IDAHO STATE BAR COMMISSION

By_____,Secretary

PROCEEDINGS

of the

IDAHO STATE BAR

●

VOLUME XIV, 1938
FOURTEENTH ANNUAL MEETING

●

Proceedings of the
LOCAL BARS SECTION
Second Annual Meeting

●

COEUR D'ALENE, IDAHO
July 21, 22 and 23

OFFICERS OF THE IDAHO STATE BAR

PAST AND PRESENT COMMISSIONERS

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.....1928-34
WARREN TRUITT, Moscow, Northern Division.....1929-32
WM. HEALY, Boise, Western Division.....1930-33
JAMES F. AILSHIE, Coeur d'Alene, Northern Division.....1932-35
JOHN W. GRAHAM, Twin Falls, Western Division.....1933-36
WALTER H. ANDERSON, Pocatello, Eastern Division.....1934 —
A. L. MORGAN, Moscow, Northern Division.....1935-38
J. L. EBERLE, Boise, Western Division.....1936 —
ABE GOFF, Moscow, Northern Division.....1938 —

OFFICERS 1938-39

J. L. EBERLE, President
WALTER H. ANDERSON, Vice-President
SAM S. GRIFFIN, Secretary
300 Capitol Securities Bldg., Boise, Idaho

LOCAL BARS' SECTION OFFICERS

P. J. EVANS, Preston, Chairman
EUGENE S. WARE, Kellogg, Secretary

Shoshone County Bar Association, H. J. Hull .Wallace, President; James E. Gyde, Jr., Wallace, Secretary.

Clearwater Bar Association (Second and Tenth Districts), Weldon Schimke, Moscow, Secretary.

Third Judicial District Bar Association, Frank Davison, Boise, President; Oliver M. Koelsch, Boise, Secretary.

Fifth District Bar Association, W. C. Loofbourrow, American Falls, President; John W. Clark, Malad, Secretary.

Seventh District Bar Association, Frank Ryan, Weiser, President; John T. Kenward, Payette, Secretary.

Eighth Judicial District Bar Association, C. H. Potts, Coeur d'Alene, President; George W. Beardmore, Sandpoint, Secretary.

Ninth District Bar Association, Wm. S. Holden, Idaho Falls, President; Faber F. Tway, Idaho Falls, Secretary.

Eleventh Judicial District Bar Association, Ray D. Agee, Twin Falls, President; N. K. Ricks, Twin Falls, Secretary.

PROCEEDINGS

Vol. I

SECOND ANNUAL MEETING

of the

LOCAL BARS SECTION

of the

IDAHO STATE BAR

P. J. EVANS, Preston, Chairman

EUGENE S. WARE, Kellogg, Secretary

Coeur d'Alene, Idaho

July 21, 1938, 10:00 A. M.

PROPOSED RESOLUTIONS

Pursuant to directions of the 1937 meeting that proposed resolutions be submitted in writing to the Secretary and by him mailed to members prior to the meeting of the Idaho State Bar, the following were so proposed and mailed, for consideration and action at the 1938 meeting of the Idaho State Bar, July 22, 23, 1938, at Coeur d'Alene, Idaho:

I

RESOLVED, That practice and procedure in Idaho Courts should be fixed and regulated by Rules of the Supreme Court, and that the Legislative Committee of the Idaho State Bar is hereby instructed to draft, and endeavor to secure enactment of, all necessary legislation therefor.

II

RESOLVED, That the Supreme Court be, and hereby is, respectfully requested to cause to be appointed a committee of members of the Idaho State Bar to aid and assist the Court in the preparation of Rules of Practice and Procedure in the Courts of Idaho.

III

RESOLVED, That so far as practicable Rules of Practice and Procedure in the Courts of Idaho, which may be adopted by the Supreme Court, should conform to the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States, pursuant to the Act of Congress June 19, 1934 (48 Stat. 1064).

IV

RESOLVED, That the Supreme Court be, and hereby is, requested to amend its Rule 43 so as to allow as costs the actual amount expended or incurred for printed briefs up to 45 pages.

V

RESOLVED, That the Supreme Court be, and hereby is, requested to amend Rules relating to oral argument so as to provide: (a) 15 minutes more time for appellant than respondent, because of necessity of statement of facts by appellant; (b) the Court shall examine the records and briefs prior to oral arguments; (c) that the Court, after prior examination of the record and briefs and upon reasonable notice to attorneys prior to oral argument, may state the matters upon which the Court desires oral argument, and limit argument thereto; (d) the Court, after examination of records and briefs, or after argument, may submit to the attorneys questions to be briefed, or further briefed.

VI

RESOLVED, That the annual license fee for attorneys be increased from $5.00 to $7.50, provided the same is appropriated for the use of the Idaho State Bar and its Board of Commissioners, and the Legislative Committee is hereby directed to draft, and endeavor to secure enactment of, all necessary legislation therefor.

VII

WHEREAS, Experience has demonstrated that the present method of handling contested Workmen's Compensation cases results in numerous appeals to the Courts and consequent expense and delay to injured workmen:

NOW, THEREFORE, RESOLVED, That the Board of Commissioners appoint a committee of the Bar to study the question, draft legislation providing for trials of such contested cases in the Courts, and otherwise relieving workmen of expense and delay, and that such committee use its best efforts to secure enactment of such legislation.

VIII

WHEREAS, The expense of investigating and examining applicants for admission to the Bar greatly exceeds the $3.00 fee now required to be paid by applicants, and such additional expense is a burden upon the finances available for the work of the Idaho State Bar:

NOW, THEREFORE, RESOLVED, That the Supreme Court be, and hereby is, requested to require applicants not theretofore admitted to practice elsewhere to pay an investigation and examination fee of $25.00, and those theretofore admitted elsewhere to pay an investigation and examination fee of $50.00, and providing that the Board may keep the fees so paid in a fund from which the Board may pay expenses of and connected with investigation, examination, and admission of applicants.

IX

RESOLVED, That the Board appoint a standing Committee on Law Books, Publications and Directories, whose duty it shall be to pass upon

and make recommendations concerning law books, law publications, and directories offered for sale or subscription to members of the Idaho State Bar; and

RESOLVED, That it is the opinion of the Idaho State Bar that members should not purchase or subscribe for such books, publications, or directories until after the publisher shall have submitted the same to such Committee; and

RESOLVED, That such Committee shall have authority to make rules and regulations concerning the examination, opinion on, publication or distribution of information concerning such books, and the disposition of such thereof as publishers may submit to such Committee.

X

RESOLVED, That amendments of the Canons of Professional and Judicial Ethics adopted by the American Bar Association since February 4, 1937, and to the date of this meeting, be and they hereby are adopted as amendments of the Canons of Ethics of the Idaho State Bar.

PROCEEDINGS

MR. EVANS: In view of the fact our Secretary, Mr. H. E. Ray, is not present, nominations will be in order for the election of a secretary for this meeting.

(Mr. Eugene S. Ware of Kellogg was unanimously elected to act as Secretary.)

MR. EVANS: We have for discussion this morning the question of oral argument in the Supreme Court. This matter was referred to the different local bar associations for their action. Only two of them have reported so far and if there are any other reports of any of the local bar associations, we might get their report at this time as to the action of their local associations on this matter.

MR. FRANK KIBBLER: I have the report of the Seventh District Association. (Turns in report.)

MR. EVANS: The report of the Seventh District is noncomital. They refer the matter for action of the State Bar.

MR. HYATT: I notice the subject is covered by printed Resolution No. 5. RESOLVED, That the Supreme Court be, and hereby is, requested to amend rules relating to oral arguments so as to provide: (a) Fifteen minutes more time for appellants and respondents because of necessity of statement of facts by appellant; (b) The court shall examine the records and briefs prior to oral argument; (c) That the court, after prior examination of the record and briefs and upon reasonable notice to attorneys, prior to oral argument, may state the matters about which the court desires oral argument, and limit argu-

ment thereto ; (a) The court, after examination of records and briefs, or after arguments, may submit to the attorneys questions to be briefed, or further briefed.

MR. BOWDEN: I move that each of these paragraphs or sections be passed on separately.

MR. HYATT: Second the motion.

(Thereupon the motion was carried unanimously.)

MR. EVANS: We are ready te take action on the first paragraph; "That the Supreme Court be, and hereby is, requested to amend rules relating to oral argument so as to provide; (a) Fifteen minutes more time for appellants and respondents, because of necessity of statement of facts by appellant."

MR. BOWDEN: I move its adoption.

MR. BOUGHTON: I will second the motion.

MR. HYATT: I would like to offer an amendment to that changing it to read ten minutes instead of fifteen. There seems to be some objection that it would be giving the appellant too much advantage. But I believe they should have more time. I offer that as a substitute amendment.

MR. ABE GOFF: I will second that.

MR. WAYNE: I am opposed because it is against all precedent. For over a century the highest court in this country has allowed the same length of time to respondents as it does to the appellant. It is true with the Circuit Court of Appeals. The reason given for this change does not exist. I have never heard of a case involving a real question of fact, since I have been in Idaho, in which both parties, both in their briefs and in their oral arguments make a statement of all the facts. I can see no reason why one side of the controversy should have more length of time. Now I know that the respondent, if it is a case where there is a real question in controversy, is never satisfied with the statement of fact made by the appellant. I am opposd to it both on the grounds of precedent and because I see no real logic in the reason given.

MR. GOFF: I want to raise this question, Mr. Chairman, whether we are voting as a local unit or voting individually. I don't know that all of the local bars are represented here and I am not committed one way or the other, but just wondering whether we should vote as delegates in a unit or vote as individuals.

MR. EVANS: In view of the small number assembled, perhaps we should vote as individuals and present the report of our actions to the main convention with that explanation, because whatever action we take is preliminary to the action taken by the convention in the next few days. I do not think we need to be any too technical in

passing on this matter here. All of those in favor of the motion limiting additional time to not more than ten minutes will signify by saying aye.

My opinion is the no's have it and motion is lost.

MR. EVANS: The next question is "that the Supreme Court be, and hereby is requested to amend rules relating to oral argument so as te provide that the court shall examine the records and briefs prior to oral argument."

MR. HORNING: They are presumed to do that already.

MR. ROBERT ELDER: I am not a delegate. I would like to know, if we have a resolution to present to the Bar meeting here looking toward following out the suggestions of the American Bar Association permitting the courts of this State to establish procedure in the state by rules instead of by statute.

MR. EVANS: We are met for the purpose of trying to formulate some course of procedure that will make the Idaho Bar function more effectively. Last year was the first time that the local bar associations were called together. We were called for the purpose of study and the Bar Commission feels that we should study the matter in order that the State Bar might function effectively. It is quite evident the local bar associations must be organized and they must function before the State Bar can accomplish what it should. This meeting was called, of course, for the purpose of carrying out the program that has been outlined here and trying to dispose of matters of our organization, the local Bar Associations, so that we may function intelligently and effectively for the purpose of enabling our State Bar to function.

Going to this last question, that is covered in printed Resolution No. one which will be submitted to the main convention, so I don't think that this session need to take up time necessary to discuss that. I think we will get through quicker if we go ahead and pass on the matters that are set down on the program and then we can present them to the main convention for they are the ones to take final action.

MR. A. L. MORGAN: Practically every matter coming before you is a question that was thoroughly discussed last year at Idaho Falls. Such members of the Court desiring to be there, were there, and these resolutions, which you are passing on now, have been before the State Bar and sent back to the local organizations for their action, so that the Court would be advised as to what is going on. Judge Ailshie advocated that the legislature be asked to pass a law permitting the Court to adopt procedure rules, notwithstanding that those who have made a study are generally of the opinion that the Court has that power now under the constitution.

MR. EVANS: The subdivision (b) is the matter that is now up for discussion; that the Supreme Court shall examine the records and

briefs prior to oral argument. What is your pleasure on that question?

MR. BOUGHTON: As I recall, Mr. Chairman, that particular question was injected into the meeting by one of the members of the Supreme Court himself at the last meeting. There was considerable discussion and it was referred back to this meeting.

MR. HYATT: I move that this section favor a recommendation to the Supreme Court that briefs and transcripts be read prior to oral argument. I think we have accomplished what we have wanted the last year on that. I have heard the boys who have been up before the Supreme Court, say that they get a lot more than they did before.

(The motion was seconded by Mr. Bowden, put to a vote and carried unanimously.)

MR. EVANS: The next subdivision is; "that the Court, after prior examination of the record and briefs, upon reasonable notice to attorneys, prior to oral argument, may state the matters upon which the court desires oral argument, and limit argument thereto."

MR. GOFF: It seems to me that we can get some angle of what the court is concerned about and I am in favor of that part limiting it solely to those points raised by the court because it is possible they may have some preconceived notion that oral argument might be helpful. I am in favor of getting a tip from the Supreme Court as to what they want.

MR. EVANS: Your idea is to leave it as it is except to strike out that part that limits the oral argument to matters to which the court directs your attention.

MR. GOFF: Yes.

MR. HORNING: I have no objection to that. The court might have some slant on the case that in my judgment might be wrong because of the fact the Court did not get my theory on it. I do not think there should be any limitation on what you are to talk about. Let it read this way, "shall not limit oral argument to such point" and I move that it so read.

MR. GOFF: I second the motion.

MR. BOUGHTON: I think that will limit facts we want to discuss. For instance, riparian rights—we have tried to get that question definitely settled. If they limit it and do not permit you to present that question any further, it just limits us to those definite matters before the Court.

