of the conference.

Sec. 5. No member of the conference shall receive any compensation for his services. The sum of not exceeding two hundred and fifty ($250) dollars annually is appropriated for clerical help and incidentals to be paid out of the treasury upon the order of the president of the conference, approved by the state auditor.

Sec. 6. This act shall be in force from and after its ratification.

North Dakota

An Act Creating a Judicial Council for the State of North Dakota, and Providing for the Continuous Study of the Administration of Justice.

Section 1. JUDICIAL COUNCIL ESTABLISHED. There is hereby established a judicial council which shall consist of all judges of the supreme and district courts of the state, one judge of the county court to be chosen by the supreme court, the attorney general, the dean of the school of law of the state university, and five members of the bar who are engaged in the practice of law, who shall be chosen by the executive committee of the state bar association.

Section 2. TERM OF OFFICE. The judges of the supreme and district courts, tbe attorney general and the dean of the school of law of the state unievrsity sball hold office as members of the council during the time they occupy their respective official positions. The terms of the office of the county judge chosen by the supreme court, and of the members of the bar, shall be two years, commencing on the first Monday of January of odd-numbered years. A vacancy shall be filled by the authority originally selecting the member.

Section 3. ORGANIZATION OF COUNCIL. The chief justice during his term as chief justice shall be chairman of the council. An executive secretary shall be chosen by tbe council either from within or without the council. The council shall make rules for its procedure and the conduct of its business.

Section 4. MEETINGS. The council shall meet at least twice in each year at such times and places as shall be fixed by the council, provided that the first meeting shall be held at such time and place as the chief justice shall designate and within six months after the taking effect of this act.

Section 5. DUTIES. The judicial council is to make a continuous study of the operation of the judicial system of the state, to the end that procedure may be simplified, business expedited and justice better administered.

Section 6. HEARINGS. The council may hold public meetings and hearings and shall have power to require the attendance of witnesses and the production of books and documents. The district ccurt shall have power to enforce obedience to subpoenas issued by tbe council and to compel the giving of testimony. Each member of the council shall have power to administer oaths in any hearing or investigation instituted by the council.

Section 7. BUREAU OF STATISTICS. The council shall have the power to organize a bureau of statistics for the purpose of gathering information relating to crime and criminal and civil litigation. Judges, state's attorneys, sheriffs, the attorney general, clerks of the district courts, the state board of administration, the superintending officers of penal and reformatory institutions and of asylums and other places of detention, and all other state, county and municipal officers, boards and commissions, shall render to the council such reports as it may request on matters within the scope of its powers. The clerks of the district courts of the state shall prepare a

statement semi-annually under the seal of the court showing the number of cases filed, the number of cases ready for trial and the number of cases tried during the preceding period of six months, together with such additional information as may be required by the council; and such statement shall be forwarded to the judicial council not later than January first and July first each year.

Section 8. REPORT. The judicial council shall submit to the governor not later than the first day of December of each even numbered year a report upon the work of the various branches of the judicial system of the state. The council may recommend to the governor or to the legislative assembly such measures as it shall deem advisable and may from time to time submit for the consideration of the supreme court suggestions regarding rules of practice and procedure.

Section 9. MEETING OF JUDGES. Immediately following each meeting of the judicial council the judges of the supreme and district courts shall assemble for the purpose of considering matters relating to the administration of justice, including recommendations and complaints submitted to them concerning the business of the courts and their officers.

Section 10. COMPENSATION. No member of the council shall receive compensation for any services rendered by him in such capacity; but any necessary expense incurred by any judge of the district and supreme courts in the discharge of his duties as a member shall be deemed expenses incurred in the performance of the duties of his office and paid as such; the expenses of all other members of the council shall be audited and paid from the State Bar Fund in the same manner as other claims against such fund.

Section 11. REPEAL. All acts or parts of acts in conflict herewith are hereby repealed.

Ohio

Section 1. There shall be a judicial council of nine members for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the State of Ohio, the work accomplished and the results produced by that system and its various parts. The term of office of members of the council shall be three years. This council shall be composed of the chief justice of the supreme court and two associate judges of the supreme court; the chief justice of the court of appeals of the state; one common pleas judge to be selected by the common pleas judges of the state at a meeting to be held the first January following the passage of this act and every three years thereafter; one municipal judge to be selected by the municipal judges of the state at a meeting to be held the first January following the passage of this act and every three years thereafter; and three practicing attorneys at law to be appointed by the governor. The chief justice of the Supreme Court shall be the president of the council.

Section 2. A vancancy in the judicial council by death, resignation, removal from office, failure of a person appointed to qualify within ten days after the organization of the council or of his appointment, shall be filled by the council by a majority vote of all the remaining members of the council, at the next meeting following such vacancy.

Section 3. The council shall report biennially to the General Assembly of the work of the various branches of the judicial system with its recommendations for modification of existing conditions. It may also from time to time submit such suggestions as it may deem advisable for the consideration of the judges of the various courts with relation to rules and practices and procedure. The clerks of the various courts and other officials shall make to the council such reports on such matters and in such form periodically, or from time to time, as the council may prescribe.

Section 4. The council may hold public hearings and shall have power to administer oaths and require the attendance of witnesses and the production of books and documents. A witness who gives false testimony or fails to appear when duly summoned shall be subject to the same penalties to which a witness before a court is subject, and the same shall be imposed by the supreme court or any judge of the court of common pleas.

Section 5. No member of said council shall receive any compensation for his services. The council and the several members thereof shall be allowed from the state treasury such expenses for clerical and other services, travel and incidentals as the council and the governor shall approve. All disbursements shall be by voucher signed by the president of the council, and shall not exceed one thousand dollars per year.

Rhode Island

It is enacted by the General Assembly as follows:

Section 1. A judicial council is hereby created for the study of the organization, rules and methods of procedure and practice, of the judicial system of the state and all matters relating to the administration of said system and its several departments of service. The judicial council shall consist of the chief justice of the supreme court or some other justice or former justice of that court designated by him from time to time to serve on said council; the presiding justice of the superior court or some other justice or former justice of that court designated by him from time to time to serve on said council; a justice or associate justice of a district court and three attorneys admitted to practice in the courts of this state and actively engaged in such practice, who shall be appointed by the governor. The four members of said council first appointed by the governor shall serve until the first day of February, 1931, and in the month of January, 1931, and in said month every fourth year thereafter the governor shall appoint members of said council to succeed those whose terms are about to expire, and to serve until the first day of February in the fourth year after their appointment. Any vacancy that shall occur in the membership of said council appointed by the governor shall be filled by another appointment by him for the remainder of the term. The chief justice of the supreme court or justice or former justice of said court who may be designated by

him to be a member of said council shall be chairman thereof, and shall call said council together for organization within thirty days after the appointment of all its members.

Sec. 2. The judicial council may from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable and it shall report annually to the governor on or before December the fifteenth upon such matters as it desires to bring to his attention or to the attention of the general assembly. In such report to the governor for the year 1927 the council shall present its opinion as to the need of additional justices of the superior court.

Sec. 3. The members of said council shall serve without compensation and the general assembly shall annually appropriate such sum as it may deem necessary for clerical assistance and other necessary expenses incurred in carrying out the provisions of this act, and the state auditor is hereby directed to draw his order upon the general treasurer for the payment of such sum or so much thereof as may from time to time be necessary, upon receipt by him of proper vouchers approved by the chairman of said council.

Sec. 4. For the purpose of carrying this act into effect during the fiscal year ending November 30, 1927, the sum of $500 is hereby appropriated out of any money in the treasury not otherwise appropriated and the state auditor is hereby authorized and directed to draw his orders upon the general treasurer for the payment of said sum or so much thereof as may be from time to time necessary upon receipt by him of proper vouchers approved by the chairman of said council.

Sec. 5. This act shall take effect upon its passage.

Virginia

1. Be it enacted by the general assembly of Virginia, That it shall be the duty of the president of the Supreme Court of appeals of Virginia, or in case of his disability, of one of the judges of the supreme court, in order of their seniority, to summon annually to a judicial council, on the first Wednesday in December, at Richmond, or at such other time and place in the state as may be designated in the said summons, not less than three or more than five circuit judges, and not less than two or more than three of the judges of other courts of record, and ten members of the bar of the supreme court of appeals, one from each congressional district of the state.

If for any cause the judges so summoned are unable to attend, the president of the supreme court or the judges calling the council may fill their places by summoning any other judges of courts of record who are able to attend. It shall be the duty of every judge thus sommoned to attend said conference and to remain throughout its proceedings, unless excused by the presiding judge, and to advise as to any matters in respect of which in their opinion the administration of justice in the courts of this Commonwealth may be improved. If any member of the bar thus summoned cannot

attend he shall forthwith notify the presiding judge, and his place shall be filled by summoning some other member of said bar. Each judge of a court of record of this Commonwealth shall, on or before the first day in October in each year, prepare and submit to the president of the supreme court of appeals for the consideration of the council, a report showing the condition of business in his court for the preceding twelve months, including the number and character of cases on the docket, the business in arrears, and cases disposed of, and such other facts pertinent to the business dispatched and pending in his court, together with recommendations as to the need of additional judicial assistance for the disposal of business for the ensuing year, as said judge may deem proper.

2. The president of the supreme court or the judge summoning council as aforesaid, shall be the presiding officer of the council. Said council shall make a comprehensive survey of the condition of business in the courts of the Commonwealth, and make recommendations for the improvement of the administration of justice, and shall particularly report as to needed changes in the rules of practice and procedure in the several courts of the commonwealth.

3. Each member of the council shall serve without compensation, but the presiding judge may engage a stenographer to be paid for his services, and he and each member of the council summoned and attending said council shall be allowed his actual expenses of travel, and also his necessary expenses for subsistence while attending the council, which shall be paid out of any money in the treasury not otherwise appropriated, on the order of the judge presiding at the council.

4. On the request of the presiding judge the attorney general shall attend said council and confer with the members thereof, more particularly on the Commonwealth's business in the courts, and for the purpose of devising methods for the prevention of undue delay in the trial of such cases.

5. A report of the proceedings of said council shall be made to the governor and to the supreme court of appeals, with such recommendations as may be agreed upon.

Washington

Be it enacted by the Legislature of the State of Washington:

Section 1. There is hereby established a judicial council, which shall consist of the chief justice and one other judge of the Supreme court, three superior judges, two members of the legislature, and three members of the bar who are practicing law and one of whom is a prosecuting attorney. The judge of the supreme court other than the chief justice shall be chosen by the court. The three superior judges shall be chosen by the superior judges through their association, if they have one, but if not, then in such manner as the judges of the supreme court shall prescribe by rule. The members of the legislature shall be the persons last appointed chairmen of the judiciary committees of the senate and the house. The members of

the bar shall be appointed by the chief justice of the supreme court with the advice and consent of the other judges of the court.

Sec. 2. The term of a member of the council who is a judge, a chairman of a judiciary committee of the legislature or a prosecuting attorney shall be for the rest of his term in the office that qualified him to become a member. The term of a member chosen from the bar, except the one who is a prosecuting attorney, shall be two years. A vacancy shall be filled for the rest of the term by appointment as in the first instance.

Sec. 3. The chief justice shall be chairman of the council, and one of the other members may be appointed by the council to be executive secretary. The council may make rules for its procedure and the conduct of its business and may employ such clerical assistance and procure such office supplies as shall be necessary in the performance of its duties.

Sec. 4. A meeting of the council shall be held at the seat of government on the second Monday of September of each year. Other regular meetings may be provided for by rule. A special meeting may be held anywhere in the state at any time upon call by the chairman or five other members of the council and upon notice given to each member in time to enable him to attend.

Sec. 5. It shall be the duty of the council.

(1) Continuously to survey and study the operation of the judicial department of the state, the volume and condition of business in the courts, whether of record or not, the methods of procedure therein, the work accomplished, and the character of the results;

(2) To receive and consider suggestions from judges, public officers, members of the bar, and citizens as to remedies for faults in the administration of justice;

(3) To devise ways of simplifying judicial precedure, expediting the transaction of judicial business, and correcting faults in the administration of justice;

(4) To submit from time to time to the courts or the judges such suggestions as it may deem advisable for changes in rules, procedure, or methods of administration;

(5) To report biennially to the governor and the legislature on the condition of business in the courts, with the council's recommendations as to needed changes in the organization of the judicial department or the courts or in judicial precedure; and

(6) To assist the judges in giving effect to section twenty-five of article four of the constitution.

Sec. 6. Judges and other officers of the courts, whether of record or not, and all other state, county and municipal officers shall render to the council such reports as it may request on matters within the scope of its duty to inquire.

Sec. 7. The council may hold public meetings and hearings, and shall have power to require the attendance of witnesses and the production of books and documents. Every member of the council shall have power to administer oaths and to issue subpoenas requiring the attendance and the production of books and documents before the council, and the superior court shall have the power to enforce obedience to such subponeas and to compel the giving of testimony.

Sec. 8. A member of the council shall not receive compensation for his services, but shall be allowed his actual necessary expenses when traveling on business of the council.

Appendix

Purely for informative purposes the vote of the National Council of the National Economic League upon matters considered in the foregoing Reports is given below. It is not intended thereby to indicate the conclusions of the Commissioners, the Committees or any members of the Idaho State Bar. According to its announcements the Council includes a membership of about 5,000 presidents and professors of universities, judges, lawyers, bankers, merchants, farmers, labor leaders, etc.

Total number of ballots cast in all states, 1016.

JUDICIAL COUNCIL

	YES	NO
1. Should there be a permanent Judicial Council in your State the duty of which should be to make a continuous study of the organization, procedure, and practice of the Courts, and to report from time to time to the Governor or Legislature upon the work of the various branches of the Judicial system, with recommendations for their improvement?	818	100
(a) Should such a Judicial Council be given any further powers?	124	422

JUDGES

2. Should Judges of the State Courts, in your State, be		
(a) Appointed?	645	
(b) Elected?	264	
(a) A majority of those who favor an appointive judiciary believe that the appointment should be made by the Governor subject to confirmation by the State Senate.		
(b) Most of the members who believe that the Judges of State Courts should be elected agree that the election should be by means of a non-partisan, non-political, and separate ballot.		
3. Should the term of office be		
(a) For life, during good behavior?	610	
(b) For a term of years?	316	
(a) Nearly all of the members who favor life tenure believe there should be a definite age retirement, the age of seventy being most generally approved.		
(b) A majority of the members who		

favor a term of years, agree that ten years would be most suitable.

COURTS

4. Should the whole judicial power of your State be unified and vested in one State organization, of which all judicial tribunals should be branches or departments or divisions?	622	151
(a) Should there be specialized branches of the courts with specialist judges in the larger cities?	632	129
5. Should the organization of the administrative and clerical side of the courts, in your State, be prescribed		
(a) By each Court?	170	
(b) By the highest Court of the State?	514	
(c) By the Legislature?	88	
(d) By a State Judicial Council?	306	
6. Should all rules of practice and procedure in your State be determined		
(a) By each Court?	60	
(b) By the highest Court of the State?	515	
(c) By the Legislature?	66	
(d) By a State Judicial Council?	323	
7. Should trial judges in your State, in instructing the jury, have power to sum up the evidence orally, to comment upon its weight and sufficiency and upon the credibility of witnesses as in Federal Courts		
(a) In civil cases?	813	121
(b) In criminal cases?	775	152
8. Should the Courts of Appeal be allowed, in their discretion, to receive new evidence or have it taken, to make new findings of fact to enter final judgment based on such evidence and findings and thus to avoid remanding for a new trial		
(a) In civil cases?	660	229
(b) In criminal cases?	609	268
9. Should the defendant in a criminal case have the right to waive jury trial and be tried by court?	863	62
(a) Would you except death or life imprisonment cases?	195	646
1. Would you advocate three Judge's sitting on such cases?	635	193
10. Should the defendant in a criminal case be required to take the witness stand and submit to examination and cross-examination?	364	551
(a) If not required, should comment on his failure to take the stand be allowed?	512	275
11. Should less than twelve of a jury be able to return a verdict		
(a) In civil cases?	834	123

1. If so, how many should concur?		
8 jurors	121	
9 jurors	439	
10 jurors	129	
A majority of the jury	43	
(b) In criminal cases?	645	265
1. If so, how many should concur?		
8 jurors	69	
9 jurors	226	
10 jurors	173	
11 jurors	55	
A majority of the jury	10	
2. Would you except cases involving death penalty or life imprisonment?	202	375
12. Should a jury of less than twelve be used in misdemeanor cases?	760	136
(a) If so, how large should it be?		
3 jurors	24	
5 jurors	82	
6 jurors	474	
7 jurors	63	
8 jurors	29	
9 jurors	42	
10 jurors	10	
13. Should the question of the mental capacity of a person to be tried for a crime be taken out of the forensic field and determined by a disinterested body of experts?	813	118
(a) Should the question of irresponsibility because of mental disease or defect be determined		
1. By the Court?	726	75
2. By the Jury?	123	286

VICE-PRESIDENT: The first order of business this afternoon will be an address by the Honorable Raymond L. Givens, one of the Supreme Court Justices. The subject matter is a question which has attracted the attention of the bar for several years, and I am sure that Judge Givens has a thorough grasp of this subject.

Gentlemen of the bar, I am honored, indeed, to present to you Honorable Raymond L. Givens.

HON. RAYMOND L. GIVENS: Mr. Chairman, and members of the Idaho State Bar Association: As you will notice by the program, this paper was to be preceded by the report of the committee of which I am a member, and of which Judge Brinck is chairman, upon this subject. And this paper is prepared upon the theory that that report has been made, and that perhaps some of you have read that report which is in the pamphlet which was furnished you prior to the beginning of this meeting.

Rules of practice and procedure are the pathways by which legal controversies pursue their course to a final determination, and as in this age of transportation highways must be straight and wide with vision unobscured to meet the demands for speed, so court ac-

tion must meet the same requirement for celerity on account of the multitudinous questions occasioned by the presence of increased business and social activities.

Two great legal systems contributed most to our jurisprudence, the Roman or Civil Law and the law of England or the Common Law. Procedure under the latter was to an extent the outgrowth of the rules for conducting trials, in the first instance in no way connected with courts of law as we know them. For instance, there was a time when under the feudal system (877) the wager of battle was the accepted procedure of determining issues which would now be handled in a court of law. Though it had been forbidden, popular opinion was so strongly in its favor that it was revived, though limited, and it was the accepted method, for instance, in litigation over the possession of land where forgery in the title deeds was alleged. Clerics, widows, children and the aged could substitute a champion. Justice was with the strongest.

Criminal procedure was largely revolutionized by the Church, and for the accusatory system, it substituted the inquisatorial system, not to be confused with the institution known as Inquisition.

As conditions changed and new methods for determining disputed questions of fact were adopted, the rules for conducting the proceeding were outlined by those in charge and the transition from force of arms to force of logic and reasoning, while slow, was steady. These changes were mostly promulgated by those in charge of the immediate proceedings.

The same system was in vogue here in colonial days. Later the power to make rules of practice was delegated to the legislatures. In 1848 the Field code was the forerunner and pattern from which have developed the reformed procedure or code practice as until within a few years we have known it in this country.

Under the Roman law there were three successive systems of civil procedure; first, the statute actions which developed under or from the law of the Twelve Tables, the result of a commission to Athens. These began under the early Republic and flourished during the Republic. Each praetor had jurisdiction to dictate by published rules what rules of justice he would observe during his tenure of office; second, the formulary or ordinary procedure which began under the Republic and was at first for those who were not citizens of Rome; third, the extraordinary procedure which was the procedure of the later Empire and Justinian. The second, or ordinary procedure, was largely judge made. The third originated with the courts, though it was preserved in the Justinian code and underlies all modern procedure.

The first system was extremely technical, great importance being placed on strict adherence to forms, ceremonies and procedure.

Under the feudal system the practice and procedure was prescribed by the King through his officers. True legislative rules of procedure are of comparatively recent origin, the function being exercised in the first instance by the courts, both secular and religious. But few enactments by Parliament were concerned alone with procedure and the legislative rule making power has had its greatest growth in this country.

The general statement of the controversy at the present time is

whether rules of practice and procedure would be made by the legislature or the courts. This is not quite accurate because the real question is whether the courts or some organization affiliated with the courts, or the legislature should make the rules; that is, whether the rules should emanate from the legislative branch or the judicial branch of our government.

The report of the committee shows its conclusions generally. England, while not burdened, if I may use that strong a term, with legislative practice and procedure, had numerous courts, each with its separate procedure, old, involved and intricate and based often not on reason but only on precedent.

For instance, the method of what Blackstone and Stephen called "trial by witness," which existed until 1833, when abolished by statute, originated with the "secta" in 1200 when the forms of trial were (1) witness, (2) the party's oath with or without fellow swearers, (3) the ordeal, and (4) battle.

For a number of years in England the courts had the power to supersede these old powers, customs and rules but no effective progress was made until the Judicature Acts in 1875 when the Rule Committee was created with power to recommend further or additional rules of court to carry the acts of 1873 and 1875 into effect.

In 1909 the Committee was enlarged and is now composed of the Lord Chancellor and the three heads of the divisions of the High Court and four other judges of the Supreme Court from time to time appointed by the Lord Chancellor and of two practicing barristers and two practicing solicitors. It may be said that the rules of the High Court are now formulated by this committee which thus to my mind was the forerunner of what we know in this country as judicial councils. Without such an organization, it seems to me impossible scientifically and quickly to revise our system of practice and procedure.

A side issue, as it were, is the question of whether the practice and procedure in civil actions in the Federal District Courts should continue as now to be based upon the civil practice in the state court in which the Federal court is located, or whether the practice should be revised and made uniform throughout the United States.

What might be classed as the "school men," headed by Dean Pound of Harvard Law School favor a universal unified system while Senator Walsh of Montana has taken a leading part, if not the most leading part, in opposing such changes when the proposed measure has appeared in the United States Senate.

Such controversy is not strictly one between legislative or court rule making power but if the system were unified, then it would be necessary to determine whether Congress should prescribe the rules of practice for the entire country or whether the Federal Courts should make the rules as they do now for the equity side.

These are questions to which I think this association should properly give its attention and which a judicial council could well investigate, and then with the sanction or approval of this organization advise with our Congressional delegation.

Restricting trial by jury, limiting appeals, a different system for the imposition of costs, simplifying records on appeal, revising our

theory of the rules of evidence more in accord with what appears to be the method now pursued in England, elimination or consolidation of some of the courts; for instance, abolishing Probate Courts and giving District Courts jurisdiction over probate and juvenile matters are all questions which in the very nature of their importance and extent may not be intelligently studied and determined by the legislature in the short time in which it is in session. The courts themselves would not have quite the same viewpoint practicing lawyers would hold and yet all angles should be considered and all such changes might lend themselves to a greater dispatch of business. A judicial council gathering data, being a continuing investigating and advisory organization, could give accurate and detailed suggestions of value.

Reports of the councils of Massachusetts, California, Washington, Connecticut and Rhode Island have come to the committee and show that an intensive and accurate study and survey has been made and is being made by these councils along the following general lines—the amount and kind of judicial business by counties, districts and character of litigation; rules of procedure; consolidation of courts and methods to relieve the congested condition of court calendars.

While no great number of changes have been suggested nor any startling departure has been made from the former or existing rules of procedure, those proposed are in line with simplifying and expediting business. There has been by legislation a constant whittling down, as it were, of the scope and extent of court work. For instance the Industrial Accident Boards, Public Utilities Commissions and the latest is the growing demand for and use of extra-judicial arbitration, both statutory and by common consent. I do not necessarily condemn such changes. One reason for these changes was the dissatisfaction felt with the way courts handled such affairs. If the judicial branch is not to be further criticized, we must adjust our business ourselves.

Lawyers and judges are or should be best fitted to promulgate a procedure to most effectively do the work for which the judicial branch was designed and for which it is essential, having the sole power of compulsion within its field as outlined by the constitutions, both State and Federal.

This does not mean, however, that we are restricted to those agencies formerly employed or used. Study and investigation are needed and both judges and practicing lawyers must help cut the pattern and design the judicial robe of rules.

In any activity the labor of preparation exceeds that of the actual construction. Through our State Bar and our Bar Commission, we now have a working organization and under the Constitution the judicial branch is charged with the duty and the public has long placed upon us the responsibility of keeping step with the advance of time in transacting our business. A judicial council with sufficient funds to adequately function, and a constant, not sporadic, investigation of advanced methods will meet I believe, with the whole hearted approval of all.

Requiring the judicial council, not the legislature, to make the rules of procedure does not necessarily mean that the courts must

make the rules, though they should take their part. But certainly it is as logical to say that the judicial branch should adopt its own rules of procedure as to say that each branch of the legislature shall make its own rules of order, which right has never been questioned.

Probably Sec. 13 of Art. V of the Constitution should be amended so that there will be no question as to the legality of such rules as the Judicial Council, when created, shall formulate and the Supreme Court approve. All doubt that there is constitutional sanction for it should be removed.

Then as to such a code, may I close by suggesting as to its use what Lord Halsbury in the introduction to his monumental Laws of England said Bentham advised as to construing and applying the law—

"A passage appears to be obscure, let it be cleared up rather by alteration than by comment; retrench, add as much as you will, but never explain. By the latter certainty will generally, perspicuity and brevity will always suffer. The more words there are, the more words there are about which doubts may be entertained."

VICE-PRESIDENT: I think the bar and bench are to be congratulated upon having one of their number who has such a grasp of this important subject. And the bar does thank you, Judge Givens, for this address.

This discussion, I assume, will follow the report which will be made by the chairman of the committee, and I now call upon Judge Dana Brinck of the Third District, who is chairman of the committee on Judicial council and rule making power.

HON. DANA E. BRINCK: Like Judge Givens, I have assumed that all of you read the report of this committee which was published in the pamphlet and sent out by the commission. To make sure on that score, I would like to see the hands of those who have read it .....

We have appended to our report the laws of the various states which have created judicial councils—the states which had adopted it prior to the time our report was filed,—since that time Michigan and Texas have each adopted a judicial council, and the acts of those states do not appear there.

The report I will not cover, since so many of you have read it. I will merely state at this time that in Virginia, Kansas, Connecticut, California, North Carolina, North Dakota, Ohio, Rhode Island, Oregon, Washington, Kentucky, Michigan, Massachuseets and Texas judicial councils have been formed in the last half dozen years.

We assumed that we were rather a fact finding body, and our report is without any expression of opinion. In fact, Judge Givens and Judge McCarthy and I maintained in this respect a good deal of judicial poise. But in connection with the report I will now submit some of the arguments in favor of the judicial council.

With the organization of the bar that exists in this state and with the activity of the membership of the bar, and its committees, its legislative committee and the groups such as reported this morning—the Prosecuting Attorney's Association—I am not sure that we really need a judicial council in this state, although a continuous body whose duty is imposed by law might accomplish more than the scattered work of the members of the bar, and the various committees.

With that reservation, however, I think no one can study the question of judicial council without coming to the view that it is needed in every state in the Union.

In presenting some of the arguments that are advanced here, some are those that had occured to me, and others are copied from other sources.

It is doubtless true that the need of such a body is not as imperative in Idaho as it has been in some of the states that have adopted it, nor as it is in many of the states which have not adopted it. Considering it merely as an instrument for the improvement of procedure, which is its primary aim, it has been called into being because of the congestion of court business in the metropolitan centers of the country. So far as the work of the trial courts is concerned, in rural communities and the smaller cities, such as make up this state, the business of the courts is accomplished with reasonable dispatch and efficiency. I think that is true throughout the country, and I think it is true in Idaho.

Nevertheless, it is inevitable that in our changing and developing civilization, a normal growth and development in the adminstration of justice is natural, and that without it the system of procedure becomes less and less appropriate to changing needs. It is notorious that but little change has come about during the three-quarters of a century since the legislatures began to adopt rigid codes of precedure. It would seem obvious therefore, that procedure should develop along with the development of society, and industry and government; and it is perfectly apparent to one who gives the matter consideration that there is a multitude of respects in which the work of our trial courts can be made more accurate, more complete, more efficient, and less expensive. The need for improvement can then be assumed.

It also is true that the interdependence of the various parts of the procedural system is such that reform in it must be undertaken systematically.

Another cogent reason why the subject deserves the constructive attention of the members of the legal profession, is the public clamor for it. It is no doubt true that in all ages and among all peoples, the instrumentalities functioning as courts and the legal profession as a whole, have been the subject for more or less criticism among the people. There have been times when this was amply justified, and the clamor of such times has had its echo in times when the justification was slight. It is a fact, however, that the efficiency and usefulness of the courts depend to a great extent upon the confidence of the public whose affairs they adminster, and at the present time in the congested centers of population cause has been given for popular complaint because of the failure of the courts to cope with the mass of crime that is committed, or to promptly deal with civil controversies—a complaint which is reflected in the popular opinion of communities where the evil exists but slightly, if at all.

If the legal profession of Idaho, through some body formed for the purpose, undertakes a thorough examination of the procedural situation, and accomplishes whatever reforms may appear to be needed, and sees to it that proper publicity is given such work, a great step has been taken toward overcoming the popular impression prevalent in some quarters that the courts cannot give relief and the bar exploits the public.

If a judicial council or other means can either increase the efficiency of the courts and of judicial procedure, or if it can reassure the public in respect to the good faith and efficiency of the courts and the profession, its existence will be justified, and it seems probable that a judicial council will accomplish both.

There is probably no field of endeavor in all of our government, industry or professions, where scientific methods have been so utterly and persistently ignored as in the field of law—both remedial and substantive. The scientific method of procedure requires the securing and compiling of facts, accurately and exhaustively; the analysis and classification of facts; the drawing of conclusions; the devising and application of ways and means for accomplishing the ends thus suggested. As to the effectiveness of methods or of particular courts or other agencies, no survey has been made anywhere that I know of aside from those made by the judicial councils recently formed. I suppose surveys have been made on a minute scale, but as to the matter of a comprehensive survey, it has not been undertaken.

Not very long ago I had occasion to investigate the literature on the indeterminate sentence, and was very much surprised to find that nowhere was available any data as to the effectiveness of that system in the states where it has been in force for years and years, except for a few small and isolated instances. Not until the Missouri crime survey during the present decade has any comprehensive survey been made of the result of criminal procedure in any state. That movement is well under way now throughout the nation.

The ascertainment of facts is the first thing for a judicial council to undertake.

It is the duty of the legal profession both to the public and to itself, to take this first step to answer the question: "What, if anything is wrong with the administration of justice?" And by a thorough survey determine what if anything is, and then to devise whatever remedies are needed, and thus avoid the danger of radical changes at unskilled hands.

The situation has been stated by Robert G. Dodge of the Boston bar and the Massachusetts council, thus: "In the past, reforms in the judicial system of the several states have been largely brought about in a haphazard way. There has been no official or board whose duty it has been to study continuously the operation of the courts, assemble statistics and other facts, search for means of improvement and recommend desirable changes. The legislatures have been more interested in other matters. Temporary commissions have been appointed to consider particular problems and have made reports Bar association committees have striven intermittenly and often ineffectively to effect reforms. Much has been left to the initiative of individuals and the results have not always been fortunate. The profession has been justly criticized for inattention to the problems and complaints of the work of the courts have been voiced in increasing volume."

In Massachusetts I think there has been no bar association that has been active in promoting legislation.

In 1917, in an address before the American Bar Association, Dean Pound advocated a sort of a ministry of justice, charged with the responsibility of making the legal system an effective instrument for justice, consisting "of a body of men competent to study the law and its actual administration functionally, to ascertain the legal needs of the community and the defects in the administration of justice, not academically or a priori, but in the light of every day judicial experience, and to work out definite, consistent and lawyerlike programs of amendment."

The brilliant Judge Cardozo of the New York Court of Appeals in commenting upon this idea says that "the courts are not helped as they ought to be in adapting laws to justice, for the reason that they and "legislature work in separation and aloofness, and there is no one to mediate between them, no one to give warning that help is needed. The legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. The duty must be cast on some man or group of men to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged."

We have pointed out in our report the action of the Massachusetts Judicature Commission resulting in the establishment in that state of the judicial council. The purpose of the council is expressed in that act as "for the continous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished and the results produced by that system and its various parts, and to report annually to the governor, and to suggest to the courts rules of practice."

And that is the nucleus of the provisions that have been made in all of the states that have adopted the judicial council—that is the central purpose for which they have been formed. The growth of the movement has been phenominally rapid. Fourteen states have adopted the judicial council. That nearly one-third of the states have taken this action in six years speaks most eloquently of its usefulness and desirability. The success of the movement is due to the continuous and intensive study undertaken by men officially selected and designated for the task; and it will be successful, of course, in proportion to the energy and circumspection exercised.

F. W. Grinnell, the Secretary of the Massachusetts judicial council says: "The important thing to remember, particularly at the beginning of such an experiment, is that improvements come about gradually. If too much haste is attempted, or too many radical ideas or reorganization are suggested all at once, the council itself and everybody else would get indigestion and nothing would happen at all."

The Kansas council has proceeded, I think, most deliberately and efficiently of any council whose preceedings are available, that are referred to in the report which was printed. The council sent out four or five thousand letters to all of the members of the bar and bench, and to many laymen and the newspapers, including in that

letter their own suggestions as to any procedural changes, and asking for any comment upon those suggestions, and for suggestions of the people to whom the letters were sent. They received a great many replies—probably a reasonable proportion of them,—and about ten per cent of the letters were answered rather constructively. They then remodelled the rules that they had suggested, in accordance with the light thrown on the situation by this correspondence, and again have sent them out to all the judges and lawyers. Up to the time of the second Kansas report no final rules had been adopted and finally submitted by the council to the Supreme Court.

A deliberate procedure of that kind, which takes into its confidence all the members of the bar, and all of the public who should be consulted, and whose advice should be procured, will no doubt effect a very well considered reform when the reform is had.

On the other hand, the California judicial council, acting no doubt in the best of faith, and very advisedly, so far as its own investigation was concerned, promulgated a set of rules without consulting the bar, and stirred up a considerable hornets' nest among the members of the bar who had not been given an opportunity to express themselves. They desisted from that method, and the bar and the council are now working together with good results, I understand. At the last legislature some fifty measures were recommended by the council of California for enactment, and the greater part of them were enacted by the legislature.

The questions that have been considered by the council are touched upon in the report that has been printed, and referred to in Judge Givens' address.

The response to the Kansas questionare indicated that there was no particular complaint against the courts, except to the delay—the seeming unavoidable delay—in the proceedings of the courts. The report of the council says: "It is suggested that these delays are occasioned in some localities by infrequent terms of court and the lack of a definite day or proper opportunity to present motions and demurrers for hearing at a time when the court is not in session. Some of it is attributed to indifference or lack of push of attorneys, or to professional courtesy by which a request by one attorney to another to continue a matter is frequently granted as a matter of course, and to the fact that some courts do not insist on matters being disposed of."

Most of the delays that I know of in procedure result just that way. The courts—at least the court in our district—has not insisted upon matters being heard before counsel desire.

Kansas has suggested a rule that every demurrer or motion not presented by the second motion day shall be passed upon by the court, and the matter disposed of.

Questions of that sort are questions that the council might well investigate, and ascertain the view of the bar as a whole. I know that I have usually allowed matters to be postponed every motion day as counsel desired—having in mind many cases when I, in practice, did the same thing, when in my opinion the delay was justified.

But the question of speeding up and getting the cases to issue, and getting them to trial after the issues are made up, is a matter

that the judicial council could help materially in advising the court upon.

Other matters that have been given consideration are declaratory judgements, and the waiving of jury trials, as suggested by the report this morning.

The thing to do is for some organization really to take the matter in hand and formulate changes systematically in our system, and unless our bar association, with its present organization is a more suitable, or as suitable an organization for that purpose, the judicial council is probably the only other source of assistance.

VICE PRESIDENT: Now, undoubtedly Judge Givens and Judge Brinck will very gladly answer questions that may be leveled against them; and probably there are men here who have some definite ideas. The question is thrown open for general discussion.

SECRETARY: Mr. Chairman, I wonder if I might ask Judge Brinck what the practice is with respect to the adoption of the rules of procedure in the various states; whether the council itself formulates the rules of procedure, or whether the court adopts them, or whether they are recommended to the legislature and the legislature adopts them.

JUDGE BRINCK: Of course it is different in the various states. In none of the states except California—unless in Texas, whose law I do not recall on that subject—does the council itself have any power to make rules. In that state it has the power to make rules which are not contrary to law. In all of the other states the rules are submitted by the council either to the legislature or to the supreme court. In some states where the legislature must act, as in Massachusetts, a very few, relatively few, of the suggestions have been adopted by the legislature, and in its last report the council called upon the bar to get behind it and help put their measures through the legislature. On the other hand, in Rhode Island, I thing it was, the legislature adopted all of the rules that were proposed by the judicial council. In Washington the Supreme Court has adopted all the rules that have been suggested by the council. So far as I know, nothing has been done in Kansas where the court adopts the rules.

SECRETARY: I have understood that in Washington the rules adopted were primarily supplemental, to the code—that is, rather than changes in code provisions, they simply adopted rules supplementing the code, and not in any sense changing the code. In view of our constitutional provision they would almost have to be approved by the legislature. For instance, suppose the council should recommend the time for answering should be shortened or lengthened, as the case might be—that happens to be now prescribed by legislative enactment,—would it be necessary for the council to present that recommendation to the legislature, or could the supreme court adopt the rule?

JUDGE BRINCK: I think that unless the legislature would or could delegate that power to the supreme court it would have to be done by the legislature. The question, whether under the constitution the power now delegated by the legislature to the supreme court would cover that matter, exists, and a constitutional amendment might or might not be required. In Washington, with a somewhat more liberal provision in the constitution in that state, the supreme court held the conferring of rule making power upon the supreme court as constitutional.

VICE-PRESIDENT: May I ask you to define what you mean by 'rule', Judge Brinck? That term may be misleading.

JUDGE BRINCK: That refers to procedural rules, such as make up our practice.

VICE-PRESIDENT: What is the definite recommendation of your committee?

JUDGE BRINCK: Our committee did not want to recommend any particular provisions without the benefit of a discussion, although the committee was unanimous in the view that a judicial council would be of benefit in the State of Idaho, and the provisions should be made, in our opinion, in as general terms as can be had without specifying in toto what the council can do. I think our suggestion was that the council be composed of two judges of the supreme court, three district judges and five lawyers. The designation of attorneys is a matter that has to be given some study, no doubt. In some states they are appointed by the governor, in others by the supreme court, and in one or two states by the bar association itself, and in one or two states out of a larger list submitted by the bar association.

MR. LAMPERT: I would like to inquire of Judge Brinck whether in his opinion there is anything which a judicial council, such as he has referred to, could do in our state, which the bar association, as now authorized by legislative act, cannot itself do. In other words, would a judicial council have any more power or authority than the bar association itself now has?

JUDGE BRINCK: It would have no more power than the bar association. And the only question would be whether a continuous body of some ten or so, appointed for the particular purpose of making investigations along any particular line, or to make suggestions along any particular line could operate or would operate any more efficiently than the bar commission. That is something that I am really not qualified to answer.

SECRETARY: Wouldn't this judicial council have this advantage, that the duty would be laid specifically upon it? In other words, it wouldn't be in the nature of voluntary service, it would be in the nature of a definite duty laid upon it. Don't you think it would probably have more influence in that sense, than would a voluntary committee of the bar, or a committee appointd by the commission. You would be imposing rather a heavy duty upon the members of the bar, and perhaps the members of the committee would feel less obligated than they would if they accepted a position on a specific commission.

JUDGE BRINCK: I have this thought, Mr. Griffin, that a judicial council selected by the supreme court would be a more permanent organization than the bar commission as it is today. Furthermore, I believe the supreme court is in better position than a changing bar commission is to know where to look for particular assistance, where to make particular appointments for particular phases of the work.

MR. MARTIN: Judge Brinck, I notice that in one of the acts you refer to, the Kentucky act, that the members of the council receive a salary in connection with their work. Is that general throughout the country, or not?

JUDGE BRINCK: In none of the other states, save Kentucky, are the members paid any salary, and there, from the terms of the act, it would appear that where one of the commission is a judge he is allowed a certain salary, or allowed money. I think it is limited to certain members. But, in no other state are the members of the council paid anything. A provision is made for their expenses and for clerical assistance; and much stress is laid upon the necessity of having a paid secretary, who can devote his time to carrying on correspondence, making investigations, and assembling the work that is prepared by the council.

VICE-PRESIDENT: You will probably remember the amendment which was mentioned this morning, under which the supreme court the legislature and the governor are authorized to call on the bar for advice and suggestions, etcetera. Now, I wonder if Judge Brinck, Judge Givens and Judge McCarthy have considered that that in effect gives to the bar of Idaho the same power of investigation along that line that Kansas has authorized. It is a different name, of course, but the same power exists. That the power exists I think is rather proven by the fact that last year, and the year before, and little by little for the past eight years, the legislature has come to regard our recommendations very highly. And, I think that was in Mr. Lampert's mind when he started that particular phase of the discussion. When we make investigations and recommend changes in procedure or changes in any manner connected with the courts or the science of the administration of justice, we are going to have a very, very attentive and receptive audience in the state legislature. I think we have gone much further than a great many of us realize along the line of a judicial council, by having this act passed.

The matter, I suppose is like some of the other things that we are considering, and will come up for final action next year. Meanwhile, though, we should all give some attention to it.

However, one of the difficulties of the bar commission acting is this: Suppose the Governor says to us: "I want you to report on the redistricting of the state; I want you to report on a new system of pleading; I want you to prepare rules of procedure affecting the trials in criminal cases." He can do that, but we don't have to report, as you notice it is not compulsory. And the sad part is our means, or rather the defect is that we haven't the money to do it. For instance we will appoint a commission of forty or fifty men, scattered all over the state, from every county. It taks a lot of money for them to travel, and you must have printed reports, and you must have stenographic reports, and you must have a secretary who keeps everybody prodded up, and who is himself interested; and we haven't the money to do that. The answer is that the legislature would have to appropriate some money for us in addition and entirely outside of the moneys we have as our revenue. You cannot begin to get this data without a great deal of cost.

I think, too, that the supreme court would very much prefer to have the power of appointing a council. And so far as I am concerned—and speaking for the bar commissioners as I have known them— I do not believe we would want that power, and that we would much prefer that tbe Supreme Court had the appointing.

These are matters that I do not know whether we can decide now, or that it is necessary to determine now. But, you can see that we have mighty close to a judicial council, or rather close to the power to act as judicial council through this amendatory act.

MR. C. E. CROWLEY: I had a little experience, Mr. Chairman, in the legislature last winter. Mr. Elam and I were on the judiciary committee of the House. And what has been said here with regard to recommendations of the bar are absolutely true. When the bar recommended anything to the legislature it went through the committees of the House to the Senate, and it was received almost unanimously favorable.

Another thing I desire to call your attention to, in regard to this matter of recommending improvements and remedies for existing faults, is this: If I remember right, we have a constitutional provision requiring district judges, and perhaps other officers, to make reports to the supreme court regarding defects or difficulties they have found in the plan of procedure in the state.

Sometimes we are looking for new remedies when we have the remedy already.

From my observation on the matter, very, very few recommendations from the district judges had been made. Some have been made, but when we went into the legislature over here and asked for reports of that kind, we didn't find any. Mr. Elam and I endeavored to find out what recommendations had been made, and we did not find any, except the ones that had been made through the bar association.