MR. WAYNE: It does seem to me that both subdivisions, "C" and "D", as well as some of those sections, has little to do with it. The Court has, as a matter of fact, always exercised that right to submit particular questions to be re-briefed and upon occasion, by reargument. I remember one particular case I had in which they ordered a rehearing and limited both brief and argument. Upon certain matters of theory they didn't allow us a rehearing. However, I am going to vote in favor of it—whatever the section does.

MR. EVANS: All those in favor of the motion which now reads as follows; "That the Court, after prior examination of the record and briefs and upon reasonable notice to attorneys prior to oral argument, may state the matters upon which the Court desires oral argument, **but shall not limit such oral argument to such questions raised.**" All those in favor of the motion signify by saying "aye."

(Thereupon Mr. Evans declared the motion carried.)

MR. EVANS: Subdivision "D" is "the Court, after examination of records and briefs, or after argument, may submit to the attorneys questions to be briefed, or further briefed." As I understand that matter, gentlemen, it simply means this—the Court before deciding the matter upon the original presentation, might ask for additional briefs—

MR. HYATT: I move the adoption.

MR. O'LEARY: I will second it.

MR. EVANS: All those in favor of the motion signify by saying "Aye."

(Thereupon Mr. Evans declared the motion carried.)

MR. HYATT: In view of what came up on this question—the abolition of oral argument altogether, I think it would be well if we would have a resolution adopted at this time that the local bar section is opposed to abolition of oral argument in the Supreme Court. While we can't control the Court, they want to get an expression on these matters. That is largely the purpose of it. I think that question was up last year with reference to oral argument and I move such a resolution be adopted "that we favor oral argument in all cases."

MR. EVANS: That would present the matter clearly to the convention.

(Thereupon the motion was seconded.)

MR. EVANS: All those in favor of going on record opposing limitation of oral argument before the Supreme Court signify by saying "Aye."

(Thereupon the motion carried.)

MR. EVANS: Now, we will go ahead with this question of increasing lawyers' annual license fees to $7.50. I suppose that all of you present have had this matter up before in the local bar associations, so you are probably ready to vote on this question without much waste of time.

MR. O'LEARY: The idea behind it is, there was an old surplus

of un-used funds in the treasury which carried us along so far but is about exhausted and there is some question whether the Legislature may continue the appropriation every year. The Board favors using this extra $2.50 for investigation and expenses and possibly a small fee to any person who might be selected to prosecute or appear in a disbarment proceeding. The third district is in favor of that increase.

MR. EVANS: I might state that the fifth district of which I am a member, comprising the five southeastern counties, also favors the raising of the fee.

MR. WAYNE: So does Shoshone county.

(Someone): And the Seventh district.

MR. EVANS: The Eighth went on record as not favoring it. Of course the final action, gentlemen, will be taken up in the main convention. It is simply a recommendation from this section meeting.

MR. LIBLER: I move the adoption of the resolution.

MR. EVANS: It has been duly moved and seconded that the resolution favoring the raising of annual fee from $5.00 to $7.50 be recommended to the main bar convention.

MR. HORNING: I will second it.

MR. HYATT: I want to explain the way the Clearwater bar has been instructed to vote. We are instructed to vote on condition that a law be passed whereby the legislature cannot handle our money; then the lawyers down our way are in favor of anything we want to levy. Now we have to pay our money and the Legislature can appropriate it for us if they want to and if they don't, we pay it and they can throw it in the general fund. I don't see where having an appropriation will give us any protection because the Legislature can change it under the law, so, in view of the law now, we have to vote to oppose it for that reason. We are in favor of an increase for the purpose of investigating the legal profession and for the prosecution of disbarment proceedings. We can't get along without money, but as long as we haven't got control of that money, our members don't want to vote for the increase.

MR. WAYNE: I understand this proposed resolution covers that point. It raises the fees providing the same is appropriated for use of the Idaho State Bar and its board of commissioners and then directs the legislative committee to draft and attempt to secure the enactment of such a law.

MR. HYATT: Yes, we are in favor of such a resolution.

MR. KIBLER: This matter of increase of annual license fees to $7.50 has been a controversial subject for some time. In our district association the committee brought in a report not favoring it and

they were voted down by a close margin, so we favor it as a district association. I think our report should simply convey the district associations' ideas and stating whether they are for or against the proposition and submit that as a report to the convention rather than to take an individual vote on that subject.

MR. EVANS: Your idea is the representation of the various bar associations should report the action of their associations to this organization?

MR. KIBLER: Yes. A canvass taken here shows that seven associations are in favor—we are really getting back into a conflict the bar association has been striving to avoid.

MR. O'LEARY: I might say this $5.00 at the present time does not cover the current expense of the Bar. The Board had to go back into that old appropriation which has been continued every year and which was not yet used. There has been some worry whether the Legislature would continue that every year. I don't think there has been any difficulty yet in getting that appropriated every year, according to Mr. Griffin.

MR. EVANS: I might call your attention to the resolution that will be offered to the main convention on this matter which is proposed resolution No. 6, "Resolved that the annual license fee for attorneys be increased from $5.00 to $7.50, provided the same is appropriated for the use of the Idaho State Bar and its Board of Commissioners, and the Legislative Committee is hereby directed to draft, and endeavor to secure enactment of all necessary legislation therefor." It might cover that if you are going to add to that "that it shall not take effect until the necessary legislation shall have been enacted."

MR. WAYNE: As a provision for the increase.

MR. BOUGHTON: Mr. Morgan is a member of the commission—what is the necessity for this increase?

MR. A. L. MORGAN: Our income which we have to operate on is $5.00 per member per year. We had come over to us, as you know, from the old volunteer association, a small sum of money which has been carried along as a sort of trust fund and which we have had to use from time to time. During the past year, we have had a number of expensive disciplinary proceedings. There were such things we felt had to be carried through and we did. This has happened before in years gone by and we find our funds very badly depleted. We found out that, roughly, the cost of giving an examination was $25.00 per student and for this the student pays in $3.00. A careful analysis which goes down into even the question of postage expended in connection with examination of applicants discloses the startling fact that it costs us over $25.00 for each individual that takes the examination. It is a condition of affairs that will readily appeal to you as leading to bankruptcy in spite of anything we can do unless we increase our revenue in some way. Later on in the meeting there

will be the question of raising this fee for examination to $25.00 or whatever it may be. As a matter of fact, I don't think $25.00 is enough. But I am going to get our organization to recommend to the main association that the commission be instructed to take whatever means, whether it means a constitutional amendment or whatever it is, necessary to take this organization's funds away from the State of Idaho entirely and put them in the hands of trustees appointed or elected by this association. That is proposition number one, as Mr. Hyatt has indicated here, but the commission has now the power to call on every lawyer in this state to aid them in working out a means of putting that over.

We have just given an examination where twenty-five applicants reported for examination and a little mathematics will show you what it cost this association to give that examination. Now, the result of that examination has been wholly, and exceedingly unsatisfactory. These two things go together—one of them is to get practical experience into the applicants before they are permitted to take the examination and another is provide finances to carry it on. I feel that something has to be done and believe those fees ought to be raised and I also believe that we must divorce ourselves from the State of Idaho treasury. If we hadn't had a trust fund, we would have had to take the money from our own pockets, and to a certain extent, we did anyhow. Now, we have had plenty of our own money in the treasury in the past but we couldn't use it because the legislature didn't see fit to appropriate it for that particular year notwithstanding the State Bar had made a fight to appropriate all the funds, and hence the Auditor wouldn't draw warrants and we couldn't get our money.

Now, we got by in the past but the thing that confronts us is this, that sooner or later, if we build up a nice juicy fund in the Treasury some legislature is going to come along and take it away from us. They will say, "Here is some money not being used and we will appropriate it for something," and that is the last of it and we don't get it back. Let us increase these fees providing we take the necessary steps to segregate the money of the Idaho State Bar from the political end of the State and take it out of the treasury.

MR. EVANS: Mr. Morgan, I would like to ask you a question in connection with this resolution No. 6. In your opinion, does that resolution cover the situation as you see it?

MR. A. L. MORGAN: It puts us in the same position we are now. The original Bar act appropriates our funds for our own use. Now, if the Legislature passes this law raising the fee at all, I presume it will pass it in the same way, and it will be that way as long as some Legislature does not come along and say, "You have got more money than you need and we will put this over in the general fund."

MR. EVANS: Do you think it wise to raise the fees from $5.00 to $7.50 when that possibility confronts us?

MR. A. L. MORGAN: I do for this reason—with the thing as it is we have to take a chance and gamble with them. We need the money to operate. We are only jeopardizing $2.50 more than we are already jeopardizing. We can put the machinery in motion to do something about it. As Mr. Hyatt states, I don't think the next Legislature can give us any relief we want because it is a close question as to whether or not it will require a constitutional amendment. That is something that is going to require a lot of effort from this legislation committee but we want to see the thing through properly between now and the time the Legislature meets. We have $5.00 in the pot already and I don't see why we should not shoot $2.50 more and take a chance until we can get the thing straightened out.

MR. EVANS: This matter is coming up before the main convention and the only matter we are considering here is what recommendation shall we make to the main convention in regard to this proposed resolution. What is your pleasure on that?

MR. HYATT: After listening to Mr. Morgan I think I am justified in disregarding some of our instructions. I am going to move this $7.50 fee be adopted. I agree with him we might as well shoot $2.50 more and take that chance.

MR. WAYNE: I second the motion.

MR. EVANS: The next matter to come before this body is abolishing the Industrial Accident Board. Resolution No. 7, "Whereas, Experience has demonstrated that the present method of handling contested Workmen's Compensation cases results in numerous appeals to the Courts and consequent expenses and delay to injured workmen: Now, Therefore, Resolved, that the Board of Commissioners appoint a committee of the Bar to study the question, draft legislation providing for trials of such contested cases in the Courts, and otherwise relieving workmen of expense and delay, and that such committee use its best efforts to secure enactment of such legislation."

I might state, on reading that resolution, that does not seem to cover the matter set down for consideration here to abolish the Industrial Accident Board. We have had that matter up for discussion. I don't know whether this question of abolishing the Industrial Accident Board was intended as a joke at their expenses or whether it was seriously proposed, but a lot of attorneys of this State are holding a very bitter feeling regarding that Board. They are not at all satisfied with its manner of functioning. They want to abolish the thing. The resolution that will be presented to the convention does not go that far. It provides for a simple procedure but it would still permit this Board to function.

MR. McFARLAND: Has any study been made to ascertain whether there are—

MR. WAYNE: I move the adoption of this resolution.

MR. GOFF: I second the motion.

MR. WAYNE: I haven't given it any particular study except this resolution is, the way I read it, simply getting away from the preliminary hearing, or taking from the Industrial Accident Board its powers and functions as a fact finding body. I think they have been pretty well curtailed anyhow. And, as a matter of necessity, we started out with the proposition that the findings of the Industrial Accident Board upon questions of fact were conclusive even upon the courts and under the old law, prior to the last amendment, the District Courts had pretty well shattered that idea, so that continually the District Courts had examined into the facts and in most recent decisions, from our own Supreme Court, and very properly I think, since the appeal is direct to them, they took the position that they not only had the power but it was their duty and function to examine into the findings of the Industrial Accident Board upon the questions of fact and to see to it that their findings were supported by the evidence and that it was legally competent, relevant and material and that if the findings were not so supported that they would be reversed on the facts. A committee of three travel around the State and hear the evidence in a perfunctory way, many times, not always, and they attempt to make their findings conclusive upon the Court. It must be evident to that Board that the Courts and lawyers will not stand for any such proposition as that, and I think it is a move in the right direction to put the trial of contested compensation cases, right where other cases are, in the District Court.

MR. ELDER: Mr. Chairman. I am deeply interested. Not only on this question in regard to this particular legislation, but all of such class of legislation. Now, I may remind you, gentlemen, we are wholly governed from the National Government down. As a state we have the three branches, legislative, judicial and executive. In the last twenty-five years there has been developd in the country a sentiment against the lawyer, against the judiciary and it has been brought about by just such boards as this which claim they are more fair to the individual. You have a board here that goes out and makes an investigation. Often times, even, boards are prosecutor, judge and the jury and they try the whole thing. There is no such thing as impartial decisions in such cases. I am deeply interested in having the Bar see the judiciary in this country protected from such laws. We must maintain faith in our judiciary and in our judicial system and if we don't, we lawyers are out of business anyway. I am heartily in favor of seeing this resolution, not only presented here but presented on the floor of the convention and discussed because I believe it is time the lawyers take note and wake up to the situation that is confronting them with reference to these different boards that are taking unto themselves all the legislative, executive and judicial functions of government. I don't believe in it.

MR. GOFF: I would like to add one thing more. After all, these boards are created to do justice and my experience has been that actually the poor devil who has a matter to present more often does not receive the justice before one of these boards that he does in an impartial court of law. I heartily approve of everything of which the gentleman here just spoke.

MR. BOUGHTON: I understand the resolution to be that a committee is to be appointed to study and draft legislation with the object of cutting down the expenses of presenting a matter of an injured workman. This, in itself, does not suggest abolition of the board.

MR. EVANS: That is a correct understanding, Mr. Boughton. I don't think at this time we are in position to take intelligent action but that we further study the matter. This resolution seems to cover that proposition providing for further investigation and presentation of such recommendation to the legislature and passage of such legislation as will remedy the condition suggested at the present time. I will say I am heartily in favor of what Mr. Elder suggests. The trouble is these boards function in such an arbitrary manner and they throw away all rules of law and in consideration of cases that come before them they are more arbitrary than the kings of old. These accident cases could be considered more intelligently, more fairly and more impartially by our present judicial organizations than they can be by submitting them to these boards and for that reason we favor abolishment of the Industrial Accident Board and that these matters be presented for trial as part of the functions of the courts of this state so the injured party may have a hearing on the merits under the protection of the law.

MR. BEARDSMORE: I believe our resolution should be even a little bit stronger and should say we go on record favoring the abolishment of the Industrial Accident Board. As I recall, it had been referred back to the local sections last year.

MR. ELDER: I would not be in favor of repeal of the law with reference at least to some duties which should be delegated to the Board, the manager or someone for the purpose of looking up some of these questions. Many of them never come into court. I see no reason for three members of the Board, but if you had one member and if there was no contest in the matter, that could be certified on the record, could just be filed in the District Court and if it was contested the District Court would be the judge of the facts and the law and then appeal would be to the Supreme Court. But there are a lot of administrative matters that should be handled by the Board or an administrator of some kind.

MR. EVANS: To prevent this question becoming too involved, gentlemen, I think we should pass on this resolution that is before the meeting at the present time and defer action on the question of abolishing the Board. There is a motion before the meeting and duly seconded that we favor the adoption of this resolution for the convention. All those in favor of the question signify by saying "Aye."

(Thereupon the motion carried unanimously.)

MR. EVANS: Sub-division "E" "Amendment of Uniform Local by-

laws, relative to fee schedule." I think there is a resolution submitted on that to the State Bar. What action has been taken by the different Bar Associations in discussing this adoption of local fee schedules?

MR. A. L. MORGAN: I will say this—the matter of fee schedules has always been a troublesome proposition and the difficulty was we feared that the regulation that we had prepared was not quite sufficient to enable the State Bar to enforce the local fee schedule and it requires the Board's order to be absolutely certain about it. There should still be an amendment in the by-laws of the local Bar organizations and, to make the matter entirely safe, a resolution from this body I think will probably put that over.

MR. EVANS: We will pass it now. We will proceed with Subdivision "F," "Increase of examination fees of applicants." A resolution has been proposed on that matter, to be presented to the main convention, which reads as follows: "Whereas, the expense of investigating and examining applicants for admission to the Bar greatly exceeds the $3.00 fee now required to be paid by applicants, and such additional expense is a burden upon the finances available for the work of the Idaho State Bar: Now, therefore, Resolved, that the Supreme Court be, and hereby is, requested to require applicants not theretofore admitted to practice elsewhere to pay an investigation and examination fee of $25.00, and those theretofore admitted elsewhere to pay an investigation and examination fee of $50.00, and providing that the Board may keep the fees so paid in a fund from which the Board may pay expenses of and connected with investigation, examination, and admission of applicants." You have all heard the remarks of the President of the association on that matter and it is now open for discussion.

MR. HORNING: I move its adoption.

MR. HYATT: Second the motion.

MR. A. L. MORGAN: May I suggest that this resolution be changed; this limits the use to which that money can be put. There is no particular reason why it should be limited to examination. It ought to go into the funds of the Idaho State Bar to use as it sees fit. What we endeavored to do was to put that into the fund which does not get into the State Treasury. I don't know whether we can get by with it or not, but I am always in favor of trying. If we can keep it out of there for the present, I think it can satisfactorily be handled by the commission. We have learned to do that with our own funds, whatever they are, and we think it ought to be placed in the hands of the commission or in trustees.

MR. GOFF: It seems to me Mr. Morgan is right. If for some reason the commission would have to make up a deficit and if there wasn't enough in the funds of the Bar, and if there is a little over in this fund, it should go in the general fund, and I am in favor of the motion providing this limitation is taken off.

MR. A. L. MORGAN: We want to keep it out of the State Treasury if there is any way to do it. Possibly the resolution as it stands would be all right for this organization. We will consider it further and it can be amended in the future if we find that necessary.

MR. EVANS: All in favor of the motion signify by saying "Aye."

(Thereupon the motion carried unanimously.)

MR. EVANS: There is another resolution that has been proposed—resolution No. 10. "Resolved that amendments of the Canons of Professional and Judicial Ethics adopted by the American Bar Association since February 4, 1937, and to the date of this meeting, be and they hereby are adopted as amendments of the Canons of Ethics of the Idaho State Bar."

MR. A. L. MORGAN: I have been studying Canons and it seems to me that it is a little bit dangerous to adopt Canons of Ethics adopted by the American Bar Association. I am a member of that association. There are a lot of things those people do that I don't approve of. The Canons of Ethics that have been submitted may be all right and may not be all right. I want to direct your attention to one thing in the present rules of the Idaho State Bar; a violation of the Canons of Ethics adopted by this organization is a ground for disbarment. It is a rather serious matter to write something in the way of Canons of Ethics unless we want it there. I think they should be adopted one at a time or at least be given careful consideration before adopting them. I hope you will do that because I don't want some bar commission deciding a matter for violation of some Canon of Ethics I never heard of.

MR. LOOFBORROW: Don't our by-laws provide we shall be governed by the American Bar Association Canons of Ethics?

MR. A. L. MORGAN: Here is the Rule—we specifically had them under consideration of the court at the time this rule was adopted. "In addition to any specific rules of the Supreme Court and Statutes of this State, the canons of professional ethics of the American Bar Association now in effect shall constitute the Code of Ethics of this Association."

Those are the Canons of Ethics which were in effect at the time. That limitation was placed in there for the very reason that the Court and Commission felt that we should not place ourselves under the control of the American Bar Association and be bound by any regulation which they might see fit to pass in the future. If we were bound by any regulation which they passed, then the resolution here would be entirely out of place anyhow—in other words, the rules as they now are, means, unless we adopt the Canons as amended, we are not bound by them.

MR. BOUGHTON: I am generally constitutionally opposed to adopting blindly any regulations and rules which we are ignorant of. We have had a campaign of that the last few years as suggested by Mr. Elder.

MR. EVANS: Would anyone make the motion that we refer the matter without recommendation to the convention?

MR. WAYNE: I will make such a motion.

MR. JIBLER: Second it.

(Thereupon the matter was put to a vote and carried unanimously.)

MR. EVANS: We have several other matters, gentlemen, we should consider—this question of repeal of obsolete laws. What recommendation should we make to the convention about this? The Lord knows, we have plenty of them. Are we going to save them as curiosities or take steps to eliminate them?

This question of uniform instructions to juries—what action should we take in regard to that, and then there is another question—a very important question. I don't think we can possibly get through without another session this afternoon. There is a lot of work in this local bar section if this group is to be organized in the future. If we are such an important branch of the work of the State Bar, it seems to me we ought to have some definite organization of our own. As it stands now I frankly confess I don't know whether we are the tail that wags the dog or whether we are the dog itself.

Now, I had down here "organization of local bar sections committee." We ought to have a committee in charge of activities of this department of the State Bar defining our powers and duties and procedure and determining the number and kinds of offices that we have in this section and the manner of their selection and terms of office and defining their duties and draft by-laws and so on. We want a committee to do these things. We have got to do something for the purpose of coordinating and providing for the business of this sub-division of the State Bar, so I don't see how we can possibly avoid coming back this afternoon.

(Thereupon it was moved and seconded that an adjournment be taken to 1:30.)

1:30 P. M.

MR. EVANS: We will take up first this sub-division "E" again, relative to "Amendment of Uniform Local By-laws relative to fee schedules."

MR. HYATT: A part of that same proposition is with reference to adoption of uniform rule in your own local bar association with reference to division of fees with non-resident attorneys. I want some discussion on it. I move adoption of this resolution—"Where a resident Idaho attorney is associated or connected with an attorney outside the State of Idaho in cases within the State of Idaho, the resident Idaho attorney must be present at all hearings before all the Courts or Judges, Boards or Commissions in this state and shall receive not less than

one-third of the fee of the non-resident attorney, and that for the purpose of division, the amount of fee, shall in no case be considered to be less than that set by the Court where such fee is fixed by the Court."

In other words, we are confronted every day with the question of dividing fees on business sent in from Spokane and you fellows in southeastern Idaho are probably confronted with the same thing from Salt Lake. We generally request one-half of the fee where work is done at all. That may be too high in some cases and for that reason we adopted the one-third as a minimum.

MR. GOFF: I will second it.

MR. BEARDSMORE: Does that motion mean that it is to be a uniform ruling?

MR. HYATT: Yes, the adoption of a uniform ruling.

MR. BEARDSMORE: Our local rules provide that the local attorney collect and retain the minimum fee. This may conflict with our ruling whereby we can't charge less than the minimum fee.

(Voice): I move an amendment that not less than the minimum fee provided by the schedule, shall be paid to the local attorney.

MR. EVANS: You have heard the amendment, gentlemen. Is there any second to the amendment?

MR. HYATT: That amendment is perfectly agreeable, if I understand it correctly. It means that one-third is the minimum on division; if one-third is less than the minimum fee for appearance in the State or District Court you have to charge the minimum fee for appearance and that is perfectly all right, but what we are after down there is to have something adopted that is uniform so we can all stay with it. It is for the purpose of fixing the minimum.

MR. EVANS: Do you accept the amendment?

MR. GOFF: I will accept the amendment. As I see it, it does not suspend any rule you might have in the association.

MR. BEARDSMORE: Do I take it your rule now is one-third and by amendment the minimum fee of our schedule is to be retained by the local attorney?

MR. HYATT: Yes.

MR. ROBERT McFARLAND: Suppose the total fee is $150.00 and the minimum fee is $75.00, your local attorney would get $75.00?

MR. HYATT: Suppose it was $500.00, you are not to charge him less than one-third.

MR. EVANS: All those in favor of the motion as modified by Mr. Hyatt will signify by saying "Aye."

(Thereupon said motion carried unanimously.)

MR. GRIFFIN: I now desire to move that the Board of Commissioners be authorized to phrase this resolution so as to fit that into the rules and present them to the Supreme Court.

MR. BEARDSMORE: Second the motion.

(Thereupon the motion was carried unanimously.)

MR. EVANS: Is there anything further on this matter of amendment of uniform local by-laws relative to fee schedules?

MR. GRIFFIN: You will recall that we have had some discussion of leaving to the Supreme Court the matter of discipline for violation of the fee schedule if the fee schedule has been approved by the board; in Sec. ten, of your local by-laws is a provision that the local association shall fix and prescribe the penalties for the violation thereof and the machinery for enforcement thereof. In view of making that a disciplinary proceeding by the State Bar, that clause should be eliminated, and in addition thereto, there ought to be some method of providing for necessitous circumstances in particular cases, such as providing for a committee of a local bar which would have authority, in particular cases, to authorize a charge of less than the minimum fee. Probably all of you can think of instances where the case is not strictly a charitable one, where the client is able and willing to pay some fee, in which case the local committee would have authority to relieve the lawyer of the minimum fee.

The present rule eleven of the by-laws, provides that the schedule of fees becomes effective when filed with the Secretary of the State Bar and mailed to the Secretaries of other bars. In view of amendment of rule 153, that should be changed so it may become effective with the approval of the Board and upon mailing to other secretaries.

MR. A. L. MORGAN: Mr. Chairman, one illustration just to point out, I think, the reason for making one of those changes. In the First Judicial District the schedule provides a fine, and suspension until the fine is paid, for violation of the bar schedule. It is questionable whether or not they will enforce their own penalty. The Bar Commission felt it would be better to make the matter subject to disciplinary proceedings and leave the punishment of it up to the recommendation of the Commission to be approved by the Supreme Court in accordance with the gravity of the offense. For instance, if a man is an old time offender and keeps at it continuously, his punishment should be naturally greater than for one minor offense. Now, on this matter of a committee to pass upon whether or not I or any other member of the bar may reduce the fee in given cases, it was thought that that question could be submitted to a local committee in each county, not necessarily in the District, no two members of which should be of the same firm, and if they said cut the fee, all well and good. If you leave the matter up to each individual, it leaves a loop-hole for them to cut the fee down in all cases. If he has to submit that matter to the committee so he can cut the fee,

it will elimnate that feature. It is for those reasons we are asking this change be made.

MR. GRIFFIN: I move that in the uniform by-laws, Sec. 10, the following words be stricken—"to fix the prescribed penalties for the violation thereof and the machinery for the enforcement thereof," and that there be added to said rule and said section, a provision "provided that this association or any county within the association may appoint a committee with power to permit, in specific cases, a charge of less than the minimum schedule." And that Sec. 11 be amended to insert after the word "until" the words "approved by the Board of Commissioners and." Now, the effect of that will make this read as follows: Sec. 10—"The Association is empowered to adopt such rules and regulations as it sees fit, including the minimum fee schedule as hereinafter defined, not inconsistent with the rules and regulations of the Supreme Court, the State Bar or Board of Commissioners of the State Bar" and providing in addition, for the committee. That Sec. 11 will then read "Any fee schedule and amendments thereto adopted by this association shall not become effective until approved by the Board of Commissioners and filed with the Secretary of The Idaho State Bar, and the Secretary of this Association shall send a copy of any fee schedule and amendment thereto to the secretaries of all other District Associations."

MR. HYATT: Second the motion.

MR. HORNING: May I ask just what the nature of the case would be in which an appeal would be made to the committee to permit a lesser charge than the minimum. I would suggest that where the full minimum could not be paid, then the work should be handled as a charity matter with no charge at all. I can't imagine a case in which you are charging $15.00, for instance, instead of $75.00, or the character of a case in which you are charging less than the minimum fee if you charge anything at all.

MR. BEARDSMORE: I can give Mr. Horning one example in the Federal Land Bank foreclosures. They have their standard fee of $50.00 for the resident attorney. In our particular district, our District Court minimum fee is $75.00 for appearance fee, and the Federal Land Bank is not disposed to raise their attorney's fees and it puts one who handles Federal Land Bank work in an embarrassing position unless we can get someone to handle that matter for $50.00.