If this matter was taken up by the bar commission, and some particular method of procedure adopted, and the attention of those different officers who should make these reports called to the fact that they should be made regularly, then they would make them. It is the men who are administering the law, and who are enforcing it who find defects in it. Very few of the legislators we have had have had experience in this line of work we are talking about now, and when they pass laws we have all kinds of criticism. And I would say, in my opinion, it would be best that a commission be appointed to take active charge of this matter, to call up these things, and call attention to the weaknesses.

JUDGE BRINCK: I might say, Mr. Crowley, in regard to the duty of the district judges to make reports, that the inadequacy of that is one of the things that has been commented upon by all of those who have investigated the judicial council. It contains, in the first instance, so far as recommendations by district judges is concerned, the fault that was referred to in the remark of Mr. Dodge ot Massachusetts—the one that I read—in that too much has been left to the initiative of individuals. And that is precisely what the recommendations of the district judges is. I know that some of the recommendations have been made, and went to the legislature last session, but they are individual recommendations made without the benefit of submission to the bar, and discussion by the bar,

and they are not thoroughly, well considered recommendations. The theory is all right, but the practice is almost impossible.

We refer in our report to an article by Professor Whittier of Leland Stanford wherein he states that in some six or eight states the supreme courts have had the power to prescribe procedure for inferior courts, which power has been in existence in the various states from a very few years up to fifty years. But it is impossible for supreme courts themselves to formulate these procedural changes, simply because they do not have the time; they have a job that keeps them pretty busy.

MR. C. E. CROWLEY: Just one thing in regard to that. It was my idea in regard to these reports, that you men who are enforcing or applying the law are in better position to find the holes in it.

VICE-PRESIDENT: I think that the resolutions committee probably has a rather important function to perform right along this line. It probably can suggest some way of getting a real study made of the recommendations of the prosecutors. These recommendations are certainly of importance, and while they may sound radical, at least they have an origin in the voice of the people, many of them as protests against the inefficiency in criminal procedure.

Now, on the question that was suggested this morning, that probably the salaries of judges might have been raised if we had redistricted. The subject of redistricting is a question, no doubt, which the resolutions committee has in mind. But this question and kindred questions are really the type of questions that would come under the consideration of a judicial council.

I fear our present inefficiency in this matter, because when we start in to appoint committees, which we probably will on the suggestion of the resolutions committee, if their suggestion is made and adopted, we are going to run into the question of expense of securing the necessary data and the question of clerical expense. For instance, the Corporation Code Commission, I assure you gentlemen, took a great deal of time on the part of the members, without a five cent piece of pay, and on top of that we paid the expenses of our stenographers, and every other expense connected with it. That is quite unfair, and something which you cannot expect everybody to do. So I rather fancy that a judicial council would be the better course for us, as our lack of funds may handicap us seriously. Of course, if the members of this bar are enthusiastic and earnest, then it doesn't make any difference whether we have any appropriation, or not, the work will be a work of service and love, and will be done very, very well, if we can get the bar to perform the duty that the resolutions committee will probably try to impose upon it.

At this time matter of the time for holding the banquet was brought up and discussed. And after a motion duly made and seconded it was ordered by the Vice-President that the banquet be held at seven o'clock.

CHAIRMAN: Mr. Elam, is your canvassing committee ready to report?

Report of canvassing committee read showing majority of votes cast in favor of the Warren Truitt for Commissioner from the northern Division.

SECRETARY: I move you that the election of Mr. Warren Truitt, as Commissioner of the Northern Division be declared unanimous.

Seconded.

VICE-PRESIDENT: You have heard the motion, If you are ready for the question you may vote by the usual sign. Carried.

VICE-PRESIDENT: Mr. Truitt is elected as Commissioner of the Northern Division.

Each of you gentlemen, I suppose, has read the report of the committee on Unification of the Judiciary, and that is the subject of discussion now. However, I rather incline to the view that it should be read first, and I will ask the secretary to read the report.

SECRETARY: This is the report of the Committee on Unification of Courts.

Report of Committee on Unification of Courts

Honorable Board of Commissioners
of the Idaho State Bar.
Gentlemen:

At the annual meeting of the Idaho State Bar held at Coeur d'Alene in July, 1928, your Committee was directed to consider and report upon the following suggestion:

> That our judicial system be modified as follows: First a unified court for the whole state, with a sufficient number of judges to man both the Supreme and District Courts, with a Chief Justice selected for executive as well as judicial ability who should assign the judges to the different courts as indicated by the necessities and by their fitness for the regular work: Second, appointment, instead of selection, of all judges for a long tenure, perhaps twenty years: Third, a considerable increase in the salary paid all the judges in the unified court, the salary to be uniform, say $8,000.

The suggestion is made up of the subjects somewhat although not closely, related, and we report upon them in the order above set forth.

Unification of The Judiciary

Reform in the administration of justice and of the judicial system has been a matter of more or less constant agitation for time whereof the memory of man runneth not to the contrary and the end is not yet. The need of such reform was given definite statement by President Taft when he said that, of the three divisions of government, the Judicial Department was the least effective and stood in the greatest need of immediate reform. It has rarely been suggested, however, that there was occasion for change in the organic structure of the system itself.

Increase of ltiigation in our courts has been met by increasing the number of judges and by creating intermediate appellate courts to relieve the burden upon the court of final decision. It is not

likely that with the increase of population there will be any lessening in the number of cases. It would seem inevitable that there must be from time to time a considerable increase in the number of our judges and courts unless some method be devised giving greater efficiency. With the view of meeting this situation it has been suggested that there be a unification of courts. Several plans or modifications of one plan, have been suggested. Thus there may be a unification of all present existing courts into one—The General Court of Judicature; or the unification may be confined to appellate and trial courts; or the trial courts alone may be unified.

The suggestion submitted to your Committee calls for the unification of our Supreme and District Courts. Judicial functions and power now exercised by those courts would, under the proposed plan, be invested in one court with trial and appellate divisions and, if necessary, with divisions of the appellate court itself. Judges of the unified court would doubtless be elected by districts (yielding in that respect to popular demand) and by some proper and workable system certain of these judges would be designated to sit in the appellate division, while others would sit in trial courts. From time to time judges assigned to one division would be re-assigned to another. In this way, while judges assigned for the trial of cases would sit in the counties of their respective residences, still each judge would be a member of a unified court with jurisdiction extending over the entire state and would be competent to sit as a nisi prius judge anywhere in Idaho or upon the appellate bench. All judges would receive the same salary. The unified court or its Judicial Council would be granted rule making power not only in matters commonly covered at this time by court rules but also matters of practice and procedure. To the Chief Justice would be given general supervisory and administrative authority.

Another plan involves the unification of trial courts alone. Aside, however, from the fact that the assignment of trial judges from one county to another throughout the entire state would be greatly facilitated, there would seem to be no advantage in such limited unification. The plan would appear to be a half way measure innocuous enough but not possessing any particular advantage.

A third plan is advocated by the American Judicature Society, of which Charles Evans Hughes is now President, and having among its membership outstanding leaders of the American Bar. Its Journal, issued bi-monthly, is devoted to the presentation and discussion of matters affecting judicial reform. For some time past it has zealously advocated the unification of courts and has prepared a model plan under which all the courts of the state are to be incorporated into The General Court of Judicature with divisions, one of which corresponds to our Supreme Court and another to our District Courts, while the third is to be made up of county courts for the trial of small cases and superseding justices' courts. Upon the Chief Justice of the appellate court would rest a general supervision of all divisions of the General Court of Judicature and of reporting from time to time to the Governor of the State. Annual meetings of the judges of the several divisions would be held at which time matters pertaining to the administration of justice and suggestions as to improvement would be brought forward and recommendations made to a Judicial Council which would possess the rule making power and have other duties commonly assigned to it. A reading of this model plan shows provisions more or less obviously intended to meet specific objections in matters of detail.

Undoubtedly the unification of courts under some well considered plan will result in a higher efficiency. The present system generally prevailing is admittedly lacking, particularly so far as trial courts are concerned and it must tend to become relatively more inefficient as the number of trial judges are increased to meet seriously overcrowded calendars. No business house, it is urged, could long exist in which each of its many employees in an exceedingly important division of its work were acting independently of one another and without suggestion or oversight on the part of the managers of the house itself.

There is no reason why we should not in Idaho have a judicial system that makes for the highest efficiency. Your Committee suggests, however, that the evils complained of among us are of such a nature as not to require as radical a change at this time. When the plan has elsewhere been perfected through modification and experience it will be time enough to adopt it here. Our conditions do not approach those that exist in our great cities and in states which have large populations. It is true that matters of practice and procedure ought to be determined by those most familiar with them and not by the Legislature which, admittedly, is not particularly qualified to deal with those subjects. A second complaint which has been recently voiced by our Governor is that, while some of our judges are exceedingly busy, there are others who have leisure time and that there is no readily workable system by which a judge of one district can be required to give his leisure time to relieve congestion elsewhere.

After all, these are the obvious objections which may be validly urged. So far as the rule making power is concerned, the advantage of having matters of practice and procedure dealt with by judges and lawyers rather than by legislators is obvious. It must not be overlooked, however, that if the rule making power is to be given to justices of the Supreme Court alone, it will place an additional burden upon those already over-worked, nor does it follow that our judges are as a matter of fact best qualified to act in this regard. Difficult matters of practice and procedure constantly arise and are met by the District Judges and practicing lawyers and only rarely reach the appellate court. The rule making body may very well be made up of Supreme and District judges and members of the Bar.

The present method of securing the attendance of a trial judge in a district other than his own is not satisfactory. The power to require such attendance might with great propriety be given to the Chief Justice (rather than to the Governor) whose duty it would be to make suitable temporary assignments of judges who were available to relieve congestion in some other district.

Thus the more serious objections made to our present judicial system may be met by slight changes in the law and without resort to any radical departure. When experience shows that a unified

court possesses sufficient advantages to warrant such a change, that plan can then be adopted in Idaho in the form that has been found most desirable.

These suggestions are by no means final and there should be further study and consideration. We recommend that a committee consisting of two Justices of the Supreme Court, two District Judges and two practicing members of the Bar be appointed to give further consideration, not only to the subject of unification of courts, but also that of a Judicial Council and the rule making power and that this Committee report from the time to time.

Appointment of Judges

So far as concerns the matter of appointive rather than elective judges and longer terms of office, your Committee believes that these are matters in which we should feel our way carefully. Members of the Bar who have given some thought to the matter are doubtful of the wisdom of these suggestions. We believe that the subject should be made the matter of further investigation and report.

Salary Increase

It is to be regretted that the bill passed by the Legislature at its last session granting an increase of salary to our judges should have met with executive disapproval. The effort to secure adequate compensation should be continued until it is realized.

Respectfully submitted,

FRANK T. WYMAN,
KARL PAINE,
O. O. HAGA,
Committee.

VICE-PRESIDENT: Now, gentlemen, we come logically to the address of the Honorable Alfred Budge, Chief Justice of the Idaho Supreme Court. It is, I know, going to be a pleasure to you to listen to his subject, the Unification of Courts, as applied to Idaho. Justice Budge.

HONORABLE ALFRED BUDGE: The subject this afternoon is a discussion of the subject of Unification of Courts as applied to Idaho. It might be well to determine as far as we can the amount of business that is now pending in the various courts in the state.

The Supreme Court of Idaho
CASES DISPOSED OF

1929	Boise	Northern	Pocatello	Total
January	6	10	1	17
February	7	2	3	12
March	23	5	1	29
April	19	1	6	26
May	10	1	14	25
June	10	5	9	24
July	14	18	4	36
TOTAL	89	42	38	169

NEW CASES FILED

1929	Boise	Northern	Pocatello	Total
January	11	3	5	19
February	12	1	2	15
March	12	2	9	23
April	8	1	2	11
May	2	3	2	7
June	10	2	1	13
July	2	0	8	10
TOTAL	57	12	29	98

(The total number of new cases filed in all of the divisions for the period shown above is a decrease of 24 from those filed during the corresponding period in 1928.)

CASES PENDING AND NOT HEARD ON AUGUST 1, 1929

Division	Civil	Criminal
Boise	109	6
Northern	5	2
Pocatello	52	8
TOTAL	166	16

TOTAL NUMBER OF CASES PENDING AUGUST 1, 1929 182

The foregoing tables constitute a review of the condition of the calendar in the Supreme Court of Idaho, including the number of cases disposed of from January 1, 1929 to July 31, 1929, the number of new cases filed during the same period, and the number of cases pending and not heard August 1, 1929.

While compilations of figures received from the clerks of the district courts of the various counties in the State show a large number of cases filed, both civil and criminal, from July 1, 1928 to July 1, 1929, and a great many of them disposed of by the district judges, the reports received disclose that a considerable number of cases are carried on the inactive calendar. In some of the judicial districts there appears to be some congestion, while in others this condition does not exist.

Legislative enactment has brought into existence organizations such as the Public Utilities Commission and Industrial Accident Board, the effect of which has been to withdraw from the courts, in whole or in part, certain classes of litigation that theretofore had been submitted to and determined by the courts exclusively, thereby reducing the work of both the Supreme and District Courts. The right to review findings of the Commission and the Board has been limited. Sentiment is being created in the arid states to change

the jurisdiction of courts in the matter of litigation over private water rights and shift the same to state boards of engineers or administrative boards of control, and for the creation of boards of arbitration. The courts have apparently quite readily conceded to these bodies powers theretofore thought to have been exclusively judicial, thus decreasing the volume of court business.

We have, therefore, a set-up from which we can determine whether or not there is a congestion in court calendars, or likely to be. If there is a congestion, or lack of dispatch in the disposition of court business, we must look for a remedy. Conceding that there is a congestion, and that we need a remedy, can it be found in the adoption, by constitutional amendment and statutory enactment, of a unified court system?

Much has been written in favor of the unification of courts. The Federal Government, by Congressional legislation, in 1922 sought to solve this problem. It has been suggested that like legislation be enacted in the various states; and some states and municipalities have provided a system of unified courts, notably California, Texas and Chicago.

Three plans have been suggested:

First, that there be unification of our Supreme and District Courts. Judicial functions and powers now exercised by these courts would be invested in one court, with trial and appellate divisions, and if necessary with divisions of the appellate court itself; and by some proper and workable system, certain of these judges would be designated to sit in the appellate division, while others would sit in trial courts. Reassignments of these judges would be made; each judge would be a member of a unified court with jurisdiction extending over the entire state, and would be competent to sit as a District Judge anywhere in the state, or on the appellate bench. All of the judges would be under the general supervision of the Chief Justice, or the Chief Justice and a judicial council.

Second, a unification of trial courts by establishing judicial districts or making the state one district; all District Judges to have equal rank and state-wide jurisdiction; a sufficient number of judges being provided to efficiently handle the court business of the state, with a presiding justice, or a presiding justice and a judicial council, with power conferred to adopt rules of procedure and practice, and with authority to move the judges from place to place, etc.

Third, all courts of the state to be incorporated into a general court with divisions, one of which corresponds to our Supreme Court, another to our District Courts, while the third is to be made up of county courts for the trial of small cases and superseding justice's courts. Upon the Chief Justice of the appellate court would rest a general supervision of all divisions of the general court. Annual meetings of the judges of the several divisions would be held, at which time matters pertaining to the administration of justice and suggestions as to improvement would be brought forward, and recommendations made to a judicial council which would possess the rule-making power and have other duties commonly assigned to it.

The adoption of either of the three plans would place upon the Chief Justice or the Presiding Justice administrative supervision, involving a vast amount of detail work, which some courts have refused to assume upon the theory that to carry out the provisions suggested in any of the plans referred to above, would be to impose upon the court duties of an administrative character; and the rule is invoked that courts have always refused to perform non-judicial functions.

Unified courts in this state may, in effect, be brought about by invoking certain statutory provisions and by minor amendments to present statutes, if such a system be desired.

Section 6, article 5, of the Constitution of Idaho, is in part as follows:

> "If a justice of the supreme court shall be disqualified from sitting in a cause before said court, or be unable to sit therein, by reason of illness or absence, the said court may call a district judge to sit in said court on the hearing of such cause."

Chapter 11 of the 1923 Session Laws (p. 12) provides:

> "Section 1. The supreme court of the state of Idaho may, at any time, appoint from among the duly elected, qualified and acting district judges of the state of Idaho, from any of the various counties or districts, one or more of such judges to act for such period of time as may be designated in the order appointing them, as commissioners of the supreme court; and upon grounds of the public service, the personnel of such commission may be changed from time to time as necessities and business of the several districts may require, by the designation of other district judges to act in the place and stead of those first designated. All that shall be legally required to constitute such commission, and authorize each commisioner to act, shall be the making and entering by the supreme court of the order of appointment or substitution of such commissioners . . . . .
>
> "Section 2. In order not to interrupt or delay the expeditious transaction and disposition of district court business in the several counties or judicial districts on account of the establishment of such supreme court commission, or whenever it is deemed necessary to expedite the court business of any judicial district, it shall be within the province and power of the supreme court, on application of any district judge, or of its own motion, to direct any district judge in the state to serve for a stated period, or for specific purposes, in any county or district other than that for which he shall have been elected or appointed. . . . ."

Section 12, article 5, of the Constitution of Idaho, provides in part as follows:

> "A judge of any district court may hold a district court in any county at the request of the judge of the district court thereof, and upon the request of the governor it shall be his duty to do so . . . . "

C. S. Sec. 6492 reads:

> "A district judge may hold a court in any county in this state upon the request of the judge of the district in which such court is to be held; and when by reason of sickness or absence from the state, or from any other cause a court can not be held in any county in a district by the judge thereof, a certificate of that fact must be transmitted by the clerk to the governor, who may thereupon direct some other district judge to hold such court."

C. S. sec. 6497 is as follows:

"In case of a vacancy in the office of any district judge or in his absence from the judicial district or state, or his sickness or inability to act from any cause, motions may be made before, or orders granted by, any other district judge, who shall have the same jurisdiction under this chapter as though he was the judge of said district, and orders, writs and judgments entered by such judge shall be made matters of record as herein directed and have the same effect as though made by the judge of said district."

C. S. sec. 6667 provides in part as follows:

" . . . . Whenever the judge of any district court shall be disqualified from hearing any cause pending therein, and any of the attorneys of record in such cause shall petition the governor to request that the judge of some other district court hold court in the county wherein such cause is pending, the governor may request the judge of the district court of some other district, who is not disqualified, to hold court in the county in which such cause is pending; and upon receiving such request from the governor, it shall be the duty of the judge so requested to hold such court and to try and determine such cause, and it shall be the duty of the disqualified judge to hold court for an equal length of time for the judge who takes his place, if so requested by such judge. . . . . "

In the case of In re Application of Allen, 31 Idaho 295, 170 Pac. 921, the court held that where a district judge from one district held court in another district, and no question was raised as to his authority, it would be conclusively presumed, unless the record disclosed to the contrary, that he was lawfully exercising jurisdiction; that such jurisdiction was exercised under color of authority, and was not open to collateral attack.

In the case of First National Bank v. Crane Creek Sheep Co. (Idaho) 273 Pac. 945, it was held that, under section 6, article 5, of the Constitution, the Supreme Court "has the power to call a District Judge to sit in a cause in place of a Justice incapacitated by illness, and in such a case, the District Judge possesses all the power of a Justice of the Supreme Court with respect to the cause," including the power to write the opinion.

The meaning of the term "disqualification" of a judge, is set forth in C. S. sec. 6499 and would seem not to require discussion.

The word "absence" occurring in C. S. secs. 6492 and 6497, is clear in meaning, as it is expressly qualified by the words which follow it. But the word "absence" in section 6, article 5, of the Constitution, is not so qualified, and is not easy to define.

In the case of Bingham v. Cabbot, 3 Dall. 19, 1 L. Ed. 491, the Supreme Court of the United States held (1 L. Ed. p. 499) that although a District Judge sat on the bench at the time a cause was tried, "yet, if he did not sit in the cause, he was absent in contemplation of law." Under this holding, a Justice of the Supreme Court would be "absent," even though present in the courtroom, if he were not present for the purpose of sitting at a hearing or participating in the work then at hand; in other words, that "absence" is not necessarily a physical condition, but may be purely a mental one.

In Lynde v. County of Winnebago, 16 Wall. 6, 21 L. Ed. 272, the court held that the word "absence" in an Iowa statute providing that in case of the "absence" of the county judge, the county clerk should fill his place, meant "absence from the county seat."

State vs. Engeman (N. J.) 23 Atl. 676. A statute provided that in case of the "absence" of the law judge of any county, the Chief Justice of any Associate Justice of the Orphans Court should designate the law judge of another county to perform the duties. The Court held that "absence" meant "nonpresence in the court." Under this decision, a Justice not present in the courtroom is "absent."

Manner v. Ribsam (N. J.) 41 Atl. 676. A statute provided that a deputy clerk was empowered to take the verdict of the jury during the "absence" of the clerk. The court held that the word "absence" meant "nonpresence in the courts" The verdicts in these cases were rightly received by the deputy clerk, the clerk being at the time absent from the court."

State v. Smith (La.) 31 So. 693. A statute provided that a District Judge should appoint an attorney to represent the state when the district attorney was "excused, necessarily absent, or sick." The court held that "necessarily absent" meant absent from the court, not from the parish. "A court is not to cease the performance of its functions because the prosecuting officer of the state is compelled to absent himself from it." In that case, the district attorney was absent from court because of the serious illness of a grandchild.

The case of Watkins v. Mooney (Ky.) 71 S. W. 622, contains a lengthy and able dissertation on the meaning of the word "absent." A statute provided that in the event of the "absence or disability" of the mayor of the city, the president of the board of aldermen should act as mayor. The Court of Appeals of Kentucky says it is impossible to give an exact, iron-clad, and precise definition of the word "absence," but that it must be construed in each instance in view of the facts and surrounding circumstances. It goes on to say that a mayor, for instance, might be out of the city, in a nearby place, for a single day, and that he might then be "absent" in relation to some things, but not "absent" in relation to others. The court indicates that "absence" is a combination of physical and mental states, and must be determined in the light of the surrounding circumstances, and also in view of the statute involved, its purpose and design. In the course of the opinion, the court says:

"We think that the soundest reasoning, under the authorities cited and examined, gives the word 'absence' the meaning of that absence which would make it impossible for the official to perform the act in question. Where the mayor is to preside personally at a meeting of a board of which he is ex officio a member, absence in that case would probably mean an absence from the place of meeting. But for the matter of making an appointment, signing a contract which he was permitted by law to sign for the city, or to issue a proclamation, or to issue a notice citing an official to appear for a violation of the statute, which he was authorized to try, the mayor might perform any of these acts, though beyond the corporate limits of the city." And the court concludes:

" . . . The absence contemplated by the Legislature.

. . . is not merely a physical absence of the mayor from the city, but is such an absence as renders him incapable for the time being of performing the act that may be in question, which act must present such a necessity for immediate attention as to require it to be then executed."

Dean v. Dean (Tex. Civ. App.) 214 S. W. 505. A statute provided that whenever, on the day appointed for a term of the District Court, the District Judge should be "absent," the practicing attorneys of the court should elect a special judge. A District Judge, being called to another city on war work, asked the clerk of the court to notify the attorneys that he would not hold court at the next term, and request them to elect a special judge. A special judge was elected promptly, and opened court the first day of the term. After adjournment of court for the day, the regular judge (who apparently had not yet left town) passed through the courtroom to his private chambers. In the case cited, it was contended that the regular judge was not "absent" when the special judge was elected, and that, even if he were, his presence in the courtroom terminated his absence.

The court said:

"We hold that the regular judge was absent within the meaning of the statute when the special judge was elected; that passing through the courtroom without any intention of discharging his official duty, did not terminate his absence. ."

Glavino v. People (Colo.) 224 Pac. 225. A statute provided that if the district attorney be "absent," the court should appoint some person to discharge the duties of his office. The court said:

"We think 'absent' means 'absent from the court.' The purpose is to see to it that justice shall proceed. The district attorney is supposed to be always present when the court is in session, as the formal records show. If he is not, and action is required, the court appoints some fit person that justice may be done."

See, also, Skinner v. Board of Commissioners (Kans.) 66 Pac. 635; 1 C. J. p. 343, n. 85.

It seems, from a reading of the cases, that the word "absence" must be construed in view of the particular facts involved, and that "absence" implies a mental as well as physical state. It is doubtful if a hard-and-fast rule can be laid down, applicable in all possible cases.

CONCLUSION

In conclusion, it might be suggested that C. S. section 6667 be amended to confer upon the Chief Justice the power therein given to the Governor, coupled with additional administrative power or supervision. Provision also might be made for a judicial council.

There might be merit in the suggestion that the state be divided into three judicial districts, covering the same territory as now comprises the three Supreme Court divisions, and to provide for a Presiding Justice and a Judicial Council for each district.

If the word "absence" in section 6, article 5, of the Constitution, be given a liberal construction, as distinguished from a technical construction, District Judges may be called in when necessary to assist the Supreme Court.

Under the present statutes district judges may exchange benches The Governor may order district judges from one district to another. The Supreme Court may, when naming commissioners, direct district judges to hold court in the districts from which the commissioners are chosen. However, there is still lacking a proper administrative control. The people demand certain, speedy and inexpensive justice.

The granting of continuances is the most productive cause of delay, and calls for the most serious criticism.

That greater stress should be given to the administrative side of the courts must be conceded.

I agree with the report of the Committee on Unification of Courts, that there should be further study and consideration given to this subject.

VICE-PRESIDENT: Judge, it has been a pleasure to have you with us today, and an inspiration to hear your message.

I hope that the members of the bar have some questions that they can ask, and the Judge cannot answer them, because I have been in the position of having Judge Budge ask me questions, when I have attempted to argue before him, which I was surely unable to answer.

Seriously, however, I think some of you gentlemen have ideas on this subject, and I am sure the Judge would like to hear them, and the resolutions committee would likewise.

SECRETARY: I wonder if I might ask Judge Budge to what extent the commission is used in the supreme court in the disposal of the cases you mention.

JUSTICE BUDGE:Why, we have had the assistance just for a short time of two district judges, but we have no commission.

SECRETARY: Are the two judges constant?

JUSTICE BUDGE: Not constantly. We have called in two judges during the time referred to, but we have had no commissioners. Two justices have been absent, Judge Taylor died, and Judge T. Bailey Lee was ill, and those two district judges sat in their places. Otherwise we have had no district judges.

JUDGE BRINCK: I would like to ask Judge Budge, in this investigation as to the number of cases pending, did you have any information as to how long they had been pending?

JUSTICE BUDGE: No, Judge Brinck, I was unable to really get accurate data. I do not think it can be obtained, unless you go into the counties, or have someone go there for that purpose. Some of those cases may have been pending a long time, and some of them may possibly be on the inactive calendar; in some of them the issues may not be made up; and some of them may have been continued from time to time pending settlement.

JUDGE BRINCK: Have you any information as to how many cases were filed during the given period?

JUSTICE BUDGE: Yes; I have some information as to the number of cases filed during certain periods—covering a year—and the number of cases disposed of.

JUDGE BRINCK: I think that would be a great aid.

JUSTICE BUDGE: Yes; I have that all tabulated, but I thought perhaps my remarks would be too extended. I have the number of

cases disposed of in each county and each judicial district by each judge—the number of civil and the number of criminal cases,—as well as the number filed.

VICE-PRESIDENT: Judge, I note a condition of congestion in one district, and at the same time only a few cases in another district. What is to prevent the shifting of judges, so as to relieve the pressure?

JUSTICE BUDGE: That is a question that has never been finally determined. I wonder whether the supreme court or the governor would have the power, under the present statute, to shift the judges from place to place. For instance, we will say down in the Fifth District where they have quite a number of cases, whether the governor would have authority to send a judge from the First District down to the Fifth, or whether the supreme court would have that power, I am in doubt about that.

SECRETARY: The constitution covers that, on the request of the judge.

JUSTICE BUDGE: Well, I don't know but what that is a limitation. It says he may call them. I don't know but what that may be a restriction.

SECRETARY: Then, as I understand, there being two judges in the Fifth District, you could not send two more judges down there, and the whole four sit at one time?

JUSTICE BUDGE: I doubt it.

SECRETARY: In that event, the judge from the Fifth District would have to be absent in order to send another judge down there.

JUSTICE BUDGE: We might, possibly, with some additional amendments, constitutional and statutory, in effect bring about a unification of courts.

MR. ELAM: I would like to inquire whether or not the conditions are the same in other judicial districts as they are in our judicial district. I doubt whether Judge Budge would know that, but I think possibly we could find out from some members of the bar of the different districts.

Now, in our Third District we do not have cases pending which can be brought to trial, provided the attorneys are ready to proceed with the trial. In other words, when we call our calendar at the first of each month we can always get the cases set that we want tried—with the exception, possibly of the month of June. The attorneys in our districts may be different from what they are in some of the other districts, they are inclined to procrastinate a little bit, and let the cases pile up in the spring. But, aside from that, every month we can get our cases set. I know that we keep the judges good and busy, but still they find time, in one way or another, to hear our cases. And I know personally that during the last six or eight years there have never been any criminal cases pending but what could be tried immediately after they are at issue. I think that the reason several cases appear on our court calendar which have not been heard are the result of certain cases which the attorneys do not want to bring to trial for a time. For example, in Ada County I think there are thirty or forty cases brought by the Idaho Country club against various indlviduals, and of course they are trying to consolidate those cases and bring them

all to trial at once. I will state, too, that our judges are very careful, in our district, about the dead cases. Every six months, or every year, at least, we get all the old cases cleared off; if there has been no demurrer or other pleading filed within the last six months they are disposed of. So, we do try to keep our calendar—that is our judges do—right up to date.

I think possibly that explanation ought to be made, for I realize that there is certain publicity gets out in regard to the condition of court calendars, which might possibly be a little misleading.

VICE-PRESIDENT: I think, in justice to the attorneys of the Third District, that we should say that they are not proscrastinators, although I will admit that at times they gracefully postpone a disagreeable task.

MR. PETERSON: With respect to the proposal of dividing the state into three judicial districts. Is that to put chambers at three points?

JUSTICE BUDGE: No; I wouldn't say that, not necessarily. You might have three judicial districts, and any number of judges in either one of the districts—a number sufficient to transact the business of the district; and the judges would have their residences the same as they do now, possibly.

I would like to say, Mr. Chairman, with reference to the Third Judicial District, that that district is in excellent condition, and the number of cases disposed of by the judges in that district is much to their credit. I think, in Ada County there are, from the report I got from the clerk, 92 cases pending in that county.

MR. LAMPERT: Not to add any further to the glorification of District Number Three, yet to defend Judges Brinck and Hartson and the bar of that county, I think the report as it now stands is somewhat unfair. I do not think any figure which represents that there are 2500 cases pending in the district courts of this state, 158 of which are in District Three, that those figures alone are fair to the attorneys of the bar, or to the judges on the bench. I happen to know that in District Three, as Mr. Elam stated, and the judges can verify it, that cases are disposed of just as rapidly as the attorneys are ready, and the attorneys are not prone to delay to any great extent.

If the Judge does have the figures as to the number of cases that were filed for any particular period of time, and during that same period the number of cases disposed of in that district, I would like to hear it, so that it may go into the record.

VICE-PRESIDENT: Do you have the data Mr. Chief Justice.

JUSTICE BUDGE: Yes. As I stated in the beginning, and as I want it distinctly understood, I am not giving these figures as accurate. That was understood, I think, by everyone present.

VICE-PRESIDENT: You so stated at the beginning of your address.

JUSTICE BUDGE: Yes; I so stated. And I do not want anyone to take any exception, because I have simply given you the figures that I have received; and I think I told you that I doubt very much myself that they are accurate.

Now, the cases filed, disposed of and pending in the various districts of Idaho, from July 1928 to July, 1929. We will take,

for instance, the Third District. In Ada County during that period of time, from July, 1928 to July 1929, there were 424 civil cases filed, and four criminal cases filed; there were 333 civil cases disposed of, and 23 criminal cases. Now, there were only 4 criminal cases filed, apparently, during that time, but some were brought over that had been previously filed, so that there were 23 disposed of. Now, then, there are pending 91 civil cases, and one criminal case, according to the report I got. Whether that is correct, or not I don't know.

MR. HARRY HOLDEN: Mr. Chairman, I want to say this, that I have had almost 33 years experience in practice in southeastern Idaho, and I have yet to find a single judge who has denied me a speedy trial when I was ready. Most all the time in that length of time my practice has been confined to this part of the state, and I have always found judges ready to hear cases if the attorneys are ready to present them, and I do not believe that counsel are given to procrastination where it is not necessary. There are many things that may come up that will deprive an attorney of preparing his case thoroughly for trial, but I believe from my experience, as a member of the bar, that it is their chief aim, when they do come into court, to be as thoroughly prepared as possible. I have had a great deal of experience in the practice in this county, and never had any difficulty with the judges. In the Sixth District Judge Adair, who has been on the bench there for a long time, is always ready to hear you if you are ready to properly present your case; and the same is true with respect to the judges in Pocatello. I do not believe that it is right, or fair that anything should be said that would, in any way, reflect upon the bench of Idaho. They are always ready if the members of the bar are ready. And, as I say, the chief aim and object of the attorneys is to prepare as rapidly as possible their cases, and then present them.

MR. BOTHWELL: I would like to inquire from the Chief Justice, if I may, as to the plan of dividing the State into three districts; whether or not it is contemplated that the judges should be appointed or elected?

JUSTICE BUDGE: Of course, I hope that I may disabuse the minds of any of you so far as wishing to convey the impression that the court business is not being disposed of as speedily and as adequately as possible, or that there is any criticism due.

MR. HARRY HOLDEN: I did not understand you that way, Judge.

JUSTICE BUDGE: Because I stated, time and time again, from my examination of the work done, that the work was done satisfactory. I might add here, that those who talked about reducing the number of judges I think do not know anything about the situation; I do not think the chief executive knew the extent of the business that was pending in the courts, and that might be called up at any time for the district judges to dispose of.

Now, with reference to the matter you spoke of Mr. Bothwell. I have not considered the question as to whether the judges would be appointed or elected.

MR. HARRY HOLDEN: I want to say to the Chief Justice that I did not get the idea from anything he said that he was finding

any fault, whatever, with the trial judges of this state. He was presenting a condition as it exists, and as he stated it was without any desire to criticize.

MR. BOTHWELL: Might I make this suggestion, on the question of dividing the state into three districts, as has been suggested. It might be done and could be done, but it would seem to me that if the judiciary is to remain an elective office or position, that the retention of the smaller districts would tend more, perhaps to place the men before those people whom they served, and they might have an opportunity to elect them. It seems to me that that might be one objection. If the positions are filled by appointive power vested in the chief executive, I think they should be made by and with the consent of the bar of the state, then three districts might be to an advantage, with the selection of material to be acceptable and suitable to the local people of the various counties.

VICE-PRESIDENT: Gentlemen, it is now time for our adjournment, and we will meet at the Bonneville Hotel at seven o'clock.

Thereupon the meeting adjourned for the day.

Saturday, August 10th, 1929,
10:00 O'clock A. M.

The meeting reconvened and the following proceedings were had, to wit:

MR. E. A. OWEN: Gentlemen, it is now time for us to convene.

In introducing the speaker I will not say the unkind things about him that he said about the members of our supreme court and the district judges, last night at the banquet. I have no doubt that he will relieve our supreme court and the district judges of a heavy burden when he tells us just what the legislature meant when they passed the new corporation code. Mr. Jess Hawley, President of the Idaho Bar.

PRESIDENT HAWLEY: Gentlemen, I must absolve myself of any idea of the legislature's intention.

The Corporation Code Commission was an outgrowth of a desire on the part of the members of the bar to have our inadequate 1920 code brought up somewhere close to date. The legislature authorized the appointment of a commission of five men to make a report and codify the corporation laws. They very distinctly said there was no money in it—not even expense money. Governor Baldridge appointed John P. Gray, Ralph Scatterday, James Harris, A. L. Merrill, and myself as members of the commission. We met and elected our officers, and I was chosen as president of the Corporation Code Commission; we then selected a secretary, Mr. Sidman Barber, of Boise.

We proceeded to eliminate, first of all, all laws except those refering to business organizations, which was a big job. We then took up the question or study of the changes in our corporation business code, or laws, as we had no such thing as a code. Scattered throughout all the volumes we found the different provisions relating to business corporations, and we selected them. We then went into the laws of the five states, Ohio, Nevada, California, Delaware and Wyoming to ascertain the best system. We found that all of them had good points, and Mr. John Gray prepared a hodge podge,

taking all of the good laws from each of the states. That left us in an impossible situation, because there was different language used in the different acts, and to correlate and synchronize them was an almost impossible task. However, the Uniform Law Commissioners of the United States were on this very problem, and in 1928 they unified the corporation law; and it was very good. However, it was not in all respects applicable to Idaho's condition, because we have some very peculiar provisions in our constitution. But, we largely took the present code from the uniform act; it was the basis largely.

The events of the past ten days have been of such a type that I was wholly prevented from writing the thoughts which I have on this subject; and I know that you will pardon me for talking ad lib, and from the code, or from the law, rather than from a written paper.

First, let me say that I think no body of men with whom I have been associated were more earnest in tendering service to the state, than the gentlemen on the code commission. They made several trips to Boise at their own expense and spent several days at different times studying the problems; and I think they are entitled to the reward—which is generally nothing—that a faithful public servant should receive—at least good will.

The first point I think that should be understood is a definition of 'shareholder': A shareholder is one whose subscription has been accepted. We often times, in our minds confuse the actual handing over a certificate of stock with the confidence and rights which come from a contractual relationship established by an application and an acceptance of the application for stock. Rights are not issued; your stock is issued; but, your rights to vote and sit in stockholders' meetings, and know the business of the corporation, are not. That right is given to a subscriber on the allotment of his shares. So, it is well to bear in mind, when forming a corporation, that so soon as a subscriber applies for stock, and his stock is allotted to him, he then becomes a shareholder, and is entitled to all the rights of a shareholder. Later, when he pays for his stock, it is issued to him. There is a distinction that should be born in mind. You can see that a corporation may be quite easily controlled by men who haven't any money in it, if their subscription is accepted; because, immediately, they would have all the rights of a stockholder. So, it is wise to know that.

The term 'Registered Office,' is used instead of 'principal place of business' purely for the purpose of conforming to the Uniform Act. Bearing in mind that the use of the expression 'principal place of business' means nothing so far as a legal term is concerned,in this state—at least for the future.

Articles of incorporation are prepared much as they formerly were, with this exception: That you must designate in your articles of incorporation what type or types of shares you want to issue. Formerly, there was a very decided limitation on preferred stock. There is no limitation now on preferred stock. You incorporators have full rein, have full path for the exercise of your imagination.

The corporate name must contain something to indicate that it is a corporation. It must end with the abbreviation 'Inc.' or include the word 'corporation' or 'incorporated.' You may use the word 'company' or the abbreviation 'Co.' if it is not preceded by the word 'and' or the abbreviation '&'. That must be born in mind.

Then in filing. You prepare triplicate originals, and deliver all three copies to the Secretary of State; he goes over these articles, and puts his endorsement of approval on each set. He then files one of the sets in his office and records it, and issues a certificate of incorporation. Now, immediately upon that being done, you have a corporation. Nothing further need be done, because that is sufficient. Under our old law, many, many times lawyers, and laymen essaying to practice law, would file their articles in the secretary of state's office, or in the county recorder's office, and let it go at that. Of course, their incorporation was incomplete. Now, the certificate of incorporation, and the remaining copies of the articles of incorporation, bearing the endorsement of the secretary of state, are returned to the corporation, or its representative, and one set of the articles is filed in the office of the county recorder where the Registered Office is situated. We have retained an old provision of the law, that a corporation may not purchase, locate or hold real property in any county of the state, without filing a copy of its articles of incorporation, certified by the secretary of state, in the office of the county recorder where the property is situated, within sixty days after its purchase or location of the property.

Now, subscriptions for stock ought to be taken seriously, because a subscription is irrevocable for one year from the date of signing, except, of course, in the case of fraud.

It is important to know the effect of filing or recording papers. We have used this language:

"The filing or recording of the articles of incorporation or amendments thereto or of any other papers pursuant to the provisions of this act is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person dealing with the corporation shall be charged with constructive notice of the contents of any article. . ."

He must actually know it.

The difference between authority, and capacity has bothered us for many, many years. The ultra vires doctrine has often been applied to corporations on the theory that the corporations had no authority to do an act, and therefore when it had no authority it could plead that its contract was void. The different lines of thought on that are expressed in two types of decisions.

We tried to create a new situation, and tried to undo the wrong and straighten out the confusion, by saying that a corporation which has been formed under this act, or a corporation which existed at the time this act took effect, and of a class which might be formed under this act, shall have a capacity to act as natural persons, but such corporation shall have authority to perform only such things as are necessary and proper to accomplish its purpose, and which are not contrary to law. Rather putting the quietus on the defense possibilities that have been used against ultra vires acts, in many instances. I hope I make that point clear.

Now, the allotment of shares to subscribers for shares is cov-

ered quite thoroughly in the act. And we have a provision which provides that: "No corporation shall issue stocks or bonds except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void." We had to put that in, of course, and what effect it has on the act, I don't know. That remains for future interpretation.

There is one thing that would be of interest to lawyers, I know: Notwithstanding anything to the contrary, we provide that the corporation may contract to pay for future services in stock, and issue the stock as the services are actually rendered. That is quite a departure from existing practice.

Then, another thing: After the board of directors decides to issue more stock, every stockholder has the right to subscribe to the stock, proportionate to the amount of stock he then has. And that is a departure. The board of directors cannot sell to a favorite individual, and give him control, all persons having equal rights.

This is an important provision: The Valuation for Consideration for Shares.

"For the purpose of determining whether shares have been fully paid for in order to fix the extent of the outstanding obligation of a shareholder to the corporation with respect to such shares, the following valuations shall be conclusive:

"(a) The valuation placed by the incorporators, the shareholders or the directors, as the case may be, upon the consideration other than cash with which the subscriptions for shares are made payable."

Now, that is conclusive, gentlemen.

"(b) The valuation placed by the board of directors upon the corporate assets in estimating the surplus to be transferred to capital as payment for shares to be allotted as stock dividends."

Of course, we permit the issuance of stock for stock dividends.

This is our liability statute:

"A subscriber to or holder of shares of a corporation formed under this act shall be under no liability to the corporation with respect to such shares other than the obligation of complying with the terms of the subscription therefor; but one who becomes a shareholder in good faith and without knowledge or notice that the shares he acquired had not been fully paid for, shall not be liable to the corporation with respect to such shares."

You will notice that we have used the word 'shareholder,' instead of 'stockholder'. That is for the reason that it is gives uniformity. I, perhaps, in a place or two, through carelessness, used 'stockholder'. We have adopted the English term, as used in the uniform act.

The corporation has a lien on the stock for unpaid subscriptions, and we have provided a procedure by which it can take away his stock for his failure to pay.

Then we have a provision which is applicable to non-par-stock:

"If, upon the allotment of shares having no par value, any part of the consideration received by the corporation is to be treated as paid-in surplus rather than as payment upon such shares, the incorporators, shareholders or directors, as the case may be, who fix the amount of cash or determine the value of the consideration so received, shall at that time specify the proportion of such value that is to be considered as surplus and the proportion thereof that is to be considered as payment for the shares."

Then we protect against the payment of dividends out of cash or property, "except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the the latter the amount of its capital stock, after deducting from such aggregate of its assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;" Or, out of shares if the corporation, "except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its capital stock."

We do no permit any portion of unrealized profits to be used in estimating the amount of a dividend.