MR. HORNING: I didn't understand that the rule applied to any such case as that. I understand it to apply to such cases where the client can't afford to pay the minimum fee.

MR. BEARDSMORE: That is what they tell you "they can't afford to pay it."

MR. LOOFBOURROW: I would like to have explained to me why the Federal Land Bank or Home Owners Loan is entitled to any special consideration. I kicked the Home Owners Loan organization out of the

window when they refused to pay the minimum fee. If they are a special minimum case, let's make a special exception for these two individual corporations.

MR. W. B. McFARLAND: I agree with what Mr. Horning says. Your constant fee cutter is going to assure his client it won't cost him any more than this and then he goes to this committee and puts it up the client "can't do any more than this" and that simply ruins our fee schedule.

MR. JESS HAWLEY: May I ask if any gentleman here happens to be engaged as counsel for either the Home Owners Loan or Federal Land Bank?

MR. BEARDSMORE: I am counsel for Federal Land Bank.

MR. HAWLEY: Let me ask you—I don't mean to be impertinent—just why in hell do you do their business? I mean that seriously.

MR. BEARDSMORE: I happen to be practicing in a town of 3,200 people; and have a wife and two children and the man with whom I commenced my practice died a little better than a year ago and then I took over the entire responsibility of the office. He had handled that work for years and I looked after it while he was ill and, frankly, I need that business. There isn't a whole lot to do in it, the pleadings are prepared, practically all of them are default cases, and I feel I am well paid when I get $50.00.

MR. HAWLEY: That is the answer to the fee schedule. There is no such thing as adhering to a fee schedule. Here is an outfit that has been robbing lawyers all the time. Now, the Home Owners Loan are probably better than that. We all look on them as special institutions and we let them charge less than the work is worth if the work is worth anything at all. He says, "Well, I need the money and there isn't much work." Well, he needs the money and there isn't much work in any of these other foreclosures. You can foreclose a mortgage with your eyes shut as a rule.

MR. BEARDSMORE: I couldn't do that with my eyes shut.

MR. HAWLEY: If the dictation of a foreclosure of a mortgage is hard, then I don't know what you would call some equity suit. This outfit has been imposing on us all simply because you or somebody else has that business and wants to handle it at a starvation wage, and there are a lot of other people entitled to more consideration than they are. I think that closes the fee schedule entirely.

MR. ROBERT McFARLAND: On top of that, Mr. Hawley, you have almost certainly got to accept that work or somebody else will who wants that piece of business.

MR. WAYNE: Your local banks here don't get such consideration as the outside corporations.

MR. HYATT: I move we make no such exception and they be charged the full fees.

(Some Person): Mr. Chairman, Mr. James H. Hawley, general counsel of the Home Owners Loan is here right now.

MR. GRIFFIN: Mr. Hawley, the thing that precipitated the discussion was the motion to amend the local by-laws to conform with the ruling of the Supreme Court which makes violation of the fee schedule a disciplinary matter. You remember that you and I have discussed your fee schedule many times. The motion is to amend the local by-laws so as to cut out the penalties by the local association and throw it into the Supreme Court as a disciplinary matter, and another provision that the minimum schedule becomes effective when approved by the Board of Commissioners. Now, in the course of discussion of that motion, the question came up as to the Home Owners Loan and Federal Land Bank, with fee charges which are below the schedules and what was to be done in those cases. Somebody asked what justification there was for the Home Owners Loan and Federal Land Bank fees less than the minimum fee and less than the lawyers would charge a local client. If you can justify that for us, I think they would be glad for you to do it.

MR. JAMES H. HAWLEY: As between the fee schedules of the Districts there are a great many conflicts.

MR. GRIFFIN: They are different. A foreign attorney coming in a District, is governed by that particular District schedule. In other words, Ada County has no schedule and if I would take a case over in another district, which had a schedule I couldn't violate its rules because I would have to go by its schedule. I might say this with respect to Mr. Hawley, he and I have had this thing under discussion for over a year.

MR. JAMES H. HAWLEY: I came here to give any information we had and render any assistance I can because this matter has bothered me a great deal, as Mr. Griffin has said, and I have talked to him constantly on this thing. A fee schedule which is gotten out by the Home Owners Loan Corporation for Idaho, as in the other states, we find in conflict in most places with the fee schedules. Whatever I say here is confined to foreclosure schedules. The District schedules are not in harmony with one another at all. As I recall, the District No. 5 schedule started out with a set fee or a certain amount of fee and then it stepped up under a percentage arrangement. Now, down in District No. 7 they stepped up, I think, just twice and the step was so it made the fee schedule in the Fifth District out of harmony with that of the Seventh. On foreclosure up to $3000.00, somewhere in there, the Fifth schedule was higher than the Seventh. Then, after we cross the mark at $3000.00, the Seventh was higher than the Fifth. Something like that, as I recall it. They were out of harmony. I tried to get the matter straightened out as best I could. I discussed it with Mr. Griffin and with Mr. Eberle and corresponded with Mr. Morgan on it. The

Home Owners Loan Corporation would like to cooperate with the Bar. As a result of the conflict between No. Five and Seven, as they were submitted to the Board, the Home Owners Loan Corporation made a straight across twenty-five percent raise in all Districts. Now, that met to some extent, the breaks in both the Fifth and Seventh. It doesn't, of course, meet the schedule of these two districts. If the Home Owners Loan Corporation is to have a schedule, it obviously cannot have a schedule that is not covering the State of Idaho. It would like to get out, at some time, a complete minimum schedule for the State.

MR. EVANS: Can't you have a fee schedule and provide in it that you will follow the minimum fee prescribed to be paid in all cases of foreclosure in each district?

MR. HAWLEY: It was my suggestion that they should adopt a uniform schedule, if that is regarded as necessary, but with a proviso that such schedule, wherever it conflicts with any minimum fee schedule, in any District, shall give way in that area to its fee schedule. I don't mind saying to you that was my suggestion to the Home Owners Loan Corporation. I don't believe they will do that. I am in receipt of a letter from Washington in which they said they would like to cooperate with the Bar insofar as they were able and it is possible for them to cooperate.

You have a big loan on those mortgages and they have their obligations to meet and they operate on a pretty close margin and they are obligated to the holders of their bonds and they feel they can't pay an exorbitant attorney fee any more than they can pay any other kind of a fee that they might be required to as a corporation. On the other hand, the regional department in San Francisco and the Legal Department in Washington, don't want to be in the position of attempting to chisel down any attorneys. They will cooperate insofar as their circumstances will permit them to cooperate.

MR. GRIFFIN: In your foreclosures you ask for an attorney's fee?

MR. HAWLEY: Yes.

MR. GRIFFIN: In that respect you are not any different than a local bank or even an individual in his foreclosure? You speak of operating on a close margin—are they any different than a private loan?

MR. HAWLEY: They are different.

MR. HORNING: I don't see why.

MR. HAWLEY: You loan much differently than the ordinary loaning organization in Idaho. Here, prior to the activity of the Home Owners Loan Corporations, mortgages in Idaho were as a rule, made on fifty percent of appraisement. The Home Owners Loan Corporation loan on an eighty percent of appraisement. That was their top appraisement. That makes them closer than the ordinary loan company.

MR. HORNING: I think in some cases it loaned on one hundred and fifty percent basis, but that makes no difference. Any private corporation that is in the business of loaning money on mortgages could provide in its by-laws a minimum fee. How could, and why should an exception be made of that company? If they come into the county and foreclose a mortgage they have to pay the District's minimum fee, or they can't get it done. They would have to pay it, wouldn't they?

MR. JAMES H. HAWLEY: I think they would not have to. They could pay a man a good salary, possibly, and let him come in.

MR. WAYNE: He would be disbarred under these rules if he came into Idaho.

MR. JAMES H. HAWLEY: That would be a question.

MR. EVANS: You have mentioned, Mr. Hawley, a fee schedule of $50.00. I have that in front of me and that provides that in the foreclosure of a mortgage loan, the minimum fee shall be $75.00. Well, now, is there anything unreasonable about that?

MR. JAMES H. HAWLEY: They raised it as a result of discussions we have had and my correspondence with them.

MR. GRIFFIN: The trouble comes on the percentages—that is where the difficulty is.

MR. EVANS: As I understand you, the local attorney, does not conduct the case in a foreclosure himself. He appears in association with the general counsel for the loan association—the fee is split between these attorneys?

MR. JAMES H. HAWLEY: No, that is not true, Mr. Evans, of the Home Owners Loan Corporation. They did, I believe, under the system employed by the Federal Land Bank.

MR. A. L. MORGAN: Suppose that you agreed with the attorney to foreclose the mortgage and pay him the minimum fee of $75.00. How much attorney's fee did you ask from the defendant?

MR. JAMES H. HAWLEY: $75.00.

MR. MORGAN: And nothing more?

MR. JAMES H. HAWLEY: No.

MR. MORGAN: Do your notes not provide "such reasonable attorney's fees not exceeding ten percent?" You never, in any case, ask for a greater fee than you pay?

MR. JAMES H. HAWLEY: In Ada county, I believe that was done in the first few foreclosures. I really have doubts there are others.

MR. BEARDSMORE: The Federal Land Bank, I might add, have asked their attorney's fee, but they never claim it in any judgment that has been entered by default, only in contested cases.

MR. MORGAN: Isn't that a rather new proposition of the Federal Land Bank?

MR. BEARDSMORE: I have been doing their work for a year and have been connected with doing their work for the past four or five years and that has been their practice during my connection with the Federal Land Bank.

MR. JAMES H. HAWLEY: You say in Federal Land Bank foreclosures they don't add the attorney's fees into the judgement?

MR. BEARDSMORE: No, they don't where it is a default.

MR. JAMES H. HAWLEY: I might say this—as far as the Home Owners Loan Corporation is concerned, I simply declined to send out any case to the district where those fee schedules were in conflict; we are holding them, waiting until we get some solution of this.

MR. BEARDSMORE: The Federal Land Bank have their own attorney draw the pleadings and then file them with the local attorney and he checks the pleadings and also checks the titles to see whether there are additional parties. And then if the local attorney is satisfied the case is in proper shape to file, it is filed. As far as actual work of the local counsel is concerned, it is very little.

MR. JESS HAWLEY: In other words the outside attorney gets the fee while you do the work for them.

MR. BEARDSMORE: The outside attorney is hired by the year by the Federal Land Bank. I have been foreclosing them for about a year and a half now and have never had to contest one yet.

MR. JESS HAWLEY: What is the difference between John Jones who borrows $5000.00 from the Federal Land Bank, and Willie Smith who borrows $5000.00 from The First Security Bank or from John Doe? Why should we treat one different than the others?

MR. BEARDSMORE: They are getting not over four or five percent interest. They give all the business to one man except in isolated cases. I think all fee schedules except No. 5, have the same customs in this case.

MR. MORGAN: In other words, if a man gets more business that way or accepts it, does it for less money. That is exactly the theory upon which your fee cutter operates—his volume.

ROBERT McFARLAND: Suppose you had a case in Sandpoint and you told them you couldn't do it for any less than $75.00?

MR. BEARDSMORE: If they all do that I will be perfectly willing to write the Land Bank to that effect. My experience has been, I have been charging the minimum fee of $50.00 by way of an exception. The Federal Land Bank is not in violation of our schedule because we provide for that exception, but in everything else I have been charging

the minimum fee, for instance, in divorce cases, and the result is I haven't filed a divorce case in eight months.

MR. MORGAN: The fellow that won't do it, he can be eliminated. There isn't any particular reason for throwing rocks at Sandpoint because they are no different in any other town in Idaho.

MR. EUGENE WARE: The proposition is to add by amendment to the fee schedule by-law of Local Associations a provision that any local Bar Association may appoint a committee with power to permit in specific cases, less than the minimum fee schedule.

MR. EVANS: All those in favor of the motion signify by saying "Aye."

All those opposed to the motion, signify by saying "no."

The motion is lost.

What is the rest of the motion?

MR. WARE: The second part of the motion would amend the by-law, by providing for the approval of the minimum fee schedules by the Bar Commission—

MR. A. L. MORGAN: In other words, passing it up to the Board to approve the schedule.

MR. HORNING: Mr. Griffin, do I understand if this motion is passed, this commission automatically is empowered to discipline any violator of the fee schedule?

MR. A. L. MORGAN: That is somewhat the modified idea now. You would let it be known someone has violated the schedule and then the commission appoints a committee to prosecute and the commission recommends and the Supreme Court fixes the penalty.

MR. EVANS: Ready for the question? All in favor of the resolution signify by saying "Aye."

(Thereupon the motion carried unanimously.)

MR. EVANS: What action do you wish to take in regard to resolution No. 1? "That practice and procedure in Idaho Courts should be fixed and regulated by Rules of the Supreme Court, and that the Legislative Committee of the Idaho State Bar is hereby instructed to draft, and endeavor to secure enactment of all necessary legislation therefor." Shall we approve and recommend that proposed resolution, Gentlemen?

MR. JESS HAWLEY: I move its adoption.

MR. ELDER: Second the motion.

MR. EVANS: All those in favor signify by saying "Aye."

(Thereupon the motion unanimously carried.)

MR. EVANS: Proposed resolution No. 2. "That the Supreme Court

be, and hereby is, respectfully requested to cause to be appointed a committee of members of the Idaho State Bar to aid and assist the Court in the preparation of Rules of Practice and Procedure in the Courts of Idaho."

MR. JESS HAWLEY: I move its adoption.

MR. WAYNE: Second the motion.

MR. EVANS: All in favor, signify by saying "Aye."

(Thereupon said motion carried.)