There is one question, of course, arises in connection with dividends: What are you going to do about wasting assets? That question has been covered by this provision:

"The directors of any corporation engaged in the exploitation of wasting assets such as mines, oil or gas wells, standing timber, or owning property having a limited life such as a lease for years or patents, or owning other wasting assets intended for liquidation and sale in the ordinary course of business, may determine the annual net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation, and without taking into consideraton depreciation of plant and equipment other than to make provision for its maintenance during the life or expected life of the operation."

That is a very important provison in connection with mining properties and timber companies.

Now, the by-law provision:

You can make any type of by-laws you want. That is about the size of it. However, it must be remembered that the book of by-laws must be open to the inspection of the public during office hours of each day. That is something that we do not usually have in mind. But, the public has the right to inspect your by-laws.

Shareholders' meetings may be held either within or without the state, unless otherwise provided for in the articles of incorporation or the by-laws. At least one meeting must be held each calendar year, and the by-laws may provide for the time and place of holding the meeting. Unless otherwise provided, the meeting shall be held on the fourth Monday of May of each year. That is close to the end of the fiscal year, and that is the reason for fixing it at that time.

Now these are important provisions, gentlemen, because I think that a great deal of trouble has been caused by failing to give notices of meetings.

Special meetings of shareholders may be called at any time by the board of directors, and if eighteen months has elapsed without a meeting being held, any shareholder may himself call a meeting. And at any time upon request of one-fifth of the shareholders, the secretary must call a meeting.

Written notice of the time, place and purpose of meetings shall be given by the secretary to all shareholders entitled to vote at such meeting, at least ten days prior to the meeting. If written notice is placed in the mail and addressed to a shareholder at his last known postoffice address, notice shall be deemed to have been given to him.

"Notice of time, place and purpose of any meeting of shareholders may be waived by the written assent of a shareholder entitled to a notice filed with or entered upon the records of the meeting either before or after the holding thereof.

"Any action which, under any provision of this act, or articles or by-laws, may be taken at a meeting of stockholders, may be taken without a meeting if authorized by a writing signed by all of the holders of shares who would be entitled to notice of a meeting for such purpose. Whenever a certificate in respect to any such action is required by this act to be filed in the office of the County Recorder or in the office of the secretary of state, the officers signing the same shall therein state that the action was auhorized in the manner aforesaid.

"When all of the shareholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and notified."

This next provision is a constitutional provision, and we had to put that in:

"The stock of corporations shall not be increased except in pursuance of general law nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days written notice."

Now the voting rights:

It is necessary to go into that fully. We have very full provisions here for voting; we have included the constitutional provisions on the subject; and the right to vote by proxy is granted.

Voting trusts:

You can establish voting trusts of the usual type. And any other shareholder than those originally transfering to the voting trust, may transfer their shares to the same trust. All these voting trusts must be in writing, and recorded with the secretary.

Quorums:

The usual provisions. We have added, however, this unusual provision:

"If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting to such time and place as they may determine, but in case of any meeting called for the election of directors, those who attend the second of such adjourned meetings, although less than a quorum as fixed in this section or in the articles of incorporation shall, nevertheless constitute a quorum for the purpose of electing directors."

That simply means that before the passage of this law men could keep themselves in control of the corporation, could hold their offices and keep themselves in power—if they had a majority of the stock, at least. Now there must be a meeting for the purpose of electing directors, and it cannot be put off except to the second adjournment. In a recent case before Judge Cavanah this provision was the deciding factor in the case.

Here is a provision that is well to have in mind:

"The by-laws may provide that whenever all parties entitled to vote at any meeting, whether of directors or shareholders consent either by writing on the records of the meeting or filed with the secretary or by presence at such meeting, and oral consent entered on the minutes, or by taking part in the deliberations at such meeting without objection, the doings of such meeting shall be as valid as if had at a meeting regularly called and noticed, and at such meeting any business may be transacted which is not excepted from the written consent or to the consideration of which no objection for want of notice is made at the time, and if any meeting be irregular for want of notice or of such consent, provided a quorum was present at such meeting, the proceedings of said meeting may be ratified and approved and rendered likewise valid and the irregularity or defect therein waived by a writing signed by all parties having the right to vote at such meeting; such consent or approval of shareholders may be by proxy or power of attorney in writing."

That certainly give the corporation mighty full rein in the matter of holding meetings.

Now we come to the subject of directors. In respect to the matter of notice of meetings of directors we have this provision.

"In the absence of by-law provisions written notice of directors meetings shall be given each director at his last known address at least three days before the meeting and shall specify the purposes of the meeting. Such notice may be waived by a dirctor in writing at the meeting or shall be conclusively deemed given if he be present at the meeting." Now, you gentlemen know that that is a mighty fine provision, and will save a lot of trouble.

"The board of directors shall elect a president, a secretary, and a treasurer, and may elect one or more vice-presidents. No one of said officers, except the president need be a director, but a vice-president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice-president, secretary and treasurer may be combined in one person."

Now the relation of directors and officers to the corporation:

"Officers and directors shall be deemed to stand in a fiduciary relation to the corporation, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions."

That is a mighty fine thing to remember, and it is a good thing to advise clients on—just the relationship he bears—because he may get himself into trouble.

Another thing to bear in mind is that every corporation shall keep in its registered office, besides a record of the proceedings, a share register, giving, alphabetically, the name of the shareholder, his last known address, the number and class of shares he holds, and the date on which he acquired the same. That record must be kept of each shareholder. Another provision is that every corporation shall

keep appropriate records of account. Under the old law—I don't suppose many of us paid any attention to it—a corporation had to keep very accurate and intricate books of account, but I think mighty few of them did. We have changed that provision, so that now it just keeps appropriate records of account.

Every stockholder has a right to examine the books during reasonable hours. That is a provision that we have had. However we now have this provision:

"Except that no stockholder owning less than ten per cent of the total capital stock of the corporation, shall, without special permission given by the board of directors of the corporation, by resolution duly made and entered at a meeting of the board, make or take any list of the names and addresses of the stockholders of the corporation."

Up in Spokane some time ago some men who had a couple of shares in one of the very fine mining companies up there, went in and made a list of the shareholders—a sucker list—and one of those men sold that sucker list for $500.00. He copied the list because he had access to the books. This provision is to prevent just such action.

Now, on this question of sale of corporate assets. We have had lots of trouble in that—that is, we used to have.

"A voluntary sale, lease or exchange of all the assets of a corporation may be authorized by it upon such terms and conditions as it deems expedient, including an exchange for shares in another corporation, domestic or foreign."

Then, "If the corporation is able to meet its liabilities then matured, such authorization shall be given at a meeting of shareholders, duly called for that purpose, and by such vote of the shareholders as may be provided for in the articles of incorporation or, if there be no such specific provisions, then by the vote of the holders of two-thirds of the voting power of all shareholders. If the corporation be unable to meet its liabilities then matured, such authorization may be given by the vote of the board of directors."

That is the holding of the lawyers under the old act, but it was a question that had never been determined, and it was a dangerous point in corporate law.

Now, if the corporation cannot pay its liabilities then matured, then a majority of the directors can transfer all of the assets of the corporation. But of course, you cannot defraud creditors or minority shareholders, or violate the bulk sales law in so doing.

The amendment of your articles of incorporation is simply done by calling a meeting for that purpose, making the amendments, and then filing triplicate copies of the articles of amendment with the secretary of State. We don't have to go through the old rigmarole and thirty days notice required by the old law. That is very simply done now.

This next provision is in protection of minority or dissenting shareholders, in the matter of the sale of assets:

"If a corporation has authoriztd the sale, lease or exchange of all its assets. . . . at a time when it is able to meet its liabilities then matured, or has . . authorized an amendment which changes the corporate purpose, extends the duration of the corporation or changes the rights of the holders of any outstanding shares, a shareholder who did not vote in favor of such corporate action may, within twenty days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares.

"If, after such a demand by a shareholder, the corporation and the shareholder cannot agree upon the value of the shares at the time such corporate action was authorized, such value may be ascertained by three disinterested persons, one of whom shall be named by the shareholders, another by the corporation, and the third by the two thus chosen. The finding of the appraisers shall be final, and if their award is not paid by the corporation withiu thirty days after it is made, it may be recovered in an action by the shareholder against the corporation. Upon payment by the corporation to the shareholder of the agreed or awarded price of shares, the shareholder shall forthwith transfer and assign the shares held by him at, and in accordance with, the request of the corporation."

Of course, you cannot pay out to a shareholder below the indebtedness of the corporation. That is a provision that is in this act.

Consolidation and merger are provided for. They were not provided for under the old law, but we have a peculiar constitutional provision here which we had to slip in in connection with consolidations.

Any domestic corporation, and any foreign corporation may be "merged into a foreign corporation, or consolidated into a new corporation to be formed under the law or laws of the government under which one of such foreign corporations was formed, provided the laws of such foreign government authorize such merger or consolidation, and provided further, if any railroad, telegraph, express, or other corporation, organized under any of the laws of this state shall consolidate by sale or otherwise with any railroad, telegraph, express or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters that may arise, as if said consolidation had not taken place."

That refers to the consolidation only of a domestic with a foreign corporation. I don't know what this proviso really means, as it is injected in the law, but we had to put it in there, because it was in the constitution.

Now, on the right of a dissenting shareholder to the merger, he has the same right to get his money out of his stock from the corporation in the event of a merger or consolidation, as he had in the case that I just read to you.

Assessment and sale of shares:

Unless the corporation, by its articles, shall provide that its shares are not subject to assessment, they shall be subject to assessment for the purpose of paying the expenses of conducting the business of the corporation, paying the debts, and so forth, and the corporation shall have power to levy and collect assessments upon the shares in the manner and form as we have provided. Shares

on which the subscription is unpaid are, unless otherwise provided, subject to assessment.

Now we come to the application of special laws:

It is just amazing to know how the legislature has cluttered up the book with a lot of special laws. And we, of course, had to do something with respect to existing corporations, and this is our language:

"Corporations now existing or hereafter formed shall be subject to the provisions of this act, but when special provision has been made in laws existing prior hereto for the incorporation, organization, powers, rights, conduct, duration, dissolution, or government of any designated class of corporations, including such special classes as . . ."

Now, here comes our wonderful legislative jumble:

"Railroad corporations, bridge, ferry, flume and boom corporations, telegraph, telephone and electric power corporaton, water, irrigation or canal corporations, homestead corporations, guaranty, title and trust companies, non-profit co-operative corporations or associations, religious, ex-service men, benevolent, charitable or fraternal corporations, corporations sole, institutions of learning, agricultural fair corporations, gas corporations, land and building corporations, bank corporations, building and loan associations or corporations, surety and fidelity corporations, mutual or co-operative corporations, water users associations or corporations, real estate mortgage corporations, stock buildings and loan corporations or associations, this act shall not apply . . ."

Now, I will say, gentlemen that, however, this act does apply to a great many corporations, notwithstanding these exceptions.

The following clause, I think is a standard and conventional type:

"This act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, or prosecuted or inflicted, as fully and to the same extent as if this act had not been passed."

And we have the usual constitutional provision there, that if a part of it is unconstitutional, the rest of it shall be constitutional, and shall not be affected because some portion of it may be invalid.

Then we repealed some sixty sections of the old laws.

I thank you gentlemen for your patience, and if you have any questions to ask I will be very glad to answer them, if I can, and if I cannot answer them, I am very sure that Mr. Merrill can.

MR. ST. CLAIR: There is one section that is rather confounding, as to the powers of the corporation. I think it is the second paragraph of section ten: That without enlarging or extending the powers provided for in the articles that the corporation shall have certain powers. I don't understand what that means.

MR. HAWLEY: We will get it, and see if Mr. Merrill can tell you what it means.

"A corporation which has been formed under this act, or a corporation which existed at the time this act took effect and of a

class which might be formed under this act, shall have the capacity to act possessed by natural persons, but such corporation shall have authority to perform only such acts as are necessary or proper to accomplish its purposes and and which are not repugnant to law."

Paragraph two: "Without limiting or enlarging the grant of authority contained in subdivision I of this section, it is hereby provided that such corporation shall have authority. . ," etcetera.

MR. ST. CLAIR: What does that mean?

MR. HAWLEY: I think that that simply protects the corporation, or prevents the corporation from going back to a confusion between corporate capacity and corporate authority.

MR. ST. CLAIR: It wouldn't have authority to do those things enumerated thereafter, because that would extend or enlarge the powers granted by the articles.

MR. HAWLEY: Possibly I don't get your point there.

MR. ST. CLAIR: Well, you prepare your articles, and give certain powers to the corporation. Then that reads that the corporation shall have the following powers, but not to enlarge those in the articles.

MR. HAWLEY: You just heard what the section, or paragraph preceding that provided—that it has the capacity to act possessed by natural persons, but has authority to perform only acts necessary or proper to accomplish its purpose.

MR. ST. CLAIR: Yes, but there are a number of designated powers following what you have read. And you have to designate in your articles the powers which you propose to exercise.

MR. HAWLEY: No. Your corporation has absolute right to have succession by its corporate name, to sue, to defend in suits brought against it, to use its corporate seal, to hold property, mortgage or convey it, to appoint officers, issue shares of stock, enter into contracts, to conduct business anywhere, and (reading) "to do all acts permitted by this act, and all such other acts as are necessary and expedient to accomplish its stated purpose."

MR. ST. CLAIR: But, that might extend what is in your articles.

MR. HAWLEY: No; it doesn't make that statement.

MR. ST. CLAIR: As I remember, it says "without enlarging or extending the powers granted, that the corporation shall have power," and then enumerates a number of things.

MR. HAWLEY: Well, what do you understand by "without limiting or enlarging the grant of authority," of subdivision I—what do you understand by that?

Mr. ST. CLAIR: I am speaking of the powers following that statement.

MR. HAWLEY: Well, it says "without limiting or enlarging the grant of authority contained in subdivsion I." And subdivision I states that it shall have the capacity to act as an individual, and the authority to accomplish its purpose.

MR. ST. CLAIR: Subdivision I provides what you shall put in your articles.

MR. HAWLEY: No; the uniform commission intended subdivsion I to do just one thing: That is to do away with ultra vires acts;

and we say that your corporation has the capacity to act as an individual, but only authority to accomplish its purpose.

I really don't see any difficulty in that.

Maybe there are some other questions I can answer just as clearly.

MR. A. L. MERRILL: My understanding of what that is to be is as follows: The corporate charter gives such powers to the corporation as are expressed in that charter, and without limiting or extending, or in anywise interfering with those particular general granted powers, the corporation may have, under certain conditions and certain circumstances, these additional special powers.

MR. ST. CLAIR: Section I says that such corporation shall have authority to perform such things as are necessary to properly accomplish its purpose—shall only have such authority. Now, the purposes are what are provided in the articles. Then it says in the second subdivision, that without limiting or enlarging the grant of authority contained in I, such corporation shall have authority—and then enumerating them. You mean to provide in the articles the purposes for which the corporation is organized, and that these are not an enlargement on the purposes, but merely a grant of authority added to the purposes that are given in your articles? That is the way I construed it, but I thought, of course, that the contention was different.

MR. HAWLEY: Well, that is the exact provision of the uniform law.

Are there any other suggestions, gentlemen?

MR. ERICKSON: Could you enlarge on the question of the lien on the stock?

MR. HAWLEY: That is section 18 of the act. (Reading)

"If a shareholder is indebted to the corporation on account of unpaid subscriptions for shares it shall have a lien upon such shares for such indebtedness." That is a lien just for that purpose; and then the rest of the provision deals with the foreclosure of that lien. That is all.

MR. ERICKSON: What standing does that have as against creditors of the shareholder.

MR. HAWLEY: Well, the share has not actually been issued, and it is in the possession of the corporation. And, the corporation can acquire jurisdiction by advertising and selling it, and can convey a perfect ttle to all of the shares of the corporation.

MR. A. L. MERRILL: Would that be in the nature of a lien on the stock?

MR. HAWLEY: Yes; a vendor's lien on the stock. Well, it is probably more than that, because the corporation actually has possession of the stock; but a purchaser of shares of stock which are in the hands of the corporation, which have not been paid for is in a different situation than a purchaser from one whose stock has been handed to him. Quite a difference there.

MR. C. E. CROWLEY: As I understand it, it is something like a banker's lien on money and other effects in his possession?

MR. HAWLEY: Yes. And there is a provision—I am not going to read it, because it will take a little time—but provision is made for the foreclosure of that lien.

Gentlemen, I very much appreciate your courtesy in listening to me. I think Brother Clency and myself will have a private discussion about this, so that we may understand each more more thoroughly.

SECRETARY: I think at this time I shall announce that at the meeting of the Bar Commission yesterday evening, after the adjournment of this meeting, there was elected as president of the bar for the next year, Mr. Jess Hawley, of Boise, as vice-president; Mr. E. A. Owen, of Idaho Falls, and myself re-elected as secretary. I take pleasure in introducing Mr. Hawley, president for the next year.

MR. ST. CLAIR: Mr. Chairman, I want to say that I have gone into the corporation code quite thoroughly, and I think the commission should be complimented on this work. I think, as a whole, it is a splendid act.

PRESIDENT: In line with the move to simplify our procedure, and unify courts, and to change our present rather cumbersome probate procedure, the committee on program has assigned the subject 'Should Probate Jurisdiction be in the District Court?' They were fortunate in procuring, as the speaker on this subject, a gentlemen who has had considerable experience in Idaho law, and who, prior to leaving the state had attained a considerable reputation as a lawyer in this state, a reputation which he has equalled, possibly increased, in the neighboring state of Utah. It is therefore with pleasure that I introduce to you Honorable Jesse R. Budge, who will address you on the subject 'Should Probate Jurisdiction be in the District Court?'

HON. JESSE R. BUDGE: Gentlemen of the Idaho Bar, in the program it is stated that the subject I am to talk to you on is 'Should Probate Jurisdiction be in the District Court?' In his letter to me, Secretary Griffin defined the subject as follows: 'Shall Probate Courts be Abolished, and Probate Jurisdiction Vested in the District Courts?'

I shall speak on this latter question:

Whether Probate Courts should be abolished and probate jurisdiction vested in the District Courts has long been a subject of controversy among members of the legal profession in Idaho. Both phases of the question are to be discussed, although, in a sense, the abolition of Probate Courts, as judicial tribunals for the handling of much of the work they do, has only slight connection with the advisability of depriving them of probate jurisdiction. Many of us, I am sure, have expressed positive opinions upon this question, which were induced by a very superficial consideration of the matter, and by special incidents or experiences which were insufficient to form a basis for sound judgment. Perhaps the Probate Judges with whom we have come in contact have been men of exceptional ability, who, in the discharge of their duties, have encouraged the opinion that it is the part of wisdom to leave conditions as they are; or, on the other hand, perhaps we assume that all Probate Judges are like the inefficient, incompetent Judge to whom we have been or are obliged to submit important matters for consideration. In either

event our personal like or dislike measures our support of or opposition to these courts.

In early days when our Constitution was adopted, the State, then sparsely settled, was divided into only five judicial districts. The old Fifth District, for example, comprised the five counties of Bear Lake, Bingham, Oneida, Lemhi and Custer. Within that old district we now have Bear Lake, Bingham, Bannock, Caribou, Franklin, Oneida, Power, Butte, Custer, Lemhi, Bonneville, Clark, Fremont, Jefferson, Madison and Teton, located within three judicial districts, the Fifth, Sixth and Ninth. In the early days District Judges, in making the circuit, were required to travel long distances, often in horse drawn vehicles, and as a consequence terms of court in the several counties were few and far between. The court in term time could settle issues and dispose of criminal and civil actions, without too much inconvenience to litigants, especially in view of the fact that there were fewer controversies, because there were fewer people to get into disputes, and Justices of the Peace and Probate Courts adjudicated most matters of lesser importance. But probate proceedings necessarily require the presentation of numerous petitions, accounts and orders as the proceedings progress, many of which are matters of routine, and to have had no means of disposing of the the business of estates, except upon application to the District Courts, would have been a most unfortunate condition, for even if Judges had been empowered to hear probate proceedings at chambers, and not merely during the infrequent terms in each county, it would have necessitated the journeying of attorneys from one county to another, which would have resulted in much delay, as well as great expense.

Undoubtedly it was the fact that there was some complaint concerning the dispatch of business in the District Courts that prompted the Legislature in 1902 to provide for the enlargement of the jurisdiction of Probate Courts, so that they might have power to enforce mortgages, laborers', mechanics' and other liens upon real property, which enactment, however, was declared unconstitutional. On the other hand it was only four years later, 1907, when quite a sentiment was manifest for the abolishment of Probate Courts altogether, expressed in a proposed amendment to the Constitution, which was held to be ineffectual because of defects in the procedure when it was submitted for adoption. It would seem, having in mind the conditions at the time, that the framers of the Constitution were wise in requiring the Legislature to provide for the election of a Probate Judge in each of the several counties, as a convenient means of handling the business of probating estates.

Of late years, with the influx of people into this commonwealth, and the growth and development of so many towns and cities, counties have been divided and subdivided and additional judicial districts created; and these changes, together with the improved methods of transportation, have brought the District Courts into closer touch with the business of their respective districts, so that it is now generally handled with reasonable dispatch, and under present conditions District Judges could undoubtedly take over the business of probating estates, with only a small fraction of the inconvenience and delay which could have been occasioned had such business been assigned to these courts years ago.