MR. EVANS: Resolution No. 3. "Resolved that so far as practicable Rules of Practice and Procedure in the Courts of Idaho which may be adopted by the Supreme Court, should conform to the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States, pursuant to the Act of Congress June 19, 1934. (48 Stat. 1064)."

What is your wish on that motion?

MR. HYATT: Move we pass that until we hear what Mr. Worthwine has to say about that matter.

MR. JESS HAWLEY: Don't you think the committee that assists the Supreme Court, together with the Supreme Court, will give ample consideration to methods we have in view? I move we reject No. 3—no necessity for it.

MR. HYATT: Second the motion.

MR. GRIFFIN: One thing that occurs to me on that is whether or not it wouldn't be advisory, at least, as to the attitude of the Bar toward unifying these two rules of procedure.

MR. JESS HAWLEY: Well, of course, this committee is going to be quite competent to know what the rules are and to look into it. I don't see any reason to suggest that. We will read it anyway. I don't believe it means anything because, so far as practicable, such rules of practice will be adopted.

MR. GRIFFIN: You may be right.

(The motion carried.)

MR. EVANS: Resolution No. 4, "Resolved that the Supreme Court be, and hereby is, requested to amend its rule 43 so as to allow as costs the actual amount expended or incurred for printed briefs up to 45 pages."

MR. McFARLAND: What is the rule now—forty pages?

MR. GRIFFIN: The Supreme Court increased the size of the printing and spacing so you can't get as much on a page as you could before.

MR. WAYNE: You would leave yourself to the mercy of printers if you let them charge the fees.

MR. GRIFFIN: Aren't you at the mercy of them now? They charge and they don't pay any attention to the rules of the Supreme Court.

MR. A. L. MORGAN: Well, you should send your printing up to that plant I represent. I go in to him and say "I can collect $40.00 for printing, will you print it for that"?

MR. GRIFFIN: If you have sixty pages in a brief, you get as costs only $40.00. The Supreme Court cut down the size of the printed page and why shouldn't they allow forty-five pages to make up the difference that made.

MR. EVANS: I would like to ask if this proposed resolution is intended for the relief of the printers or lawyers?

MR. GRIFFIN: The relief of the clients.

MR. EVANS: Here is a proposition—if the Supreme Court limits the amount you may charge as costs, you have got that club over the head of the printer when you come to have your brief printed that you can't pay any more than you can get and claim no more than you are getting and put in no more than the Supreme Court allows as costs. "Are you going to do it for that or shall I send it out to another printer who will?"

MR. GRIFFIN: What is the difference between this and the minimum fee schedule?

MR. EVANS: This seems to be for the relief of the printer. At the present rate, your printer receives a reasonable compensation for printing the briefs.

MR. JESS HAWLEY: I happen to know one that I have a little stock in and I think pay $1.00 a page there. There seems to be plenty of money for some reason or other.

MR. WM. McFARLAND: I make a motion we reject that resolution.

MR. WAYNE: Second the motion.

MR. EVANS: All those in favor of the motion signify by saying "Aye."

(Mr. Evans declared the motion carried.)

MR. HYATT: I have a couple or three matters I would like to bring up with reference to some changes. These are not to be brought up before the general Bar meeting tomorrow, but are matters we would like to see referred back to local Bar Associations with the idea that the local Bar Associations act on them and get them presented to the

Legislature. I want to see these local Bars get to working, any time we have anything of this kind.

First, with reference to sales of real estate under our probate procedure. The present statute does not expressly provide we cannot sell real estate under a contract, and says the Court shall take a mortgage and other security. I have had an old estate with a lot of lots in it. We have to sell them all and turn the money into cash. We have sold under contract and I don't know what has been the practice anywhere else. I understand with reference to mining there is the same thing. The only way you can sell mining property is on bond and lease contract. Some of the mining property is governed by probate provisions with respect to general sales of real estate, so I want, at this time, to offer an amendment to this present statute Section 15-720, by adding these words "the administrator or legal representatives may be authorized to enter into a bond or contract for the sale, when necessary or convenient."

I move that the amendment of that statute be referred back to the local Bar Associations for their meetings this fall and, in addition to that, while it isn't a motion, with the understanding they are to prepare a bill and have it presented. I am going to take that up with the local legislators, if it is favorable with the rest of the Bar Associations. The only way that I see we are going to get it, is to put these local Bar Associations to work on their representatives.

Another amendment we ought to have with respect to Guardianship sales. We have a statute here but there is one provision that hasn't been eliminated with reference to order of sale before sale. There is a provision for sale the same as in decedents estates. Down there we have made our Guardianship sales under the decedent procedure and it gets by the Idaho attorneys but some of the attorneys in Spokane are turning down titles on that because of that provision. So that I think we want the provision eliminated by its repeal.

The third proposition is collection agencies. I think there is a place for a collection agency if it is conducted right and properly licensed and only those that should be licensed are licensed. I don't think they conflict with the attorney's business. I know in Lewiston we have a high-class collection agency and it means a whole lot to the attorney, especially on small business he can't handle himself that he can refer to the collection agency, but the present act we have does not go far enough. I don't think it keeps a lot of collection agencies out of practicing law and does not draw the line and does not prohibit a lot of practice. For instance, soliciting accounts, which he should not be allowed to do. Down in our county these collectors have been going out with purported process and repossessing property with it and such stuff as that. Now, I have taken it on myself to work out a collection agency act and had it mimeographed. I want to submit it to every local Bar Association in the State. It is a long way from perfect. I have brought it up before the Clearwater Association and I want to send these to the Local Bar Associations for the next meeting. I would like to have each

local Bar Association appoint a committee on this thing and act together with your collection agency to see what you should put in, because it is going to be put before your Legislature at the next session. I don't want to do anything in this act in any way to hurt the lawyers, that is why I submit it here. I wish to submit it to this Bar Association first before submitting it to the Legislature. I will not take time to go into it here but I will take it on myself to send three copies to each secretary of every Local Bar Association and I would like to have this committee look it over and see what they think about it and get their criticism.

MR. GOFF: I think Mr. Hyatt has the right idea on submitting this proposition just to the local associations. I move that any suggested change of any present statute or new statute be submitted to each of the Local Associations because I assume most of them will have one fall meeting and they can give some consideration and criticism on it and that would give all of us information of the matters that might be suggested.

MR. JESS HAWLEY: Second the motion.

(Thereupon Mr. Evans announced that the motion carried.)

MR. EUGENE WARE: Mr. Chairman, I have here a rough draft of the two proposed resolutions that were handed to me by Mr. Morgan and I shall read them. He has already spoken on both subjects today and I shall read them without any further comment. The first one is "Resolved that a committee be named by the Idaho Bar to devise ways and means for teaching practical matters of law to applicants for admission and that the Supreme Court be asked to amend the rules regulating admission so as to require one year of practical training in addition to the present requirements. That said rules shall take effect as soon as the method and means for such practical training is provided."

Mr. Morgan has already talked at some length regarding this matter of requiring at least one year's practical experience in practical work in a law office and some training from a member of the Idaho Bar.

MR. A. L. MORGAN: Both of these steps are steps upon which I expect to elaborate a little tomorrow in my address as President and if, at that time, the Bar feels that the matter should be acted upon I want the resolution presented so they can do it and instruct the commission to take the necessary steps.

MR. EUGENE WARE: I will make a motion at this time to present them to the general meeting, without recommendation, for discussion.

The second resolution is as follows: "Resolved the Idaho State Bar Commission be and hereby is, instructed to take the necessary steps providing ways and means to take all Bar Association fees from the control of the Legislature and arrange for an administration of said fees for this organization without interference."

(Thereupon the motion was seconded, voted upon, declared carried unanimously.)

MR. HYATT: One other thing that this delegation has been instructed to bring up to be referred to local Bar Sections for action or comment: when cases are tried by the Court without a jury, the Court be required to file written opinions and that the opinion be a part of the judgment roll. Personally I haven't had so much experience that I know whether it is good or not, but, as I say, we are instructed to bring it up. The attorneys feel they know a little more about what is in the Judge's mind when he decides a case—what facts are found. The Court, we will say, will decide in your favor and you can draw your findings and judgment. Of course you know what happens, the attorney draws the findings and finds his own way on anything that happens. We ask that the matter be referred to the Local Bar Associations.

MR. GOFF: Second the motion.

(Thereupon a vote was taken and the motion carried unanimously.)

One thing, gentlemen, before we disperse; that is the question of arranging and providing for the organization and activities of this Local Bar Section. It is the idea of the State Bar Commissioners, that it is a difficult matter to get the State Bar to function as smoothly as it should function. They call a meeting once a year as a body and we have not formally discussed or threshed out these problems during the preceding year. We come up here and are all hot and bothered and when a proposition is presented we perfunctorily pass on it without any sufficient consideration whatsoever and the result is that the record of our proceedings is full of a lot of stuff that nobody ever pays any further attention to and it is forgotten as soon as it is passed.

The Board of Commissioners, and I think everyone, feels that the proper way to make the Idaho State Bar efficient as an organization is to encourage and develop the Local Bar Associations and have them take these problems up and thoroughly thresh them out. As an illustration you have here today a number of matters brought before the meeting that some of the members thought should be left to the Local Bar Associations for consideration and action. Well, that doesn't completely answer the question. Suppose this question Mr. Hyatt raised was sent out to the different Bar Associations in this State and they didn't know what action each of the different associations was taking and they didn't know whether the different associations had taken action and there is no further action taken in regard to that matter before the next annual meeting of the State Bar; the action of the Local Bar Associations is not going to be coordinated and we are not going to have much better understanding of this question when we meet next year. We need to provide for some organization of this Local Bar Section group so we may function evenly and efficiently during the coming year and so that these and other matters may be presented to the Local Bar Associations during the year, where they may be considered by the members of the Bar of the State of Idaho.

Some of us feel that it is a burden for the attorneys of this state to meet for a three-day session. A lot of them have talked about the matter and feel that two days would be sufficient if these matters would be threshed out in advance and they came with a definite program . We could accomplish our work in two days instead of three days.

I would like the sentiment of those present as to how this Local Bar Section should be organized and how it should operate. What should the offices be and how should they be selected and what terms should they be elected for? Then we can provide for the election of officers. I would like to hear from the members of this group whether they think we should have a Local Bar Sections committee, defining its powers and duties; procedure; determining the number and kind of committees and number of its officers and manner of their election and term of office and defining their duties; and whether or not we ought to draft any by-laws for the conduct of the executive work of this section.

Last year at Idaho Falls was the first meeting of the Local Bars Section and, as a joke, on the members of the Bar they stuck me as Chairman of the meeting and I had no ideas on the matter; it was a novel thing to me. It was like some person depositing an illegitimate child on my door step. So I discard all responsibility; take the kid and raise it.

I wanted to bring these things before you because I haven't done anything and I think it should be organized if we are going to get any results in the future.

MR. LOOFBOURROW: How did they come to start this organization? Who was the father of this child?

MR. A. L. MORGAN: Mr. Chairman, the original idea with reference to the Local Bars Section, originated with John W. Graham, who was on the Commission at the time. Of course he nor anybody else had a definite program mapped out for this organization at that time. However, by court rule, it was provided that the Bar Commission should arbitrarily divide the State into local districts and organize the Local Bar Associations, and that was done. Then the question was raised as to developing some method or means whereby we would derive some benefit from the organizations so we created this section known as the Local Bars Section and provided, among other things, that each local should elect three delegates to this body. Now, of course, the idea in creating the local organizations was to give an opportunity for every lawyer in the State to hear and be heard on every question which comes before the organization.

In other words, for years from seventy-five to one hundred lawyers met and passed resolutions. There are over five hundred lawyers in the State and we wanted to adopt a plan to get an expression from all lawyers before they were enacted.

Our acting chairman says he hasn't done anything in the past

year—I know and you know he has devoted a great deal of time to this and made progress. The question is whether or not this organization should now adopt for itself some rules and regulations and procedure, in other words, get yourself in shape to function in your local organizations. I think that the idea is a very good one. The great trouble with all of us is we try to move too fast. We can not accomplish a thing and do it right by operating too fast. The whole plan is to engender, if possible, a lot of interest in the lawyers of the State in their local organizations because they haven't a chance to meet and discuss the problems with their fellow lawyers in annual meeting of the Bar in a State with the length and breadth of Idaho. It is just impossible for everybody to attend this meeting, but we can get the ideas in this organization and crystalize them in the State Bar meeting. I think a committee should be appointed to work that situation out so that next year we will have a definite plan to present here.

MR. EVANS: I would like to see it function properly and do something. This proposition by Mr. Hyatt—if it is sent out to the different Bar Associations of the State, the action may differ in the various associations. They should be coordinated. These results should be sent to some central place to advise all other associations of the action that has been taken so that we may coordinate their activities and agree upon some uniform action to be presented to the State Bar convention when it meets or a recommendation of the collective Bar Associations of the State of the action they have taken. In that way we can thoroughly discuss and consider, among the members of the Bar as a whole, instead of a few of us coming here hastily and in a haphazard manner considering these questions, and then presenting them to the State Bar meeting and voting on them without understanding what we are trying to do.

My thought was to propose at this time selecting a committee to draft the form of organization suited to this local Bar Section and instruct that committee to present it to the next annual meeting of the Local Bars Section for approval and adoption and then we can go ahead and elect a chairman and secretary for the next year and a committee with the chairman and secretary can communicate with me and get some practical working organization that will enable us to function intelligently and efficiently.

MR. WAYNE: How many Local Bar Associations have we?

MR. EVANS: Eight.

MR. MORGAN: The thing we had in mind, was to get these delegates here and actually get them to function. The ultimate result, I hope, will be that, as Mr. Hyatt suggests, some of the many things which lengthen the convention of the Bar as a whole will be eliminated.