I took occasion to inquire of the Probate Judges in the several counties as to the number of estates handled by them respectively during 1928. I was not favored by a report from every county, but taking the Ninth District, which includes Bonneville, Clark, Fremont, Jefferson, Madison and Teton Counties, (Omitting Teton County, as to which I have no data) proceedings were instituted for the probate of 129 estates during the year 1928; in the Fifth Distract (six counties, omitting Oneida) 181 estates; in the Third District (four counties, omitting Boise and Elmore) 175 estates; in the Second District, Clearwater and Latah, 125 estates. These figures give some indication of the extra burden that would have been imposed upon the District Courts of these districts, if the probate business had come under their jurisdiction. To add from 125 to 200 additional proceedings to the business of the District Courts would, of course, impose considerable additional labor, but by systematically handling the work it can be taken care of, as is the case in some other States. In Utah all probate work is handled by the District Courts. In Salt Lake County one day each week, Friday, is set apart as probate day for the disposition of all matters which do not involve the trial of contests. In some outlying counties, one day a month is appointed for this purpose, and in sparsely settled sections of the State the judge disposes of probate matters as frequently as the circumstances require. Contested matters, upon issue being joined, are placed upon the trial calendar, as other civil suits, and disposed of according to number. This system operates very satisfactorily and Utah lawyers cannot well understand how it could be much improved. It may be that in this State there would be some irritation experienced at first in judges and attorneys accomodating themselves to a new system. Where there are no large centers of population it might be considered objectionable to hold court as often as once a week, or as infrequently as once a month, for probate business, but if the judges are given a wide discretion in the formulation of rules regulating the transaction of business before them, I have no doubt as to their ability to take care of the probate work.

Much of the probate business is routine work and can be handled with great dispatch. At a recent session in Salt Lake City from two o'clock to four fifteen disposition was made of eighty items of probate business. This was made possible by the competency of the District Court Deputy Clerk assigned to the probate division, who, upon the convening of court, has before the judge memoranda from which the court, at a glance, knows the status of each particular matter for attention and the necessary facts to enable him to determine just what is to be done. For example, this deputy clerk, in an application for the appointment of an administrator or executor, has inspected the petition and advised the court whether the will provides that the executor shall act without bond, or if a bond is required the clerk has before the court a statement of the value of the personal property and of the income from the real property, so that the bond can be immediately fixed. If a petition for sale of personal property is for hearing the court is advised whether the

petition is in proper form. If so, and there is no contest, an order granting the petition is entered. If the petition is for the confirmaton of the sale of real estate the court is advised by the clerk whether the bid, under which the sale was made, is in proper form and is in sufficient amount, compared with the inventoried value of the property, to permit confirmation, and the court then, under the Utah statute, inquires in open court if there are any further bids. If so, and such bid made in open court, exceeds the amount for which the property is bid in at the administrator's sale, the highest bidder is awarded the property. If petition is for family allowance the court is advised whether such petition is in proper form; the condition of the estate, the amount of the family allowance prayed for and whether there is any protest or objection. In each of these cases, having all necessary data before him, the court disposes of the probate calendar in short order. If, in matters where it is necessary to take proof, the attorneys are too slow in getting at the facts, the court himself interposes and gets what information he desires, so that time will not be wasted. There is no reason why the work could not be similarly handled in the courts of this state. While in time it may be necessary, in the more populous sections, to increase the number of judges for the expeditious handling of the business of some districts, this would be justified in the interests of public welfare.

The increase in poulation has and will continue to add to the complexity of business and property interests. Loose methods are no longer to be tolerated. The forces of what we are pleased to call civilization while making mankind more suspicious and less candid, insist upon efficiency, and when property rights are becoming so involved and titles so affected by new and unusual business transactions, greater care must be taken than ever before in the administration of estates. Men who are not learned in the law, no matter how consicentious and diligent they may be, can never fully appreciate the necessity of requiring that jurisdictional facts appear in petitions for the sale of real property; that proper notice must be given; that the sale must be regularly made; that there must be proper procedure in the confirmation of the sale; that in the distribution of estates there must be a proper determination of heirship; and that all essential conditions precedent, have been complied with before the entry of the decree.

Such correct probating as has been accomplished in this state has generally been due to the care exercised by attorneys representing administrators and executors to avoid mistakes, but it transpires that many attorneys are themselves quite negligent and there is no check upon them where courts are willing to act upon any petition or sign any order that may be presented, relying upon the attorney to have his papers in proper form. District Judges, accustomed to handling estate matters, in a short time become so familiar with the routine of the work and with all the requirements of the law with reference to questions of jurisdiction, that they refuse to grant petitions or to sign orders if the proceedings upon their face are irregular. While it may be that many errors creep into probate proceedings, even where handled by District Courts, as in

Utah, it is, nevertheless, a fact that the percentage of these errors is reduced to a minimum.

There is another decided advantage in having District Courts vested with jurisdiction in handling estates. In contested cases the trial is like any other trial in the District Court, with an appeal direct to the Supreme Court. Under the present practice in Idaho there is the trial before the Probate Court, an appeal and re-trial in the District Court, and then a second appeal to the Supreme Court. This results in great waste of time and unnecessary expense.

We must all agree that the matter of handling estates, especially where the proceedings relate to and effect the title to real estate, is as important a class of business as can come before a judicial tribunal and conditions in this state now, in my judgment, make it advisable, beyond all question, to have this work handled in the most competent tribunal provided by law. The manifold duties and responsibilities of executors, administrators and guardians can be best performed under the supervision of one who has been schooled in the principles which should be applied in the discharge of these duties. It will not do to say that some probate judges are doing the work in a satisfactory manner, or that some District Judges are incompetent. We must assume that there will be more competency shown by District Judges than by the class of men who now preside over our Probate Courts. And after all we want the public business handled in the most competent way, in the most efficient way, which means the handling of it in such a way that fewer errors will creep in to plague subsequent owners of property rights. This constitutes the all-suffiicent reason why District Courts should handle the probate work.

The matter of abolishing probate courts is, to my mind, as serious a problem as the question of probate jurisdiction, that is, if the proposition implies that no other tribunals shall be created to handle the business, other than probate, now committed to the jurisdiction of the Probate Courts. Of course, they would in reality no longer be Probate Courts, if divested of probate jurisdiction, but it would be quite convenient to change the name to County Court, or some such other designation. The power of these courts to determine controversies, where the amount involved does not exceed Five Hundred Dollars, exclusive of interest; to sit as committing magistrates, to try persons charged with misdemeanors; to handle adoption proceedings; to administer the law, which, for want of a better name, is known as the "Lazy Husbands Law"; to inquire into the condition of the mentally deficient and to make committments in proper cases; to determine applications for mothers' pensions; hear petitions of indigents, for county aid, and perhaps most important of all, to administer the law designed for the protection, aid and education of delinquent children, indicates the importance of these tribunals in our governmental machinery.

The Legislature might, of course, take from Probate Courts their jurisdiction in criminal and civil matters, leaving such causes to Justices of the Peace, with the present limit of jurisdiction in civil cases up to Three Hundred Dollars, and this undoubtedly could be done without a great deal of public inconvenience, but as evidence that Probate Courts are largely patronized (although application

might have been made to Justice Courts in all criminal cases and perhaps in a majority of the civil cases), it appears that for 1928 criminal and civil cases were handled by these courts in the several counties (so far as I have reports) as follows:

District	Counties	Criminal	Civil
First	Shoshone (No report)		
Second	Clearwater	60	41
	Latah	117	81
Third	Ada	41	82
	Owyhee	6	6
	Boise (No report)		
	Elmore (No report)		
Fourth	Camas	11	5
	Lincoln	15	9
	Gooding (No report)		
	Blaine (No report)		
Fifth	Bannock	7	129
	Bear Lake	8	23
	Caribou	15	20
	Franklin	20	105
	Power	24	32
	Oneida (No report)		
Sixth	Bingham	127	89
	Butte	5	10
	Custer (No report)		
	Lemhi (No report)		
Seventh	Adams	17	25
	Payette	143	12
	Valley	27	34
	Canyon (No report)		
	Gem (No report)		
	Washington (No report)		
Eighth	Benewah	98	61
	Bonner	50	63
	Boundary (No report)		
	Kootenai (No report)		
Ninth	Bonneville	222	114
	Clark	12	4
	Fremont	76	52
	Jefferson	99	51
	Madison	46	37
	Teton (No report)		
Tenth	Lewis	28	17
	Idaho (No report)		
	Nez Perce (No report)		
Eleventh	Cassia	119	70
	Twin Falls	278	170
	Jerome (No report)		
	Minnidoka (No report)		

If this criminal and civil jurisdiction should be taken from these courts there would still be various matters relating to domestic relations, and especially those concerning delinquent children, which in my judgment can best be handled by a County Judge. His understanding of conditions in his particular county and his close contact with the particular influences in the home and in the community, which affect the lives of the young, qualifies him to secure a more complete understanding and to apply the most helpful remedies. If there is to be a county court with jurisdiction of such matters it might, as well, have jurisdiction in criminal and civil cases such as is now possessed by the Probate Court. To have no County Court would call for the establishment of tribunals such as exist in Utah and some other states known as Juvenile Courts. The matter of the protection and education of wayward and neglected children who have been denied the blessing of a proper home environment is one which is more and more engaging the attention of all good citizens and especially those who are engaged in social service work. As an indication that Juvenile Court work constitutes an important part of the services rendered by Probate Judges, I call attention to the number of such cases handled in the several counties during the year 1928, so far as reports have been furnished:

Clearwater	2	
Latah	21	
Ada	49	
Owyhee	6	
Lincoln	17	
Bannock	80	(Including children brought in for admonition)
Bear Lake	10	
Caribou	4	
Franklin	9	
Power	28	
Oneida	39	
Payette	6	
Valley	2	
Benewah	1	
Bonner	4	
Bonneville	32	
Jefferson	5	
Fremont	8	
Jefferson	5	
Madison	23	
Cassia	9	
Twin Falls	50	
Total	450	

While in some of the counties there have been very few cases, the effort to save 400 children from forming habits which lead to criminality, sorrow and disgrace, is well worth while to the State both from a social and economic standpoint.

This jurisdiction in juvenile cases is akin to the recently conferred authority to call to account persons having children under the

age of sixteen years dependent upon them, and who desert such children, or wilfully omit, without lawful excuse, to furnish them with the necessaries of life, or in the case of a husband who fails to furnish his wife with proper support.

These are the main considerations which induce the conclusion that for the convenient, efficient and effective handlng of the business now before the Probate Courts there should be an amendment to the Constitution abolishing such courts, and vesting in the District Courts probate jurisdiction (including special proceedings apart from proceedings in probate for the determination of heirship), and jurisdiction in proceedings for the adoption of children. Such amendment should require the Legislature to provide for the election in each county of a County Judge, who shall have jurisdiction in all matters which now fall within the jurisdiction of the Probate Courts, save and except Probate proceedings and proceedings for the determination of heirship. From such experience as I have had in Utah and Idaho I would recommend this arrangement as the one most likely to satisfy the present and future needs of the people of Idaho.

PRESIDENT: Mr. Budge, that is surely interesting, and I am sure we will profit by it. It is in line with the information we want. On behalf of the bar I desire to thank you.

I assume that Mr. Budge would be delighted to have you ask questions, and discuss his paper. The meeting is open for that purpose.

MR. BUDGE: I would be pleased to answer any question I can, Mr. Hawley. However, I might not be able to answer it satisfactorily.

MR. ELAM: Have you retained the Justice Courts in the state of Utah.

MR. BUDGE: Yes.

MR. ELAM: Do you see any apparent need for them, if you have a county judge?

MR. BUDGE: Yes. Right in Salt Lake County we wouldn't have so much need for them, but in outlying sections it is sometimes quite inconvenient to take people to the county seats for hearing the small matters which come up in justice courts, and where the witnesses are all located; and the attorneys go out and try those cases in those precincts—those outlying precincts. In that respect, they help. And very often it would take too long, sometimes to get process issued out of the court at the county seat where an offense is committed in a precinct, and it is necessary to take proceedings immediately in the matter. Justice Courts serve some good purpose, and I would think it would be well to retain them. We have them there.

MR. C. E. CROWLEY: Mr. Budge, with respect to the municipal courts you have in Salt Lake and some of the other larger cities in Utah. They are neither what you call county courts, or justice courts, as I understand, and they have jurisdiction up to a thousand dollars?

MR. BUDGE: Yes.

MR. C. E. CROWLEY: What would you think about such courts being established in the larger cities in Idaho?

MR. BUDGE: I would say this: I think under the present conditions in Idaho, with the present population—there being no very large centers of population—that the county judge, if elected under the scheme I propose, it would not be necessary to have a city judge. Of course, where you have a population of 150,000 the city courts do take quite a burden away from the district courts. But, I wouldn't think it would be quite necessary here. That is my judgment.

MR. JONES: In respect to the matter of investing District courts with probate jurisdiction. Have you any districts similar to an Idaho district, for instance, let us take the Sixth District—Judge Adair's district, which composes Bingham, Butte, Custer and Lemhi counties. It is probable that Judge Adair does not have court in Lemhi county more than twice a year. How could that operate to dispatch matters pending in Lemhi county, we will say, without the court going up there? That is 220 miles from Blackfoot, where the Judge resides. Have you any districts down there that are somewhat similar, and if so, how does it work out in those districts?

MR. BUDGE: Well, I can't tell you, off hand, Mr. Jones, just how far they travel. But we have, for instance in the First District, which comprises Cache County, Rich county and Boxelder, where the court travels from Logan up to Randolph, which is quite a distance. Not very far now with automobiles, however. Down at Provo they have some outlying counties out from Utah county. And down in the southern part of the state they travel quite long distances. For instance, the Judge who holds court in Filmore also holds court in St. George at the extreme end of the state. He probably travels 250 miles.

MR. JONES: Does he do that every thirty days?

MR. BUDGE: No; he does not.

MR. JONES: Now, the situation here in this county. This judge would have to go up to Teton county for the appointment of an administrator, we will say. I just wanted to know how it worked out under similar conditions in Utah, where you have conditions similar to Idaho in these particular districts.

MR. BUDGE: Well, the clerk advises him if the matters are being pressed, and advises him of any accumulation of business of a probate nature, and the court goes down there and cleans them up. Of course, I haven't had but very little to do with probate business down in those outlying districts.

MR. JONES: Well, do they do it in chambers?

MR. BUDGE: Some things they do; yes. I would recommend, as I have here that the court have very broad powers with respect to chamber matters, so that if it were inconvenient for him to go down, that perhaps the matter could be presented to him where he is, either in person, or by mail, perhaps, and have the orders entered, if there was no contest.

It would be difficult to frame any law that would suit the convenience of every district; and it would be quite impossible to avoid some little inconvenience, one way or another, because districts are so different, and distances to be traveled are so different. Those matters of detail could be worked out by extending the powers of chambers of a district judge, so that uncontested mat-

ters might be heard at chambers, and so forth. I think that the details could be worked out.

MR. GLENNON: Mr. Budge, have you considered the feasibility of permitting probate jurisdiction to remain as it is, and simply amending the constitution so as to give the district court concurrent jurisdiction? The thought I had in mind is that in that way we might use the probate courts in the outlying districts, and still have the benefit of the district court in the larger centers of population, where the judges are available. Had you considered the feasibility of that?

MR. BUDGE: I hadn't thought of that Mr. Glennon. But, it occurs to me that if you are going to do that, if you are going to have both judges, you better do it by classification of your districts, and have the district judges perform it in some districts, where the population is large, and have the probate judges in other districts. However, the objection to that is that the country is growing so fast, and real estate titles are becoming more and more complicated all the time as people go into the outlying counties, and the matter of deciding the questions is getting more important. Also there are so many errors made by probate judges who do not understand legal principles that I do not think it would be wise to have laymen handle probate business.

MR. GLENNON: Well, we appreciate that, Mr. Budge, but I am referring to the impracticability of handling the work through the district court in the outlying districts, such as Lemhi county, where I had a good many years experience. I can appreciate the difficulty of handling probate work through the district court in that county under present conditions; and I was wondering as to the feasibility of having it handled through the district court, and at the same time giving the probate court concurrent jurisdiction.

SECRETARY: Are notices given by the clerk, or are they required, as in many instances here, to be passed upon by the judge?

MR. BUDGE: I am speaking of Salt Lake County. In that county the clerk gives the notice. He has grown to be very efficient in that business, and of course he really knows more about it than anybody else, and he takes a pride in keeping his work up to date, and attending to all the details so completely. And I think that is true generally in the other counties; I know it to be in Salt Lake. And, in Provo, they are very, very competent there, also. The clerks give the notices?

MR. RATHBUN: I fully agree that we should take such precaution as we can to prevent errors. But couldn't we get just as competent a probate judge as we could a clerk?

MR. BUDGE: The matters that the clerk performs are purely ministerial, such as whether or not notices had been given, notices had been filed, whether a bond was in proper form, or not, how much the estate was inventoried at, or the particular piece or property for which a petition for sale was asked, so that the court could be advised as to how much the bid ought to be, and, in confirmation proceedings, whether the amount bid was a sufficient proportion of the inventoried value. And matters like that would require the court to go through the files to check up to find out just what the conditions were.

MR. RATHBUN: The form of the petition and the service of the notice are jurisdictional matters.

MR. BUDGE: Yes; that is true, of course. But the clerk would become so proficient in the matter of giving notices, that if a notice is required to be given ten days, of course, be knows whether the proof shows whether it was so given. It wouldn't take a man learned in the law to know that fact. Now, of course, the court always checks decrees, and checks orders of confirmation, and checks jurisdictional facts in the petition, and so forth; he is very careful about that. In one day, down in Salt Lake County, the judge disposed of eighty probate matters; and the last time I was down to the court the clerk advised me that he had sixty-seven matters to present that afternoon, and he advised me that they would all be taken care of that afternoon.

I warrant, Mr. Rathbun, if you go down to the court in Salt Lake and ask to inspect one of the files in the probate division, you will be surprised how well it is kept, and how regular the proceedings are shown to be.

MR. RATHBUN: My experience, however, is just the contrary. I have been endeavoring for three months to ascertain the probable assets of an estate in Utah, and so far I have not even gotten an inventory.

MR. BUDGE: You mean the inventory has not been filed?

MR. RATHBUN: So my experiences down there do not harmonize with my experiences here. Of course, it is a very complicated matter.

MR. BUDGE: That has nothing to do with the matter, however.

MR. RATHBUN: Except that you referred me to go down there to see how efficiently it is handled, and my experience has been to the contrary.

MR. BUDGE: That matter you refer had nothing to do with the proficiency of the court.

MR. HIX: I would like to ask you if there are any other states besides Utah that have adopted that plan.

MR. BUDGE: They have probate courts in other states, but they are presided over by lawyers.

MR. HIX: Washington, Oregon and Montana are similar to Utah, are they not?

MR. BUDGE: I can't tell you that, Judge; I don't remember.

MR. HIX: In California, as I recall, the superior courts have similar jurisdiction to the districts court in this state, and they handle probate business—always have handled it.

PRESIDENT: Mr. Budge, have you investigated the cost of the probate courts in this state, so that you could tell us, with any degree of accuracy, the amount to be saved by abolishing probate courts?

MR. BUDGE: No; I haven't. I don't know that you would save much by abolishing them, as far as that is concerned, if you had county judges, because juvenile court work is getting larger all the

time, and you have to elect better men as juvenile court judges—men who will demand, and who are entitled to receive more pay than a justice of the peace, and perhaps as much pay as your probate judges are now getting, if their business increases much, which it is likely to do. I don't know that there would be much saving, when it comes to that. I would not recommend the abolition of probate courts merely as a matter of saving. It is a matter of efficiency in the handling of business which I think probate courts are not competent to handle.

MR. A. L. MERRILL: Do the district courts in Utah, in the administration of estates, handle the appraisement of property in a manner different from Idaho?

MR. BUDGE: Yes; somewhat. We have a standing board of appraisers there, who, when the inventory is filed, appraise all estates.

MR. A. L. MERRILL: Independent of the estate, entirely?

MR. BUDGE: Yes.

MR. MARTIN: Is that appraised for the purpose of determining the value of the estate?

MR. BUDGE: It is. The attorney general checks up on the value of all estates, and before any final decree is entered the clerk of the probate division reports to the district judge whether or not the inheritance tax has been taken care of to the satisfaction of the attorney general's office.

PRESIDENT: I thank you, Mr. Budge.

It has just been called to my attention that the Montana Bar Association is now meeting in Lewiston, and I think if there is no objection we will send greetings of our bar to Lewiston to the Montana bar. Mr. Merrill, will you see that the telegram is sent?

MR. A. L. MERRILL: Yes.

PRESIDENT: Gentlemen we will now adjourn until two o'clock.

Thereupon the meeting adjourned for the noon recess.

At 2:00 o'clock P. M. the meeting reconvened and the following proceedings were had, to wit:

PRESIDENT: Ladies and gentlemen. Judge Dietrich is a well known figure in Idaho, and he is known throughout the country as a jurist of eminent ability. Of that I will not speak, because each of you knows well enough the reputation that he has so richly earned. But, I would say, and I think I speak the sentiments of the bar of Idaho, that they feel in Judge Dietrich a friendly interest, and they feel and know that he has often times shown that he has a generous, kind and charitable heart for the lawyers of this state.

It is a pleasure, in deed, to introduce Judge Dietrich, who will talk upon a subject of national interest, and we will be favored, indeed, to hear from him words which I am sure will likewise have a national import. I have the honor now to introduce Honorable Frank S. Dietrich, Judge of the United States Circuit Court of Appeals, who will speak on the subject, 'Causes of Disrespect for Law'.

HONORABLE FRANK S. DIETRICH: Mr. Chairman, ladies and gentlemen, members of the bar and my brothers on the bench, also gentlemen. I thank the chairman for his very kind introduction.

One of the compensations for coming here is the opportunity of coming back to an old field, familiar to me in its general aspect, but somewhat grown out of recognition because of improvements that have taken place. But even with the passage of time, I have the privilege of either casually or purposely meeting some of those with whom I was very closly associated, either at the law, or politically, or as neighbors and friends, a great many years ago.

It has been some time since I came up into this particular neighborhood for a purpose similar to that which brings me today. And I am reminded of the last time I met in this general section to address a public audience. I never was very active in politics, but usually toward the end of the campaign I was drafted to make two or three barnstorming speeches, as they were called at that time. I think the last time I was in this neighborhood for that purpose was on a very cold November night; we went out to a school house—I have forgotten the name of the place now—only to find that in some way the first joint of the stove pipe had disappeared; and the stove being the only method of heating the room, you can imagine the effort I made to enthuse the audience was not very successful.

I didn't notice on this program, until I started over here, that following the address I am to make a golf tournament between the bench and the bar is scheduled at the Idaho Falls Country Club. I can imagine the mental attitude of some of you gentlemen who are thinking about the matter of improving your score, just as soon as I get through. But, anyway, I am not responsible for that.

In preparing this address I have tried to visualize the group that one usually sees at a state bar association meeting, made up almost exclusively of lawyers, and perhaps a small sprinkling of judges. I observe that there are present this afternoon a number of citizens of the community who are probably not lawyers, and who are not on the bench. In visualizing the audience, I undertook to form the address in such a way as to be fairly appropriate to a group of lawyers. I am not at all sure that it will be adequate even for that purpose; and I fear it will be wholly inadequate for a general audience.

But such as it is, I give it to you:

It is popularly assumed that our time is one of abnormal criminality and that disregard of legal restraint is more prevalent in our country than among other peoples having like standards of intelligence and morality, and maintaining analogous systems of organized government. Whether the generalization is too sweeping, we need not stop to inquire; most of us would agree that there are conditions that give just ground for concern, and there are tendencies toward not only a weakening of respect for law, but the subversion of its very foundations, that may well arouse a feeling of alarm.

In a cartoon carried in a recent issue of one of the daily papers was shown the figure of an over-sized, fat boy, labeled "Crime," to whom was being put by another figure the question of his paternity, the answer being "I dunno." In a sense, the answer is appropriate, but it is perhaps misleading in that it assumes that out of known promiscuity there is a single unidentified begetting agency. Were the source a single one and the problem only to find out and destroy it, the task would be comparatively simple. Public sentiment, so indispensable to any reform, could be readily rallied to such a task.

But unfortunately the prevalence of lawlessness is the resultant of so many forces and springs from so many sources that when we come to relate them to personal responsibility we shall perhaps find only a small minority who can, with clean hands, come into the court of public opinion with a prayer for relief. On self examination the plight of most of us may not be unlike that of those who gathered to condemn the erring woman of Sacred Writ, but upon the admonition of the Master that he who was without sin should case the first stone, quietly stole away.

It has been a common practice to charge those who administer the law with responsibility for much of the popular disrespect for it. Through technicalities of procedure, it is said, justice suffers such delays and so often miscarries that in the place of a wholesome fear, there is a prevalent feeling of contempt. For such criticism in the past, it may be conceded that there was much just ground. But we may well question whether the continuance of unqualified charges of incompetency or inefficiency will not work more harm than good. The atmosphere, spirit, and practice in courts generally have come to be very different from what they were say twenty-five years ago. Due in part, we may assume, to such criticism, statutory law pertaining to procedure has been modified, and, exercising a wider latitude of discretion, those who minister in the courts have made marked progress in rationalizing the practice and eliminating delays. For want of knowledge, I do not speak particularly of the state courts, but with actual procedure in the federal courts I am measurably familiar, and I seriously question whether to go further there in subordinating rules and forms and expediting the disposition of business would not imperil rather than further the administration of justice. Sloth on the part of the servants of the law, slavish and irrational adherence to inflexible rules, the preference of form to substance, are to be condemned, but the administration of justice implies a measure of dignity and deliberation; quality in production is to be desired as well as quantity. I do not mean to intimate that we have reached a state of perfection or that we should relax efforts toward the maintenance of that which has been attained, and for further improvement. The common tendency of procedure is toward formalism and is, therefore, to be continuously resisted, and the end, rather than the means, is to be kept in the foreground. Rules are indispensable, but considering the reason upon which they rest, they are to be applied with a measure of flexibility, lest they become the masters rather than the servants of justice. These considerations all require continuing vigilance. So, too, we are to bear in mind that the law must be administered through human agencies. Upon entering the bar or going upon the bench, we may be chastened by the consciousness of responsibility, but we are not transformed into supermen. In some measure, we carry with us our natural tendencies and temperaments, our biases and weaknesses, and indeed all those qualities and traits that go to make up personality. There will come to the bar those who by reason of moral weakness or a false conception of their obligations to their clients and to society are willing to resort to deception or other chicanery, and even perjured testimony, to compass their ends. There may come to the bench one who is lazy and inattentative to duty, wanting in mental integrity or moral courage, or otherwise without fitness for the task. My point is that such shortcomings, being purely personal and exceptional, afford no just ground for a general indictment of the administration which upon the whole has come to be rational and efficient. For a personal fault, whether it be of a lawyer or a judge, let there be personal criticism and personal discipline. For a specific instance of the miscarriage or unreasonable delay of justice, let there be condemnation. But from a sporadic case to assume an epidemic, and upon that unwarranted assumption to inveigh generally against the courts with charges of widespread incompetency and inefficiency, is not only unjust, but is a species of highly dangerous demagogy by which there is engendered a want of popular confidence in the servants of the law, and sooner or later a disregard for the law itself.

It is also frequently said that much of our lawlessness is chargeable to the inciting effect of prohibitory laws. That is, that human nature is such that we accept a prohibition as a challenge and consequently do those things which we would not be disposed to do but for such challenge. Underlying the view, there is perhaps some basis of psychology. But I am inclined to think it is greatly magnified. Laws or regulations which excite curiosity or create an atmosphere of mystery may be conceded in some measure, to have that tendency, especially with the young. Outstanding examples are laws of censorship, prohibiting the reading of certain books or entering certain places of amusement. But generally to give place to such a consideration would be tantamount to the negation of the wisdom of any law, for expressly or by necessary implication, nearly all criminal laws are prohibitory. The Ten Commandments abound in prohibitions, and on every page of a criminal code is written "Thou shalt not." True we sometimes hear men—grown up men, too—assert with an undertone of apparent pride that they are now doing that which they would not have done before it was outlawed. But I suspect that generally the apparent assumption of pride is, after all, only an attempt to throw a sop to conscience.

Objective arguments are, for the most part, little more than in the nature of post hoc, propter hoc. Referring, for example, to the national anti-narcotic laws and anti-liquor laws, it is pointed out with an air of conclusiveness that since they came into operation, if the consumption of drugs and liquors has in the aggregate not increased, they have come to be used by large numbers of people, especially young people, who never used them before. But it is apparently overlooked that within the same period our lives and habits of life have been greatly transformed. Youth has been emancipated from many restraining conventionalities. Without intimating they involve any moral or immoral aspects, I may suggest that dancing, card playing, theater going have become well nigh universal, cosmetics are the rule rather than the exception, the consumption of candy and gum has greatly increased, and cigarettes—the number daily consumed staggers our comprehension, and they are used by persons and by classes of persons to whom but a few years ago they were anathema—all without the incitement of prohibitory law. To the reckless spirit of a certain age in the young,

a "keep off" sign may suggest the mischief of vandalism, but I have difficulty in believing that to the ordinary man it is an incitement to trample upon the grass and flowers it is desired to protect. If there be such, they should rightly appraise their inclination as a vice and not as a virtue, a cause for mortification rather than of pride. And were the prevalence, in some measure, of such a disposition to be admitted, the result would necessarily be the same. It is essentially anti-social, and for society to recognize or yield to it would necessarily be to confess incompetency for organization and for maintaining rules indispensable to its existence.

It is also often asserted that much of our lawlessness is to be attributed to the growing multiplicity of statutes. The view, it must be conceded, may, for literalists, have some apparent theological support, for in his matchless letter to the Romans, did not St. Paul declare that, "Where there is no law, there is no transgression"?

By aggregating the annual or biennial output of forty-eight legislatures and the national congress, to say nothing of the legislative bodies of territories and municipalities, a most startling exhibit can be made, calculated to strike terror to the simple soul who has a reverent fear for the law and labors under the impression that he is reasonably law abiding. For his consolation, in passing it may be said that generally he is not called upon to live in more than one state at the same time. So that, to begin with, at most his task is but a one-forty-eighth part of the aggregate. And without too much enlarging upon the subject, it is to be added that for other reasons such a statistical showing may very well leave a false impression. After all, the common man has little concern with the great majority of statutory enactments; generally, they are of a special nature and relate to subjects beyond the range of his interests and activities. Whether he be a farmer in Idaho or a mechanic or clerk in New York, the great body of law that really touches his daily life he naturally complies with, though ignorant of its precise statutory form, because it is but declaratory of rules and standards which, as a normal and fairly intelligent man, having a reasonable regard for the rights of his fellows, he has unconsciously set for his own conduct. If in the exercise of his American right, by industry and thrift he is successful in achieving a taxable income or an automobile, his case may be different and his trouble with the intricacies of the law may begin. And this suggests a highly material consideration. I have no doubt that many laws get on the statute books for which there is no real need, and that is to be deplored, for such laws tend to impair popular respect for all laws. But it is futile to inveigh generally against the multiplicity of regulatory law, while at the same time we go on multiplying our social and industrial relations. For the simple life there is need only for a simple code. But for a growing complexity of relations there must of necessity be a growing complexity of rules for individual conduct. The automobile is illustrative. In an incredibly short time it has come to occupy a place of great magnitude in our industrial and social life. Of necessity, through its use many new rights, new obligations, and new relations have come into existence. These relations under a variety of qualifying conditions, must be defined

and to these rights and obligations must be given legal boundaries by either the legislatures or the courts. One would doubtless be astonished, upon classifying the new laws to which I have referred as making a startling aggregate, to note the preeminence of the group having to do directly or indirectly with the automobile and its use. But in that fact there is no shadow of a reason why we should lose our respect for or withhold obedience to the laws thus evoked. In the new uses of the highway we have in physical form a concrete example of the necessity for and the utility of new laws. In principle, they effect no change in personal rights. The highway is public as it always has been, and every member of the public has a right to use it. No old principle is infringed, no new one introduced. The principle always has been and still is that highways are to be used in such manner as to bring the greatest good to the greatest number, or, putting it another way, each individual user must exercise his right subject to the equal right of all others. The regulations do not contravene but give effect to the principle; they are not destructive of but conserve individual rights; they circumscribe the mode of exercising personal liberty only to the end that such liberty may have any value at all. If one is disposed to be impatient with or deprecate the increase of regulatory law, he should in a contemplative mood stand where he can observe an arterial intersection in a populous urban community, at a busy hour of the day. There can be no more striking object lesson of the necessity and value of such law and the paramount duty of each individual to render to it the strictest obedience, that without mishap or serious inconvenience thousands of cars may have the use of this small square of highway in the shortest space of time. But each must move in its appointed orbit and in deference to an established schedule. Preposterous it would be for any one at such a juncture to assert the doctrine of unrestricted or unregulated personal liberty.

But highway intersections are not the only points where there has been a growing complexity of relations and a multiplication of personal contacts. With the phenomenal growth of wealth, the specializing of industry, vast business organization, concentrated population in urban communities, popularization of facilities for recreation, group amusement, and other features of our current life, there has been a corresponding increase of individual interdependence, intersecting interests, and crossing pathways. In short, figuratively speaking, there are in our industrial and social spheres crowded highways of which the individual can have the fullest possible enjoyment only subject to regulatory law. It will thus be seen that complexity or multiplicity of laws may signify nothing more than a corresponding complexity or multiplicity of rights and obligations. When the sacred writer declared that without law there is no transgression, he was but clearing the way for the discussion of an underlying theme. When we say that we would have less lawlessness if we had less law, we may be but playing with words. The mere transgression of the law is not the thing—it is the violation of the right which is back of the law or which the law defines and is intended to protect. If by driving upon the lefthand side of the highway my neighbhor crashes into my car and injures me, I

am not greatly interested whether or not there is an express statute on the subject. And if he drives his cattle into my field of corn, there is little consolation in the knowledge that there was no protecting fence which he had first to break down. By repealing our laws, we could escape law violation, but only in a technical sense. The rights and obligations underlying the form of the law would continue, and the violation of them, which we now term lawlessness, would be none the less evil.

In discussing these considerations, I am inclined to think that we touch on the surface only, and deal with symptons rather than the real sources. The disposition to be obedient to authority is probably innate in but few of us. Generally, it is the product of long training involving a measure of compulsion and a little reasoning, first in the home with its paternal authority, later in the school with its rules of conduct and the superior authority of instructors, and lastly in the organization we call the state with its laws and officers constituted for their enforcement. Naturally, the habits thus formed are in their earlier stages but little the product of reason, and for the most part are induced by fear of punishment, together with a regard for parental pleasure and displeasure; and even in the maturer youth they are more largely moulded by environment and unconscious deference to the wisdom of the past. In the absence of some intellectual revolution, we may adhere to habits thus acquired, indefinitely, without serious inquiry touching the underlying basis of the social system to which they relate.

But such a revolution of thought we have had and are having. I have no disposition to be querulous, but only state the facts when I say that in our time, generally speaking, there is little reverence for the past. The so-called wisdom of the ages is received subject to inspection and approval. The change can hardly be called a new social philosophy—it has scarcely taken on a sufficiently definite form to be so dignified. Whether commendable or regrettable, the attitude is one of skepticism, if not of suspicion. Authority is rejected and the testimony of experience is lightly weighed. Theories of long standing are dissected in the high school and freshmen are advised to take nothing for granted, but to prove all things. The spirit is not unlike that which attends a new emancipation with its exuberances and excesses, its exaggerated sense of individual independence, and a distorted conception of personal liberty. The attitude is not restricted to a single field of thought. It prevails in the scientific as well as in the religious world, and from it accepted theories of government and social organization have not escaped. For a greatly increased number, there is little vitality in the view that any law is of divine origin and no real potency in the fear of divine punishment.

Without such sanctions and deterrent considerations, without deference to or acknowledgment of the authority of the experience and wisdom of the past, the conservative, thoughtful citizen may still, and generally does, continue to be law abiding. Even though separated from its props, the habit of obedience, supplemented by a general sense of order, carries him through—at least until he is subjected to the pressure of some unusual consideration of opposing self-interest. But not all men who otherwise may be good citizens

are conservative, think deeply, or have any very live sense of the necessities of orderly government, and released from the restraining influences to which they were formerly accustomed, they may, without thought of being vicious, fall into an attitude of disrespect for and come to disregard laws classified by them as being of little importance. And it is generally conceded that the common disregard of even minor statutes sooner or later contributes to lawlessness of the more vicious types. There is, of course, the deterrent of possible punishment, but unattended by other automatically operating restraints, that is at best a clumsy and inadequate preventative. Relatively more effective, perhaps, it is in checking the vicious, for they are exceptions and the severe punishment of their offenses has the added weight of popular approval. But however that may be, as against them society seems to have no other weapon, whereas respect for law and restraint on lawlessness among those who have not deliberately set their hand against social order, may be brought about by other means. Not that there is any specific remedy or short-cut—at least I am aware of none. That which has been lost must be restored or an equivalent must be found. If it be assumed that religious sanctions are no longer effective and that little deference will be paid to the past, there is still left the appeal to intelligent self interest and to a sense of honor and fair play; and the inexorable demands of necessity may serve as a substitute for divine command.

In wilfully violating a law which he does not regard as important, but which interferes with his interests or convenience, the transgressor rarely stops to consider the full significance of his act, the direct consequences of which are perhaps negligible. Excluding from consideration the confirmed criminal,—the man who is viciously inclined,—in general there are two classes of such transgressors. There are those who favor a law, approve its policy, concede it reasonableness, and have perhaps even exercised some influence in having it enacted, and yet in practice are unwilling to take its burdens while enjoying its benefits. Referring for illustration to a field of minor importance in itself, but resorted to because it so concretely and simply illustrates the principle: Some years ago there appeared in our court a defendant pleading guilty to a charge of shooting wild game out of season. He was a sportsman, belonged to a sportsmen's association, and I doubt not, favored the enactment of the very law he violated. He was an intelligent man and generally honorable in his dealings with his fellows. He had probably acted without a realization of the quality of what he was doing. With the later realization there came an apparent sense of humiliation and shame which rendered further punishment scarcely necessary.

Without regulatory laws for the preservation of game, there would be none for any of us. No one has a proprietary interest in the subject matter, but each has a potential interest and when we shoot a bird during the closed season we pilfer from our neighbor. Laws which further a public policy establish for each of us such an interest, valuable, though intangible it may be. And when we violate such laws we infringe the rights of our fellows. In playing an ordinary game, one who cheats is universally put down as

a cad; why should the cheater in the great game of social organization or of competing for the prizes of industry be considered an exception?

The other class is made up of those who do not approve the policy of a law and act, or encourage others to act, upon the assumed right of the individual to disobey it because in his judgment it is, for some reason, invalid. Within certain bounds, any citizen may with propriety challenge the validity of a legislative act. When his interests are thereby prejudicially affected, he may question the regularity of its enactment or its constitutionality and to that end may resist its enforcement until by constituted tribunals its validity is finally adjudicated. To go further is nullification and is to sow the seed of anarchy or revolution. Supremacy of law is an inexorable demand of all government. Without it government is inconceivable. Not only is the doctrine of selective obedience impossible, but in essence it is impudent selfishness. How can I decline to obey one law and at the same time demand that my neighbor comply with another? It is a contorted view of personal liberty. Only for the hermit is unrestricted personal freedom of action possible. All law operates as a limitation upon personal liberty and that limitation measures the consideration we must pay for the privilege of living together in close association. Law being indispensable to social organization, if we would take the benefit, we must pay the price. True, there are limits beyond which the majority may not go in the enactment or enforcement of laws restricting the liberty of the individual. But by whom is it to be determined when that limit has been reached? Certainly not by each individual for himself, for, as already suggested, that would mean anarchy. Under the Constitution, which we all profess to acknowledge as supreme, such a question is for the courts and the final decision of the highest judicial tribunal is binding on all. To hold that a court of final resort may be in error and for that reason to decline to accept its decisions would be destructive of all authority and of the very foundations of government.

You may feel that in the discussion I have seemed to have too much in mind infractions of what may be termed the minor laws, and have dealt too little with the graver offenses, which at times appear to have become epidemic, especially in the more populous centers. But I have construed the subject assigned as placing emphasis upon conditions ministering to general disrespect for law, and not upon the causes for or explanations of specific offenses. However deplorable they may be, crimes of the vicious afford no real ground for alarm. Our more serious concern is with the attitude and spirit of the great body of citizens, who are not vicious but who, because of conditions and tendencies of thought to some of which I have referred, have more or less unconsciously given place to impossible conceptions of personal liberty, and in practice, if not in profession, give effect thereto. With a quickened realization of the fundamental truths, that government implies obligation as well as privilege, that under it, of necessity, personal liberty means not to do as we please, but only what we please within the law, that each citizen's right is limited by the right of every other citizen, that to infringe a law is to cheat our fellows out

of their just rights, that obedience to law and duly constituted authority is an inexorable necessity, that selective obedience is subversive of the very foundations of government—in short, if for law we as the great body of well disposed citizens shall cherish a real respect, a reverent fear,—without which the regulated and protected liberty we all prize must perish—we need not doubt our capacity to cope with the vicious, and to resist their assaults upon life, rights of property, and the major moralities.

PRESIDENT: We have listened to a learned, careful, cogent analysis of public psychology, as it is concerned with law making, law breaking, and law respect. I think we have been immensely enlightened, and that Judge Dietrich's words will cause many not here, but who will read them in the press, to ponder over his personal portion in making up this mob or public psychology.

Judge Dietrich, the bar is very much in your debt, and we thank you very, very sincerely. And we appreciate very much your coming.

The next order of business is reports of the resolutions committee.

Will you deliver the report, Mr. Bothwell, and read it?

MR. BOTHWELL: Do you desire to consider the resolutions separately?

MR. GLENNON: Read them all and then consider them separately.

PRESIDENT: Is there any objection to that course?

The chair hears none.

You had better proceed to read them all, separately and then go back and consider them.

MR. BOTHWELL: Your committee on Resolutions has given consideration to all matters presented, and do now make the following report:

We find that the people of the State have accepted the Bar Association as an institution of merit, and that its accomplishments are known and appreciated. We believe that the officers of the Association are responsible in a large measure for this result, and we commend their administration. We believe the potential strength and value of the State Bar Association as a factor in the future development of Idaho, depends much upon the character, learning, and interest of its officers, and with this in mind, we desire to congratulate the Association in its choice of officers.

In furtherance of the policy of the present administration, we offer the following resolutions:

I.

RESOLVED: That in order to carry out the provisions of Section 4, Chapter 98, of the Idaho Session Laws of 1929, there be established a Committee of the Bar Association, to be known as the Judicial Council, for the continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the state, the work accomplished, and the results produced by that system in its various parts, and to make an investigation and study of and recommendations upon the practice and procedure therein.

Said Council shall be appointed by the board of Commissioners,

and shall be composed of two Justices of the Supreme Court, three District Judges, and five practising lawyers. The members shall be appointed for such periods, not exceeding four years, as the Board of Commissioners shall determine.

Said Judicial Council shall make a report in writing to the Board of Commissioners annually, not less than forty days prior to the annual meeting of the association, and at such other times as the Board of Commissioners shall direct. Said annual reports shall be printed and sent to each member of the Association at least twenty days prior to the annual meeting of the Association.

No member of the Council shall receive any compensation for his services, but said Council and the several members thereof shall be allowed for the purpose of defraying expenses of clerical help and other expenses, travel, and incidentals, such sums as the Board of Commissioners may approve, to be paid in the same manner as other expenses of this Association, such sum not to exceed Twenty-five Hundred Dollars for the first year.

II.

RESOLVED: That a Committee of five be appointed by the Chairman of this meeting, to consider and report at the next annual meeting of the Bar Association, upon the communications and recommendations received from the Idaho Prosecuting Attorneys' Association.

III.