MR. EVANS: Let us assume we had three delegates from every local organization here. A question comes up which affects the lawyers of the State. The Bar associations from all over the State have acted upon it and the delegates have come here and have gone over the matter and adopt a resolution to the effect that it is the sense or opinion of the Idaho State Bar we ought to do a particular thing. Nothing presented comes up before the Bar, as a whole, in its meeting. I would be in favor of limiting discussion on that proposition to a very short discussion and then provide that the resolution adopted by this body here should not be upset by the Bar as a whole except by a very substantial majority.

I believe that three delegates from every Bar in the State, after having had the matter thoroughly and completely discussed and acted upon by the Local Bar could come in and recommend to the State organization the action that the Bar as a whole ought to take and you would get a better resolution than by a few brief minutes of discussion in the organization as a whole. That is why this branch was organized.

MR. A. L. MORGAN: Until these Local Bars were originated, from seventy-five to one hundred lawyers have been passing on these matters and seeking to bind something like five hundred and fifty lawyers. Through your local organizations discussing the matter and their representatives coming here to the State Bar, we think there is an opportunity, at least, for every lawyer in the State to express himself upon everything done by the Idaho State Bar. That is what we are trying to get, the expression and aid of five hundred and fifty lawyers thinking along one line. It is a big job. But I think we are making some progress and we are, at least, beginning to get more and more people, as time goes on, interested in the problems that certainly are interesting to all.

MR. LOOFBOURROW: As I understand it, each Local Bar sends three delegates to each Local Bar Section meeting, is that true?

MR. A. L. MORGAN: Yes.

MR. LOOFBOURROW: Then we are at liberty to do what we like in the local organization?

MR. A. L. MORGAN: In other words, you come in here and operate the way you want to operate in this section.

MR. JESS HAWLEY: What is the Bar Commission for?

MR. A. L. MORGAN: The Bar Commission is loaded with more duties than any three individuals can successfully perform. I want to say this much to you, just as an illustration of what happens to the lowly Bar Commission. We got in here last Saturday morning at nine and worked through Sunday, and just a little longer hours Sunday than any other day, and we only finished last night at nine o'clock, including two night sessions; five days time and devoted to one particular thing—grading papers. We have other duties to perform. I presume the lawyers of the State feel they are being imposed upon if they are asked to put in three days out of a year for the benefit of the Idaho State Bar. Your Bar Commissioner puts in at least thirty to forty days every year on Bar matters. The Bar Commission cannot do these things

much more and we are loaded down with work and if a little of this can be shifted over to somebody else, that is what we would like to do. Thank God, I am getting off the Commission tomorrow, but nevertheless, I have some little thought for the poor devil who has to stay on there the next three years.

MR. JESS HAWLEY: Well, I move you then that it be the sense of this meeting that the Bar Commission shall appoint a committee of such number and such location as it decides, to report at the next annual meeting a system of organization which will bring to the annual Bar meeting, the viewpoints of the various District Organizations. I think that probably covers it. I think the Bar Commission should appoint them.

MR. A. L. MORGAN: Mr. Hawley, will you amend your motion so that instead of reporting back to this Section, that committee formulate that plan and report it to the local organizations so they will have it before them this fall?

MR. JESS HAWLEY: Yes, I accept that amendment. The report of that committee should, first of all, be taken up with each district organization. I think that is a very worthy suggestion.

MR. GOFF: Second the motion.

(Upon a vote had Mr. Evans declared the motion carried.)

MR. A. L. MORGAN: I am going to offer my services to the incoming Bar Commission and help work that thing out and I want Mr. Evans on there also and I think the best thing is to leave him where he is.

MR. HYATT: I move Mr. Evans be elected as chairman of this organization and that we elect Mr. Eugene S. Ware as Secretary. There is some work to be done on this thing until this organization gets to functioning a little smoother under this committee and I think somebody should move that nominations be closed.

MR. GOFF: I move that nominations be closed and a unanimous ballot cast for them.

MR. A. L. MORGAN: You have heard the motion. Signify by saying "Aye."

(Thereupon said motion carried unanimously.)

ADJOURNMENT

PROCEEDINGS

VOLUME XIV

FOURTEENTH ANNUAL MEETING

of the

IDAHO STATE BAR

1938

A. L. MORGAN, President, Moscow

SAM S. GRIFFIN, Secretary, Boise

COMMISSIONERS

J. L. EBERLE, Boise; WALTER H. ANDERSON, Pocatello

COEUR D'ALENE, IDAHO

July 22, 23, 1938

PROPOSED RESOLUTIONS

Pursuant to directions of the 1937 meeting that proposed resolutions be submitted in writing to the Secretary and by him mailed to members prior to the meeting of the Idaho State Bar, the following were so proposed and mailed for consideration and action at the 1938 meeting of the Idaho State Bar, July 22, 23, 1938, at Coeur d'Alene, Idaho:

I

RESOLVED, That practice and procedure in Idaho Courts should be fixed and regulated by Rules of the Supreme Court, and that the Legislative Committee of the Idaho State Bar is hereby instructed to draft, and endeavor to secure enactment of, all necessary legislation therefor.

II

RESOLVED, That the Supreme Court be, and hereby is, respectfully requested to cause to be appointed a committee of members of the Idaho State Bar to aid and assist the Court in the preparation of Rules of Practice and Procedure in the Courts of Idaho.

III

RESOLVED, That so far as practicable Rules of Practice and Procedure in the Courts of Idaho, which may be adopted by the Supreme

Court, should conform to the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States, pursuant to the Act of Congress June 19, 1934 (48 Stat. 1064).

IV

RESOLVED, That the Supreme Court be, and hereby is, requested to amend its Rule 43 so as to allow as costs the actual amount expended or incurred for printed briefs up to 45 pages.

V

RESOLVED, That the Supreme Court be, and hereby is, requested to amend Rules relating to oral argument so as to provide: (a) 15 minutes more time for appellant than respondent, because of necessity of statement of facts by appellant; (b) the Court shall examine the records and briefs prior to oral argument; (c) that the Court, after prior examination of the record and briefs and upon reasonable notice to attorneys prior to oral argument, may state the matters upon which the Court desires oral argument, and limit argument thereto; (d) the Court, after examination of records and briefs, or after argument, may submit to the attorneys questions to be briefed, or further briefed.

VI

RESOLVED, That the annual license fee for attorneys be increased from $5.00 to $7.50, provided the same is appropriated for the use of the Idaho State Bar and its Board of Commissioners, and the Legislative Committee is hereby directed to draft, and endeavor to secure enactment of, all necessary legislation therefor.

VII

WHEREAS, Experience has demonstrated that the present method of handling contested Workmen's Compensation cases results in numerous appeals to the Courts and consequent expense and delay to injured workmen:

NOW, THEREFORE, RESOLVED, That the Board of Commissioners appoint a committee of the Bar to study the question, draft legislation providing for trials of such contested cases in the Courts, and otherwise relieving workmen of expense and delay, and that such committee use its best efforts to secure enactment of such lgislation.

VIII

WHEREAS, The expense of investigating and examining applicants for admission to the Bar greatly exceeds the $3.00 fee now required to be paid by applicants, and such additional expense is a burden upon the finances available for the work of the Idaho State Bar:

NOW, THEREFORE, RESOLVED, That the Supreme Court be, and hereby is, requested to require applicants not theretofore admitted to practice elsewhere to pay an investigation and examination fee of $25.00, and those theretofore admitted elsewhere to pay an investigation and examination fee of $50.00, and providing that the Board may keep the fees so paid in a fund from which the Board may pay

expenses of and connected with investigation, examination, and admission of applicants.

IX

RESOLVED, That the Board appoint a standing Committee on Law Books, Publications and Directories, whose duty it shall be to pass upon and make recommendations concerning law books, law publications, and directories offered for sale or subscription to members of the Idaho State Bar; and

RESOLVED, That it is the opinion of the Idaho State Bar that members should not purchase or subscribe for such books, publications, or directories until after the publisher shall have submitted the same to such Committee; and

RESOLVED, That such Committee shall have authority to make rules and regulations concerning the examination, opinion on, publication or distribution of information concerning such books, and the disposition of such thereof as publishers may submit to such Committee.

X

RESOLVED, That amendments of the Canons of Professional and Judicial Ethics adopted by the American Bar Association since February 4, 1937, and to the date of this meeting, be and they hereby are adopted as amendments of the Canons of Ethics of the Idaho State Bar.

JULY 22nd, 1938

(FIRST DAY OF MAIN BAR CONVENTION)

(Presided over by A. L. MORGAN, President, Idaho State Bar)

PRES. MORGAN: Gentlemen of the Idaho State Bar, this is the time set for the convening of our 1938 Session.

The first thing on the program will be the annual report of the Secretary, Mr. Sam S. Griffin.

MR. GRIFFIN: The Board, consisting of A. L. Morgan, President, J. L. Eberle, Vice-President, and Walter H. Anderson, who was re-elected in July, 1937, for a second term of three years, has held five meetings during the past year.

Financial Matters

One of the important considerations this year has been that of the financial situation of the organization. Reference to past appropriation reports contained in the published proceedings will show that, particularly where disciplinary trials are had, annual expense is greater than receipts. The fact that in the early years of organization a surplus was created has made possible continuance of the work of the Bar, but this

surplus is about exhausted, notwithstanding that attorneys who have, at the direction of the Board, prosecuted disciplinary proceedings have served without compensation. It has been the desire of the Board to relieve such volunteers of this burden and to provide an investigator and prosecutor who would be paid, at least in part, but the funds available have not permitted this. Suggestions of increasing the annual license fee to $7.50 have met with opposition as well as favor, and this is up for discussion again this year. A serious consideration by the members should be given.

Cost of Examinations and Admissions

In this connection attention has been directed to the cost to the Bar of investigating, examining and admitting applicants to the Bar. Under rule of the Supreme Court each applicant pays a fee of $3.00 for investigation and examination. This is far below the cost to the Bar. Allocating a fair proportion of general office and travelling expense to the cost, since a considerable part of the Secretary's and stenographer's time is required therein, and a large proportion of four meetings of the Board is required in investigating applicants, preparing questions and grading, an analysis shows that it has cost the Bar $2411.44 in the past three years to give six (6) exminations, or $401.90 each. Ninety-three persons were examined in that time at an average cost per person of $25.92. Yet the Board receives from this source but $3.00 per person, or a total in the three years of $279.00, a net loss of $2132.44.

Should the applicant pay at least approximately the cost of his admission? It will be noted that did he do so the Bar's deficits would be taken care of.

No other State charges so little as Idaho. Only one State charges as low as $5.00. Four charge $10.00. One charges $10.00 if applicant has been a resident five years, otherwise $35.00; one charges $10.00 for certain classifications, $35.00 for others; one charges $10.00 for the first and $5.00 for each subsequent examination; one charges $10.00 for each examination; three charge $15.00; two charge $15.00 for each examination; one charges $15.00 ($18.00 if applicant admitted elsewhere), $20.00 for the second and $25.00 for the third examination; four charge $20.00; one charges $23.00; one charges $20.00, which covers two examinations, and $20.00 for a third examination; ten charge $25.00; one $23.50; one $25.00 for the first and $15.00 for the second; one $25.00 for each examination; one charges $25.00 unless applicant is admitted elsewhere, in which event he pays $50.00; one charges $35.00, covering two examinations, and $35.00 for each additional examination; one, as above pointed out, charges $35.00 if applicant has been a resident less than five years; one charges $50.00 if applicant is admitted elsewhere, and $25.00 if not.

In Idaho a certificate permitting examination is good for one year, and this covers two examinations. In view of the cost, and charges in other states, is it unfair to charge an applicant $25.00?

Should an applicant, admitted elsewhere, be charged a larger fee? There are no admissions on motion or certificate in Idaho, all applicants

being required to submit to examination. But the cost to the Bar of such applicants is commonly greater, due to the Board's policy of making more stringent character investigation of such applicants. It is not unusual in other states to charge such applicants a greater fee whether admitted on certificte or by examination. Thus, six states charge $100.00; one $75.00; one $65.00; five $50.00; one $40.00; three $35.00. The National Board of Bar Examiners has set up a character investigation service covering attorneys who move to other states, charging $25.00 for each investigation, and several states require the applicant to pay the cost of the service, or include it in the charge. Idaho has been unable to employ the service because of lack of funds. Would it be unfair to add this cost to the applicant admitted elsewhere and removing to Idaho, making the charge to him $50.00?

Admissions

One prelegal education examination was given; 36 certificates permitting examination issued; 49 applicants (of whom 7 had been previously examined, 3 twice, and failed) were examined; 18 recommended for admission; 31 (including repeaters) having failed examination; 4 were denied certificates permitting examination.

The method of grading was modified to make even more impossible the identification of applicants. Board members prepared, and before examination the whole Board passed upon and approved, the questions to be given at the two examinations. Grading is done by the Board with the assistance of readers; each answer of each applicant is graded by four persons and the four results averaged, the average being the grade assigned.

Illegal Practice

Three investigations of alleged illegal practice were made. One contempt proceeding was tried and decision of acquittal rendered by the Supreme Court upon the facts. The decision on demurrer was called to the Bar's attention in my report last year (In re Mathews, 57 Ida. 75). The last decision (In re Mathews, 79 Pac. (2) 535) repeats the rule laid down in In re Eastern Loan & Trust Co., 49 Ida. 280, and finds the fact to be that Mathews did not prepare or draft legal instruments, but merely acted as a scrivener, inserting data in forms of deeds, mortgages, contracts, leases and bills of sale at the direction of individuals concerned; that he did not give legal advice. In the case of J. M. Shank, Twin Falls, the Supreme Court imposed a fine of $250.00 for contempt in illegally practicing law.

Discipline

Thirteen disciplinary matters were considered; three were dismissed as presenting no cause; three are pending; in two, hearings have been had, and in both suspension recommended by the Board to the Supreme Court, which has not yet entered orders; in three action has been ordered; and two were adjusted and dismissed.

Local Bars

In addition to matters referred to Local Bar Associations for con-

sideration by the last annual meeting, the Board has from time to time referred other matters, in line with the policy to contact, so far as possible, every lawyer in Idaho and give opportunity of expression upon questions of general interest. Such matters are listed on the program of the Local Bars Section, and reports of that Section thereon are scheduled for this meeting.

In formulating the program for this meeting the Board met with the Recommendations Committee, consisting of Carey Nixon, Boise; Kenneth Mackenzie, Idaho Falls; and Paul Hyatt, Lewiston, and with P. J. Evans, Chairman of the Local Bars' Section.

Appropriation Funds

Balance July 4, 1937	$ 2,745.80
Receipts, license fees to July 7, 1938	2,500.00
Total	$ 5,245.80

Expenditures

Office expense	$1,341.52	
Travel	402.43	
Meetings	326.05	
Publication 1937 Proceedings	411.62	
Examinations	142.98	
Discipline	487.79	
		3,112.39
Balance in appropriation July 7, 1938		$ 2,133.41
Seven years' receipts (1932-1938)		$19,013.00
Seven years' expense (1932-1938)		20,406.99
Excess of expense		$ 1,393.99

Licensed Attorneys

	Average 1931-1937	1938
Northern Division	127	123
Western Devision	275	273
Eastern Division	131	127
Non-resident	24	26
	557	549

Deaths

The following deaths have been reported since the last meeting:

James F. Ailshie, Jr., Boise
Peter A. Anderson, American Falls
L. L. Burtenshaw, Council
J. E. Gyde, Wallace
Alex Kasberg, Lewiston
Roscoe I. Keator, Bonners Ferry

E. D. Reynolds, formerly Jerome, Woodland, Calif.
John C. Rice, Caldwell
I. N. Sullivan, Boise
P. T. Sutphen, Gooding
T. A. Walters, formerly Caldwell, Washington, D. C.
Alex M. Winston, Spokane, Wash.
Robert R. Wedekind, Driggs

PRES. MORGAN: On the canvassing committee for the election of the Northern Division I will appoint Robert E. McFarland, Sandpoint, E. A. Stellmon of Lewiston and Murray Estes of Moscow.

This is the time provided in the program for the annual address of the President.

Section 1 of Article II of our Constitution provides:

> "The powers of the government of this state are divided into three distinct departments, the legislative, the executive, and judicial and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others except as in this constitution expressly directed and permitted."

A subsequent Section of the Constitution provides:

> "The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, probate courts, courts of justices of the peace, and such other courts inferior to the Supreme Court as may be established by law for any incorporated city or town."

While the judicial power of the State is by the Constitution vested in all of the courts of the State, the judicial branch of the government is in reality vested in the Supreme Court, by reason of the fact that such Court is the final arbiter of all such courts. Since Justices of the Supreme Court are selected from members of the Idaho State Bar, it becomes apparent that the Idaho State Bar is directly responsible to the people of the State of Idaho for the conduct of the judicial branch. It is not likely anyone will contend that the mere election of a lawyer to a judicial position adds anything to his knowledge of the law or increases his wisdom in any way. Such election, of course, clothes him with the right to exercise certain judicial powers, but it does not and cannot add to or decrease his ability to judiciously exercise such powers. Therefore, since the judicial power of the State is to be exercised by the courts of the State, and since it is a fact that the men charged with the final exercise of this duty, not necessarily but as a matter of fact, are chosen from the ranks of the Bar of the State, it becomes apparent, in the final analysis, that the Idaho State Bar in reality is the judicial department of the State.

Under our present system of choosing judges, we may reasonably expect that our justices of the Supreme Court and our District Court

judges will compare, as a whole, favorably with the Bar as a whole, and we may not reasonably expect that our judges as a whole will rank any higher or better than this Bar as a whole. Not long ago our judges owed their success at election time to the fact that the particular political party to which the candidate belonged was in the majority. Under our present system our judges are chosen by reason of the vote-getting ability of the particular individual. The rank and file of the voters of the State are not acquainted with the candidates or their qualifications and have no means of advising themselves as to the merits or demerits of the individual seeking a judicial position. With all due regard to the position of the members of our Supreme Court and without wishing to detract in any way from the honor which any member of that body may think has been conferred upon him, it is doubtful if twenty per cent of the voters in Idaho today can name the members of that Court. While the members of the Court are in no manner responsible for this condition, it is a situation that may well be pondered by any individual inclined to feel that he has been signally honored by his choice to the judicial position which he holds. In a lesser degree, the same thing applies to trial judges. In view of the fact that our judges are chosen by votes the majority of which have been cast at random, in the past we have indulged and now can only indulge, the hope that we may have the good fortune to place the judicial affairs of the State in the hands of fairly representative individuals chosen from the ranks of the Idaho State Bar. The proposition is not offered as a reflection on our present judiciary or any member thereof, but it is advanced as a challenge to this Bar to regulate its membership so that the fact that a man is a member of the Bar will be an unimpeachable guarantee of his proper qualification to a position on the Bench.

The Bar is faced with the duty of, as speedily as possible, eliminating those members who are unworthy of a place in the judicial department of this State. It is our duty to rid our ranks of those members whom we ourselves would not be willing to trust on the Bench. We, as a Bar, are obliged not only to ourselves but also to the rest of the people of the State to see to it that no man or set of men are ever placed upon the Bar Commission who will not, with the utmost care and circumspection, guard the portals of this organization by refusing to admit any individual who is not morally and educationally equipped to perform his full duty in respect to the affairs of the judicial department of the State.

With this idea in mind the present Bar Commission has adopted the policy of conducting examinations for admission to the Bar with the utmost fidelity and without the slightest regard to a candidate's position or connection either political, social, judicial, or ecclesiastical. So far as the grading of an applicant is concerned, under the system as now adopted, the examiners do not know whose papers are being graded; on the other hand, the Commission does know the individual when he applies to the Commission for permission to take the examination and it is then that a Commissioner is in duty bound to vote conscientiously on that application and to base his vote strictly upon the information

before him as to the character of the applicant and, at every peril to himself, to refuse to vote "yes" merely because of the connections of the applicant. It will, therefore, be seen that the refusal to admit a candidate to the Bar of Idaho is not based solely upon the idea of protecting the Bar against overcrowding nor the public against incompetent practitioners as such, nor solely upon the idea of protecting the individual himself from adopting a line of work for which he is not qualified, but it is also based upon the broader ground that whenever an individual is admitted to this Bar, he becomes automatically a part of the judicial branch of our State government. That even in his private life as a practitioner, he helps to shape the policies of that branch of the government. He is from the date of his admission a potential judge or justice through whom the judicial power of this branch of government will be administered. It is therefore highly essential that we eliminate a weak or corrupt potential judge by refusing to admit such a candidate to our ranks, thereby eliminating the possibility of foisting him on the Bench by the votes of an ill-advised public. No individual lacking the training, fortitude, wisdom, and moral background required in the make-up of a good judge should ever be admitted to this organization. Without such qualifications he would not make a decent lawyer anyway.

Quite often we read of and hear of this or that member of the Bar being "elevated to the Bench." It is an expression out of harmony with my view. The active practitioner in the legal profession is a greater power for good, and likewise a more potential power for evil, than any man occupying a judicial position today. This Bar can keep the courts clean and efficient. The courts, while they can greatly aid, can, unassisted, neither make nor keep the Bar clean. When this Bar functions as it should function, then many uncertainties of law will vanish and likewise many of the faults now attributed to courts will vanish. Given a Bar which is above reproach, it must follow that we will have a judiciary which is above reproach. A weak or corrupt judge does not warrant condemnation of the Bench as a whole but does warrant criticism of the Bar. It is our responsibility.

The means of accomplishing this set-up is easily in reach. When every lawyer realizes that his sole well-being is dependent upon the profession which he has espoused; when he realizes that during the years of his practice he has maintained himself and his family solely by reason of the fact that he is a member of the Bar; when he realizes that, having taken from the store houses of the profession his very all, he is thereby indebted to the profession for the full measure of his success and that he should give, correspondingly, of his ability and time and money to the maintenance of the profession, then we will begin to pull together and to realize our hopes for a more nearly perfect Bar, our hopes for better courts, and our hopes for a better judicial department of the State.

If we are to strengthen our organization, if it shall have the healthy growth for which we hope, a definite plan must be adopted with that end in view. As a first step in that direction, we should establish closer

cooperation between the Idaho State Bar and the Idaho College of Law. Best results can only be obtained through close harmony between our organization and the institution from which we draw the greater portion of our new members. From that moment a student enrolls in that institution he should be taught as to his duties to the State Bar so that when he finally becomes a member of this organization, he will be an active member in its behalf. While there should be close association and complete cooperation between the Bar and our law school, the Bar must ever remain the dominant factor in that combination.

From a study of the various sets of papers it has been my pleasure, and pain, to assist in grading, one of the most outstanding delinquencies of all law schools appears to be their utter failure to teach anything practical. They turn a novice loose upon an unsuspecting public without the slightest training on how to apply the abstract principles of law and theories with which he has been crammed for three years. These applicants for admission are unable to draw the simple pleadings incident to an action on a promissory note or a suit for divorce or name the court in which the proceeding should be brought. To overcome this difficulty a course of study can be worked out which will add a year's time in the law school, that is make the law course a four-year course, and still not require a student to spend any greater time in his entire college work than he now spends. It probably would not be practical or advantageous to require the student to add an additional year to his entire school work. On the other hand, it should be advantageous to weed out possibly a year of studies that are of no special benefit to the student and add in its place a year of practical training given by practical people. After all, education in general subjects, so far as a lawyer is concerned, is beneficial only insofar as it enables the individual to think clearly, to reason, analyze, and apply, and it can make no difference whether that result be reached through an arts course or any other method beyond high school teaching, or whether that ability be obtained in some other way. In other words, from the standpoint of a lawyer, if the individual can think clearly, can analyze, can reach a proper conclusion and apply his conclusions to the problem before him, he has the necessary general educational qualifications to become a good lawyer through proper law study whether he has a college degree or has not. To effectuate this plan, it will only be necessary to eliminate some subjects from the general college course and, in lieu thereof, an additional year in law college be substituted with the teaching for that year to be conducted by active practitioners. It has been suggested that we cannot eliminate anything from our present college requirements without our law school losing its standing. Three years' experience in grading bar examination papers covering applicants from all well-known schools may lead the examiner to suspect that all accredited schools should lose their standing. Having an accredited school, of course, is highly to be desired, but the production of a better output of the school is much more greatly to be desired. If then, it becomes necessary to so change our system that we will lose our standing as an accredited school, but by so doing produce better lawyers, there should be no difficulty in determining which course we should adopt.

The year's practical work should be entirely practical and taught only by practical people save that it might be advantageous for the regular professors to conduct, during that year, some review work of the preceding year. In order to carry out that sort of program, it may be necessary to amend the rules and regulations governing the Idaho State Bar so as to provide that any practitioner in the State may be drafted for the purpose of delivering so many lectures and conducting so many hours of class work each year as may be necessary to attain the desired result. Such a plan should not require more than a week of any indivdiual lawyer's time during any given year. The question of compensation can be handled in accordance with future developments. If the legislature in fixing a budget for the law school can be induced to include sufficient money to pay for such teaching, then the individual lawyer could, of course, be compensated for his services. It is highly probable, however, that it would only be necessary to ask the legislature for sufficient money to defray the expenses of these attorneys in carrying on this work. Every individual member of this Bar owes it to the profession to perform this service and under the rules as they now exist, or with minor amendments, any attorney who is not willing to do his part, and who will not do so upon call, can be subject to disciplinary proceedings. Any individual who refuses to perform this service, should the plan be adopted, should be removed from the rolls of the Idaho State Bar, because a lawyer unwilling to do his full duty and who loves the organization merely because it furnishes him a means of livelihood is a detriment to the Bar and ought to be eliminated. Such a plan would require some legislation and, no doubt, some cooperative action by the school authorities.

Possibly, it will be better to require a year's service in, or connection with, a law office, it being understood, of course, that the candidate for admission would not receive any compensation while connected with such office. As a matter of fact, a student just out of school would be more or less of a nuisance in the office of an active practitioner and in order to be sure that each graduate from the University would have a law office connection, it would probably be necessary to make the acceptance of such students in an office, for a limited time at least, mandatory on the attorney. Some other plan more practical than either of these suggestions can no doubt be devised. The matter, however, of requiring practical education or training probably should be referred to a committee for consideration and that committee's report submitted to the various local organizations of the State with instruction to send delegates to next year's Bar Meet prepared to act on the matter.

Another thing which should be done is to provide a means whereby this organization will be furnished with adequate finance to carry on its operations. It costs us money to successfully operate. An increase in the license fees would, of course, aid the organization as a whole and yet such an increase is subject to objection that it will actually work a hardship on some of the members. It should be possible by donation

to start a permanent fund, to be handled either by the Commission, or preferably by trustees elected for that purpose, which fund should in time grow to an amount sufficient to enable the Bar to relieve deserving individual members from the payment of Bar dues either for limited periods, or permanently. In time to come, it might be possible to abolish license fees entirely and, in any event, it would furnish money to carry on any meritorious work which the organization as a whole might approve. Such a fund could be built up not only by present donations, but by members remembering the organization in their wills in large or small degree in accordance with the condition of their respective estates.