RESOLVED: That the Bar Association of Idaho unqualifiedly endorse an enactment by the Legislature, increasing the salaries of Supreme and District Judges of this state, and that it is the sense of this meeting that the term of office of the Supreme Judges be increased to a term of not less than ten years, and that they shall receive a salary of not less than Ten Thousand Dollars per year, and that the term of office of the District Judges be increased to six years, and that their salary be fixed at not less than Seven Thousand Five Hundred Dollars per year.

IV.

RESOLVED: That the Chairman of this meeting appoint a member of the Bar to draw and submit to the next annual meeting of the Association, a Bill for the recodification of the laws of the State of Idaho, and we recommend that such bill be introduced early in the next Session of the State Legislature.

V.

RESOLVED: That we urge the members of the Bar of this State to bring all cases of the unlawful practice of law to the attention of the Commission, and that such action be taken as the case shall require.

VI.

WHEREAS, the Supreme Ruler of the Universe has called from the sphere of activity here, to that life beyond, Honorable James H. Hawley, a citizen of this territory and state for more than sixty-seven years, and for more than fifty-eight years an active and honored member of the legal profession in this state;

AND WHEREAS, the members of this Association, through years of contact and association with him in the court rooms, across the counsel table, in the legislative halls, and in the executive department of our government, have learned to know the man;

AND WHEREAS, the members of this Association, as well as the citizenry of the State of Idaho, and others, have through this long period of time known the man as an individual and a citizen, and from that contact have known him to be one of our real noblemen, a loving father, a friend to man, whose big heart always compelled the extension of the helping hand to those in need, a man always ready to lift up the fallen, a man who in public life was fearless in the performance of every duty, a prosecutor of law violators without a peer in his day, an able defender, a legislator capable and unafraid; as chief executive of our state, an able administrator loved and respected by every citizen. Such a man it does not often fall to the lot of man to have as an associate, and this Association is especially proud of the fact that it has had his council, his advice, and his leadership in the presidency of its predecessor.

NOW, THEREFORE, BE IT RESOLVED: That we extend to the family and those left to mourn his loss, our sympathies, and we would remind them of the fact that there is no death; that the man we knew still lives, and this is but a short separation.

BE IT FURTHER RESOLVED: That a copy of these Resolutions be sent to the family of Governor Hawley, and that a copy of these Resolutions be spread at length upon the Minutes of this Association, and that a copy be forwarded to the Clerk of the Supreme Court of the State of Idaho, with the request that these Resolutions be spread upon the Minutes of that Court.

VII.

WHEREAS, since the last annual meeting of this Association, Honorable Herman H. Taylor, one of the Judges of the Supreme Court of Idaho, has been called to depart this life;

AND WHEREAS, during his many years of service as a public official in Idaho, as a legislator, district judge, and Judge of our Supreme Court, he rendered to this state and to the people of the state, an inestimable service, and has built a monument thereby that time will not efface, and in the rendition of his service to the public, Judge Taylor was eminently recognized for his ability, his sterling qualities of honesty and learning, and in his treatment of the members of the Bar, has always recognized and sympathized with our shortcomings, and has been a friend and assistant to the young attorneys, many of whom sought his advice and counsel, and his decisions as a Judge have been recognized for their impartiality and depth of learning, and great consideration given them by him, and in his general walks of life, he has always been recognized for his courtesy, his ability, and his fairness;

AND WHEREAS, whatever regret we may feel in his passing, there is satisfaction in the thought that he has well and ably performed each task laid down in life for him to perform; that he has well and faithfully fulfilled his mission on earth, and that in his passing, he will receive the just reward that will be meted out to those who have lived an exemplary life, who have sought to be of service to their fellowmen, and who by their example, kind words, and their high ideals, have made those who were closely associated with

them better men, better citizens, and the members of the Bar more worthy of the honor of their profession.

NOW, THEREFORE, BE IT RESOLVED that we, the members of the State Bar Association of Idaho, extend to the family of Judge Taylor, our sincere sympathy in this hour of their bereavement, and that a copy of this resolution be spread at length upon the minutes of this Association, and a copy thereof be delivered to the Clerk of the Supreme Court, with the request to that Court that the same be spread at length upon the minutes of that Court, and that a copy of this Resolution be sent to the family of Judge Taylor.

VIII.

WHEREAS, Honorable Edgar C. Steele, a distinguished and learned member of the Bar of Idaho, and for many years the Judge of the Second Judicial District of Idaho, has now been called to depart this life;

AND WHEREAS, we recognize in Judge Steele a man of exceptional ability as a lawyer and jurist, and one who has met without fear and without faltering, the many problems of life and the many trials and responsibilities that have rested upon him as a lawyer and a jurist, and has with distinguished ability completed each service required of him here:

AND WHEREAS, we recognize in him a person whose record has been and will be an inspiration to us as members of the Bar of Idaho, and we sincerely feel the loss of his passing, but feel that he has justly earned a great reward, and that all is well with him;

NOW, THEREFORE, be it resolved that the Idaho State Bar Association extend to the family of Judge Steele our sincere sympathy in this hour of their bereavement, and that a copy of this Resolution be sent to the family of Judge Steele, and that a copy of this Resolution be spread at length upon the Minutes of this Association, and that a copy be forwarded to the Clerk of the Supreme Court of the State of Idaho and that that Court be requested to have these resolutions spread upon the Minutes of that Court.

IX.

WHEREAS, Honorable Henry F. Ensign, a native of Idaho, and a distinguished and learned member of the Bar of Idaho, and for many years Judge of the Fourth Judicial District, has now been called to depart this life;

AND WHEREAS, Judge Ensign possessed judicial integrity that approached the ideal, was a lawyer of long experience, and an able jurist of keen perception, who gave to his work the best that was in him at all times;

AND WHEREAS, we recognize in him a man of rugged character, sterling worth, and splendid ability, whose loss will be keenly felt throughout the State;

AND WHEREAS, it is the hope that the high esteem with which he was regarded by his fellow associates may in a measure lessen the sense of loss to those most near to him;

NOW, THEREFORE, BE IT RESOLVED: That the Idaho State Bar Association extend to the family of Judge Ensign our sincere sympathy and that these Resolutions be spread at length upon the

Minutes of this Association, and that a copy be forwarded to the Clerk of the Supreme Court of the State of Idaho, with the request that the same be spread upon the Minutes of that Court, and that appropriate notice of these proceedings be given to his family.

X.

WHEREAS, Harry O. McDougall, who has been for many years recognized as an able and leading member of the Bar of the State of Idaho, and who has served in this State as Assistant Attorney General, and whose record as a soldier in the service of our country, particularly in the line of aviation, is before us, and who has in every way distinguished himself in whatsoever service he has been called into, or in whatsoever undertaking he has made, has been suddenly, tragically and unexpectedly taken from our midst;

AND WHEREAS, we feel that in the passing of this man, the Bar of Idaho has suffered a great loss, and a life rich with promise has been brought to a sudden close;

NOW, THEREFORE, BE IT RESOLVED: That the Idaho State Bar Association extend to the family of Harry O. McDougall, our sincere sympathy in this hour of their bereavement, and that a copy of these Resolutions be sent to the family of Mr. McDougall, and that a copy of these Resolutions be spread at length upon the Minutes of this Association, and that a copy be forwarded to the Clerk of the Supreme Court of the State of Idaho, with the request that these Resolutions be spread upon the Minutes of that Court.

XI.

WHEREAS, Richard H. Johnson, Thomas S. Jackson, and William P. Hanson, three learned and distinguished members of the Bar of Idaho, have now been called to depart this life;

AND WHEREAS, in the passing of these men, the members of the Bar of Idaho feel that this Bar has lost distinguished and learned members thereof; that each of these men was a man of lofty ideals and purposes, unselfish and sacrificing to a fault, and a faithful and high-minded citizen of this commonwealth;

NOW, THEREFORE, BE IT RESOLVED: That we, the members of the State Bar of Idaho, sincerely mourn the passing of each of these men, and we extend to the family of each of these men, our sincerest sympathy in this hour of bereavement, and that a copy of these Resolutions be mailed to the family of each of these men, and that a copy of these Resolutions be spread upon the Minutes of this Association Meeting, and that a copy of these Resolutions be forwarded to the Clerk of the Supreme Court of Idaho, and that said Court be requested to spread the same upon the Minutes of that Court.

XII.

RESOLVED: That we hereby express our appreciation to the Bar of Bonneville County for their courtesies and hospitality to the State Association during our sojourn with them, and also our appreciation of the many courtesies of the citizens of the city of Idaho Falls, and its official representatives, and also to the newspapers, the Idaho Falls Post and the Times-Register.

MR. A. L. MERRILL: In respect to Resolution Number 1, dealing with the judicial council, and with which I am thorough-

ly in sympathy. If I understood the resolution, however, it provided that the expenses of the judicial council, not to exceed $2500.00 per year, be paid from the bar funds. However, I may not be correct in my understanding of the resolution. But I am rather of the opinion that we ought to give that a little consideration. Our income is only a little over $3000.00 a year, and if we should use $2500.00 of that for this one purpose it would so curtail the usual and necessary operations of the association that we would defeat its purpose. As a matter of fact, it would not be at all, in my judgment, economically, feasible to appropriate that much money for any one purpose. We have our secretarial work of the bar association, the printing of our resolutions, the printing of the proceedings of these meetings, and disciplinary matters that always come up, and which take quite a considerable amount of the income of the bar association each year. While I should like to see that much money spent for the purpose of the judicial council, I am inclined to believe that if we are going to place a limit we had better reduce that limit to not exceed $1000.00, else we are going to cripple our association in other ways.

MR. LAMPERT: May I just reply to Mr. Merrill. The only purpose of the amount being there is to let the members of the bar, and the legislature and the people of Idaho have some conception of the fact that it will cost money, and that the money will be actually expended. Bearing in mind that it is entirely in the hands of the commissioners; they have knowledge of all moneys on hand, and will use them wisely. It is entirely to their good judgment in requiring the expenditure of $2500.00. That is merely placed as a maximum.

MR. A. L. MERRILL: I wonder if the resolution, then, is so drawn that the commission has control over the expenditure.

PRESIDENT: We will have the resolution read.

(Resolution No. 1, read by Mr. Bothwell.)

MR. A. L. MERRILL: My thought is this, however: That the expenditure will have been made before the bill comes before the commission. That the judicial council will have the implied, or rather tacit understanding that it might expend a sum not to exceed $2500.00—if this resolution is passed, that they might go that high, if they felt so inclined, and that the bar commissioners would approve the bill to that extent. I therefore feel that we ought to limit that amount a little more than that.

MR. BOTHWELL: It was not the purpose of the committee, as explained by Mr. Lampert, to give authority to the council to expend any money. In fact we were informed that that power could not be delegated to the council. They are only to expend such sums as the bar commissioners approve. Now, they are not to expend these sums, and then come and ask the commissioners to approve them as a matter of form; it was our idea in the way of handling these bills, that the commission would pay only those they had authorized. Our idea in stating the sum of $2500.00, was to give the idea that it was going to cost something. In all probability we will not be able to expend that much money. However, that would be controlled by the commissioners, under the resolution as we understand it.

MR. CROWLEY: Discussing this matter, the committee was unanimous in the conclusion that immediate action is necessary, and that by the time we meet at our next annual meeting there ought to be some definite outline and some systematic study must have been completed, in order that we may have presented to us a definite plan for presentation to the next legislature. We concluded that the first year we should have, and probably will require more expenses than we would any subsequent time. The report of the secretary as shown here shows that there has been some accumulations for the past year or two in this fund, and there is nothing that we can get from the legislature or from the treasurer of the state except in this way; and understanding that condition to exist, it seems to me that we ought not to curtail this matter in our recommendations, but leave it, as we are doing, with the commission, and let them give this body all of the money that they can, up to that limit. If they find out they can't let them have that full amount, of course, they can so inform them, and then curtail it to that extent. But, if they can have that much money, or nearly that much money, they will be prepared to do more work and better work, and get better results than if curtailed.

I therefore, Mr. Chairman, move the adoption of the resolution.

Seconded.

PRESIDENT: It has been moved and seconded that the resolution be adopted. Are you ready for the question?

SECRETARY: Perhaps the mention of money always scares the secretary. I appreciate that the report of the secretary shows an accumulation, but, you must understand that that accumulation, possibly $3000.00 of it, is an accumulation from the years current license fees, which must be used during the course of the next year to pay expenses. We have this situation to face. In one year we spent $1300.00 in disciplinary proceedings; and that situation is very likely to arise again. There are now actually pending five hearings and one contempt proceeding, and the extent of the expense, of course, is dependent on those things. I know there is one case, at least, where witnesses will have to be procured in Washington, Oregon and Montana for the hearing, and that is bound to run the expense up. These things have to be considered in advance when we are considering the appropriation of any moneys. I do not object, personally, to an appropriation for the purposes specified here, but I am wondering if it will work out the way it was intended. As I understand that sum was mentioned primarily with the idea that it would impress the public and the legislature with the view that some considerable sum was essential to that work. I am wondering if the reaction won't be that the legislature and the public will think that the bar association, with what I might call a theoretical balance of some $5000.00 is amply able to take care of that work itself, that it is a new source of revenue which has not been tapped yet, and if we are able to do that, out of our funds there is no reason why the state should assume any burden in respect to it. And the most we could hope for would be an official authorization of a judicial council, with the expense saddled on the bar.

I therefore move you, Mr. Chairman, amendment to the motion

for adoption, that we strike out that portion relating to a specific sum, and leave it to the board to determine what moneys should be appropriated for that purpose.

MR. A. L. MERRILL: I second that amendment.

PRESIDENT: The question is still open for discussion.

MR. E. M. HOLDEN: Mr. Chairman, I am not familiar with the law governing the proceedings of this association, if there be any, and therefore I do not know whether the passage of that resolution would have the effect of appropriating or setting aside that sum of $2500.00 for that purpose. If, as a matter of law, it should have that effect, then perhaps the resolution should be amended. If, on the other hand, and in the last analysis it amounts only to a recommendation to the commission, I cannot see if any useful purpose would be served by fixing any particular amount, or reducing the amount.

PRESIDENT: Is there further discussion? If not, are you ready for the question? The question on the amendment is whether we shall eliminate reference to the amount, and leave that entirely with the bar commission. All in favor of the amendment signify by saying aye.

Voting.

Contrary by the same sign.

Voting.

The chair is in doubt. Those in favor of the amendment please arise.

Rising vote.

Against

Rising vote.

The amendment is carried. The question is now on the adoption of the original motion, as amended.

JUDGE BRINCK: The suggestion of the resolution committee, I think, is a particularly happy one. I am fully convinced that some such a body as a judicial council is essential for the best study of the problems of our legal procedure. I am very much in favor of the resolution.

PRESIDENT: Are you ready for the question? The question is on the adoption of the original resolution as amended.

All in favor signify by the usual sign. Carried.

CHAIRMAN: Read the second resolution, Mr. Bothwell.

(Resolution No. 2 read by Mr. Bothwell.)

MR. BOTHWELL: Mr. President, I move the adoption of that resolution.

PRESIDENT: This will be referred to the division meetings. That is the procedure. I think there is nothing in the resolution that would interfere with that being done. Mr. Owen, do you think there is anything that will interfere with our regular procedure, or interfere with the regular division meetings?

MR. OWEN: Mr. President, I think not.

JUSTICE GIVENS: I would like to inquire whether they wanted a special committee for this, rather than having it referred to the judicial council?

PRESIDENT: Mr. Lampert, or Mr. Bothwell, can you gentlemen answer that?

MR. BOTHWELL: It was thought more consideration could

be given it if a special committee could be appointed for this particular purpose. It was simply at the request of the prosecuting attorney's association, and it was thought that a special committee could perhaps give more attention to it.

JUSTICE GIVENS: I hesitate a little to speak about this, for several reasons, but I will just call this to the attention of the association: With regard to that last suggestion, it seems to me that it would be rather a mistake to have it referred to a committee of prosecuting attorneys, because, if effective it would, of course have to be adopted, or at least sanctioned by the committee, and sent to the legislature, and that would mean it would have to meet with the approval of the attorneys, generally. And those attorneys who are engaged chiefly in defending criminal actions would be as much interested, probably, as prosecuting attorneys. In addition to that it would seem to me that it might be wise to have this referred to this judicial council because of the existence, at the present time, at least, of public opinion in favor of whatever changes would be necessary.

I think the popular kind of criticism of the present procedure is because of criminal procedure. Most people, when they speak to you in a critical way of the defects in our judicial system, have in mind and refer to criminal actions. And if the judicial council is to enhance itself in public opinion, to restrict it to the consideration of questions of civil practice might cause it to lose something that would be helpful to it.

I would think that in the absence of some better reason—with all due respect to the reasons given—that might well be included in the study and survey that this judicial council would make.

MR. GLENNON: I move that we substitute the judicial council for the committee of prosecuting attorneys.

MR. BOTHWELL: I second that motion.

JUDGE BRINCK: It may be of interest to know that the particular recommendations of the prosecuting attorneys have been under consideration by many of the judicial councils; and the consideration of this particular measure or similar measures has been a great part of the work that has so far been done by the judicial councils in other states.

PRESIDENT: The question is on the amendment with reference to the substitution of the judicial council for the prosecuting attorneys committee. Are you ready for the question? All in favor vote by the usual sign. Carried. It is so ordered.

The question is now on the adoption of the resolution as amended. Are you ready for the question? Those in favor make manifest by the usual sign. Carried.

PRESIDENT: Read the next resolution, Mr. Bothwell.

(Resolution No. 3 read by Mr. Bothwell.)

MR. BOTHWELL: I move the adoption, of this resolution.

All members arose in approval.

Seconded.

PRESIDENT: Are you ready for the question? All in favor signify by saying aye. Carried.

(Resolution No. 4 read by Mr. Bothwell.)

MR. SANDLES: I move the adoption of the resolution. Seconded.

MR. JOHANNESEN: I don't see anything wrong with the resolution, Mr. President, but when the laws are recodified, we ought to have a right good index.

PRESIDENT: I have often looked to find in the index a statute that wasn't there.

As you probably noticed, I hesitated there, because there is going to be some controversy for the reason that there are a number of the lawyers who feel that the first consideration is a really good code and of course a real index, and the second consideration that a lot of lawyers have given to this subject is that no one can draw it except some of those companies on the outside, Bancroft Whitney and the rest of them, who are prepared to do it; and the printers of the state are absolutely opposed to printing going outside the state.

MR. HIX: I understand that the code contemplated now is a permanent code, which will be added to along the line of the California code, and not to be recodified every year?

PRESIDENT: I think Mr. Lampert's partner has given a lot of thought to this, and maybe he has discussed it with Mr. Lampert.

MR. LAMPERT: That causes me to arise and say that it does not emenate from our office. However, I will say this, that the bill should be presented early in the session, rather than late; and the controversy over it is a matter that will have to be disposed of at the next session, and not now. I haven't the slightest idea as to what this so-called codification may present, and very likely I wil find fault with it when presented.

PRESIDENT: Are you ready for the question on the adoption of this resolution? All in favor signify by saying aye. Carried.

(Resolution No. 5 read by Mr. Bothwell.)

PRESIDENT: What is your pleasure?

MR. CROWLEY: I move its adoption.

PRESIDENT: Are you ready for the question? All in favor signify by saying aye. Carried.

PRESIDENT: Gentlemen, the bar commission, seriously, is in favor of this, because right here in this city we have been informed of the most flagrant violations by laymen of the rights and privileges to practice law, drawing legal papers, wills, and so forth. And the time has come, and it is right here now—and I am speaking for two of the commission who are here—this commission is in favor of going down the line and testing out this matter, for the protection of the public, and also the protection of the profession, and we mean business.

(Mr. Bothwell reads resolution No. 6.)

MR. BOTHWELL: I move its adoption, and ask the bar to stand as an expression of approval.

SECRETARY: The resolution is adopted.

MR. RATHBUN: Mr. Chairman, I move the adoption of the remaining resolutions.

Seconded.

PRESIDENT: Gentlemen, the motion for adoption has been seconded. All in favor signify by saying aye. Carried.

PRESIDENT: The chair asks the personal privilege of thanking you for this resolution.

I want to say that so far as the last resolution is concerned, no convention of this bar has ever been held under more friendly aspects; never have we been better treated; and we go away from here with a very, very comfortable and friendly feeling toward you gentlemen of the bar here, and of kindness towards the city of Idaho Falls.

JUDGE BRINCK: I suppose it is important to make the announcement to the bar that was made to me by the chairman as to the Journal of the American Judicature Society.

PRESIDENT: The bar commission, for several meetings, has had under discussion the matter of the Journal of the American Judicature Society, which presents a most able discussion of administrative problems, changes in law practice and procedure, and a most detailed, careful study of the science of jurisprudence. It is a little magazine that is issued, I think, about once a month. It is too heavy to digest at one sitting, and probably we all won't read all the articles, but it really puts you in touch with the best minds and the best thought on the problems that you, as lawyers, and the bar commission, are trying to solve. It is an advancement of our profession.

We do not send out anything to the members of the bar very often. We are scattered, and we have quite a problem here with six hundred lawyers, and only half a dozen bar associations in the state, and we thought that by sending these out to the lawyers throughout the state that it would be a great benefit to the individual, and the bar, as well. So we asked the secretary to ascertain the cost of this little magazine, and he informs me that the price for about 650 of them would be about twenty-five cents a year; each. They are printed and sent out at a ridiculously low price, and that is made possible by the financing by some wealthy attorneys who are interested in this subject and this magazine.

I just say to you that it is very likely that you will receive the Journal of the American Judicature Society as a part of your membership here, and I think we are really justified in spending the money.

What was it, Judge Brinck?

JUDGE BRINCK: It is so timely a publication that I thought the bar should be advised of it.

PRESIDENT: Gentlemen, It is time for us to adjourn.

I notice here there is some sort of a tournament, a golf tournament, between the bench and the bar. I personally do not like to use the language that I have heard members of the bench use, and I will not play golf with any member of the bench. If the bench wants to play golf I would suggest to you lawyers that you let them play by themselves—they really are not fit associates.

Adjournment.

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