We should separate our finances from the State of Idaho. The State contributes not one penny in tax money to this organization. Up to the present time we have been, and it is to be hoped and confidently expected we always will be, self-sustaining. If we should seek and obtain appropriations of State funds from the legislature for the direct relief of this organization, any money we might get would not be a sufficient consideration to justify a surrender of our independence.

Under the present system, there may be law for but there is no legitimate reason why the State Board of Examiners should pass upon the bills of this organization and there is no reason why the legislature should be permitted to appropriate our own funds to our uses before we can use our own money. There is grave danger that at some future date, if we happen to have a little money on hand that the political hirelings of the State desire to use for their purposes, we may find our money appropriated by the legislature to other ends and gone beyond recall. This meeting should direct its Bar Commissioners to take the necessary steps, whatever they may be, to withdraw the funds of this organization from the State Treasury and by proper set-up keep them forever separate and apart from the funds of the State and out from under the domination and control of the State government. Grave legal questions are involved in taking this step and the Commission should not be expected to work the matter out alone. The Commission, however, already has the power to call to its aid the entire Bar of the State if necessary and if instructed to take the necessary steps to bring about the result desired will, no doubt, refer the matter to a committee with instructions to investigate all legal points involved and report to the Commission. If thought necessary, the Commission can refer the report of that Committee to the various local associations, though this step would probably not be necessary.

Your present Commission has undergone the experience of having to finance the work of the Bar from outside sources, and this at a time when there was ample money belonging to the organization laying in the State treasury, but which money the State refused to pay over because the legislature had assumed to budget our funds and appropriate a certain amount to be used by us in a given two-year period. An emergency arose which exhausted the appropriation and we had to run a number of months as best we could with our own money lying idle in the State Treasury. One experience of that kind is ample and should

justify us in taking necessary steps such as will make a recurrence of that condition impossible.

Let us hope the time is here when every member of this organization will feel that his first duty is to this organization. If we conduct our own portion of the government properly, the balance of the affairs of state will thereby benefit. If every member of this organization determines that in return for reaping the benefits of the organization he will give benefits to it; if the young men in the University are taught that one of the privileges of admission to the Bar is the privilege and duty of working for and strengthening this organization; if they are taught their career is not to be one of money-making nor yet to be one of merely overcoming an adversary in a court proceeding, but that in their daily struggles as private practitioners, they are carrying on a part and parcel of the duties of the Judicial branch of government, this profession will speedily take its proper place. When the lawyers of this State pull together, this organization will become the greatest power in the State. Under these circumstances, it behooves us to keep the ranks of the profession clean to the end that that power be not abused.

May each member and each applicant for admission ponder and adopt for his guidance, as herein modified, the advice of Polonius to his son:

> This, above all; to the Bar's code of ethics be true,
> "And it must follow as the night the day,
> Thou canst not then be false to any man."

(After the address the members of the Bar stood and applauded.)

PRES. MORGAN: At this time I desire to appoint a committee on resolutions the duties of which will be to present such matters as should be presented and were not included in the report from the Local Bar Section. I will appoint on that Commission, E .A. Owens of Idaho Falls, as chairman; Ralph Breshears of Boise, and C. H. Potts of Coeur d'Alene.

Next on the program will be the report of the Judicial Section, the Hon. Chas. F. Koelsch of Boise.

HON. CHAS. F. KOELSCH: Gentlemen, we have no written report to make. The Judicial Section met in this hall yesterday with twenty percent of the Supreme Court and twenty-five percent of the District Judges. But I think I can truthfully say what we lacked in numbers we made up in work and in enthusiasm.

You will notice from the program that the subjects assigned to the Judicial Section were three in number. The "Judicial Retirement Statute" for Idaho; "Annual Meeting of Judges Statute" and "Affidavit of Prejudice Statute."

We considered two of these and postponed consideration of the third one. Our greatest discussion was had on the first subject, as you may well imagine it would be. Perhaps if that subject had come from

the body of this association it would not come with the discount that will be given it coming from the Judges themselves. As to my report and as to my remarks, I shall read the proposed bill that we agreed upon yesterday and recommend its adoption. I have here a number of them that I would like to pass amongst you and when I get through you will want to discuss the subject probably section by section, but I will read the whole bill so as to give you an idea before taking up its discussion.

AN ACT

Providing retirement compensation for Justices of the Supreme Court and Judges of the District Courts upon retiring from office after service for a period of not less than ten years and after having attained the age of sixty-five years; creating a Judges Retirement Fund out of which to pay such compensation; providing for the constitution and replenishment of such fund by additional fees in civil actions, and by contributions thereto by incumbent justices and judges, and directing an appropriation out of the General Fund in case of necessity therefor.

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

PREAMBLE

An efficient and independent judiciary is one of the mainstays of a government of laws.

Reasonable inducements should be held out to invite men of special ability and character to accept the offices of judges of our courts. Adequate salaries should be paid, and independence of action assured. But in the nature of things such salaries cannot equal the rewards generally won by men of exceptional abilities in private practice.

Happily there are many such men whose goal is not great wealth; who are altruistic enough to give their talents and their service to the public, if they can be assured of a competence when the ravages of age make arduous labor no longer possible.

For these reasons, we believe and declare that a retirement compensation for judges of our courts who have rendered long and faithful services tends to the stability and well-being of our State.

Section 1. Every person who has heretofore served, or is now serving, or who shall hereafter serve as a justcie of the Supreme Court, or as a judge of a District Court of this State, for an aggregate period of not less than ten years, whether continuously or not, and whether as a Supreme Court justice or as a District Judge, or part of said time as a justice of the Supreme Court and part as a judge of a District Court, and who has ceased to hold such office either because of the expiration of his term, or by voluntary retirement therefrom other than retirement in the face of impeachment charges against him, shall, when he attains the age of sixty-five years, be entitled to receive and shall be paid an annual retirement compensation during the residue of his natural life. Such retirement compensation shall be an amount equal to

one-half of the salary or compensation such justice or judge was being paid at the time he retired from or ceased to hold office, and shall be paid monthly out of the Judges Retirement Fund hereinafter established, in the same manner that salaries of the judges of said courts are paid out of the General Fund of the State.

Section 2. For the purpose of paying the retirement compensation by the foregoing section provided, there is hereby created in the office of the Treasurer of the State of Idaho a fund to be known as the Judges Retirement Fund.

Section 3. The said Judges Retirement Fund shall consist of all moneys received from special fees to be paid by the parties to civil actions in the several District Courts of this State, and by the parties to such actions when appealed to the Supreme Court, as hereinafter specifically prescribed, together with all contributions out of the salaries and compensation of incumbent justices and judges, as hereinafter specifically provided.

All sums of money so accruing to the said Judges Retirement Fund are hereby appropriated to the payment of the annual retirement compensation of retired judges and justices, and, if at any time the amount in said Judges Retirement Fund shall be insufficient to pay current annual retirement compensations in full, the succeeding session of the Legislature shall appropriate out of the General Fund of the State, not otherwise appropriated, in behalf of said Judges Retirement Fund, an amount sufficient to pay the deficiency.

Section 4. In addition to the fees and charges to be collected by the Clerks of the several District Courts of the State as provided by Section 1-1107 and 30-2701, I. C. A., as amended by Laws 1937, Chapter 88, such Clerks are hereby authorized and directed to charge and collect from the plaintiff in a civil action, and as part of the cost of filing the complaint in such action, the sum of $2.00, and from the defendant in such action upon making an appearance in said action, the sum of fifty cents; and upon the filing of a cross-complaint by such defendant, the further sum of fifty cents; and the Clerk of the Supreme Court is hereby authorized and directed to charge and collect in addition to the fees prescribed by Section 1-402, I. C. A., and as part of the cost of filing the transcript on appeal in each civil case appealed to the Supreme Court, the sum of $2.00; and the said Clerks of the District Courts and the Clerk of the Supreme Court are hereby required to remit all such charges and fees hereby authorized, on the first Monday of each month after receipt thereof, to the State Treasury, and the State Treasurer is hereby directed and required to place all sums so received from the said Clerks in and to the credit of the Judges Retirement Fund.

Section 5. Every justice of the Supreme Court, and every judge of a District Court of this State, now holding office, and every person who shall hereafter assume by election or appointment, the office of a justice of the Supreme Court, or of a judge of a District Court, desiring

to avail himself of the provisions of this Act providing for retirement compensation, shall file in the office of the Treasurer of the State of Idaho, a written statement signifying his intention to become eligible to receive retirement compensation, and agreeing, in consideration thereof, that the State Treasurer may, each month during the continuance in office of such justice or judge, deduct from the monthly salary of such justice or judge, an amount equal to two and one-half percent of such monthly salary, and that the said Treasurer shall transfer and credit such deductions to the Judges Retirement Fund, and the State Treasurer is hereby directed and required so to do.

Such statement shall be so filed in the office of the State Treasurer, by all present incumbent justices and judges, within 30 days from and after the passage and approval of this Act, and shall be so filed within 30 days after the assumption of office by all justices and judges hereafter elected or appointed to such offices. No justice or judge now holding office, or who shall hereafter be elected or appointed, shall be eligible to receive the retirement compensation provided for by this Act, however long he may serve, unless he shall file the statement in this section provided; Provided, that any justice or judge having complied with the requirements of this section, may upon retiring from office, waive his right to retirement compensation, and claim return to him of all deductions from his salary made under the provisions of this Act; and the estate of any justice or judge who, having complied with the provisions of this section, but who shall have died prior to receiving any retirement compensation, shall be entitled to return of all deductions from the salary of such deceased justice or judge which may have been placed into the Judges Retirement Fund.

In addition to adopting and recommending the enactment of this bill, the Judicial Section unanimously agreed to recommend to this meeting the repeal of the so-called affidavit of prejudice statute and the enactment instead thereof of practically the old statute requiring the setting forth of facts constituting prejudice of the judge.

Mr. Chairman, I move the adoption of this report.

(Voice): Second the motion.

MR. ANDERSON: Mr. Chairman, do I understand by this motion that this meeting goes on record as favoring the repeal of the prejudice statute for the disqualification of Judges?

PRES. MORGAN: I am going to ask that the questions be segregated. It is only proper that we be permitted to vote on them separately.

MR. ANDERSON: I am in favor of the Judges' retirement act very heartily, but I would like the opportunity to vote on the other separately.

MR. PAINE: I am not in favor of the retirement fund as to men who are only sixty-five years of age, and I want to hear from those Judges who think that is the proper age. I don't understand why we should retire our judges when they are in mature life at sixty-five years of age. It seems to me that would not be wisdom. Before we vote upon it, will these men, who have agreed upon that, tell us why?

MR. BOWDEN: I am questioning here how they are to be paid one-half of the compensation. We will assume that there has been a District Judge and after, say, three or four years he is elevated to the Supreme Bench. Now, are you going to pay him on the basis of his last earning or a combination? He might only be one month on the Supreme Bench. One other matter occurs to me: upon death, his family can only receive back what he has contributed, but it says he has the right to waive his retirement. In the event he does not waive that retirement, would the family be compelled to accept only what he has subscribed and shouldn't they be entitled to have something to say about waiving the rights of that to which he is absolutely entitled?

JUDGE KOELSCH: I imagine, after a man is dead, it is very hard to waive anything. Supposing a man is elected District Judge for four years and he qualifies under this act and he is defeated for re-election or any other reason declines to be re-elected, the amount that is deducted from his salary he gets back. On the other hand, if a man dies before he has served his ten years and before the compensation is paid to him, his estate gets back everything he has had deducted from his salary.

MR. HUFF: I have hastily read the pension bill submitted by Judge Koelsch during his report of the judicial section and while I have not had time to digest it thoroughly, I wish to make some observations.

The proposed bill by its terms does not provide a justice must be in office at age 65 or later retirement time provided in the bill. The bill provides that after a judge has served ten years, he is eligible to retirement when he reaches age 65. This makes it possible for a young man to sit upon the bench ten years and then retire to private practice or other business and still be eligible to a pension of one-half the salary which was being enjoyed by judges at the time of his retirement.

The present salary of district judges is $4,000 a year and all justices of the Supreme Court receive $5,000 a year so the pension would amount to from $2,000 to $2,500 a year.

The bill provides that the judges shall contribute from their salary two and one-half percent of the salary annually or $100 to $125 a year and since the period of incubation is ten years, it would make a total contribution of $1,000 by district judges and $1,250 by justices of the supreme court.

To provide a pension of $2,000 a year for a male life at age 65 requires a fund of somebody's money of approximately $20,000 and this contribution of $1,000 toward the $20,000 does not seem adequate. It

would seem that the judges should make a larger contribution and at all events, not less than five percent.

The bill suggests a pro rata refund to the widow of the contribution of the judges in event of their death prior to the time that he has used up his contribution after taking the pension. If the judge had served twenty years prior to retirement, his contribution would be $2,000 and would be used up if he lived one year.

I would suggest that the widow of the judge be taken care of upon a joint and survivorship basis. Tables for joint and survivorship factors are readily obtainable and could be included in the bill so that the justice, at the time of retirement, could make the choice to accept a smaller pension but have it paid to the expiration of the longest of his own or his wife's life. If the husband and wife are both 65 years of age at the time of retirement, the pension would be reduced in the amount of sixteen percent or if the wife were 60 years of age at the time her husband was 65, the pension would be reduced by twenty-one percent.

The bill suggests that funds derived from whatever source for pension purposes be paid into the State Treasury. No machinery is set up in the bill for the investment of these funds and this obviously would seem to be necessary.

The investment problem would never be a large one for the reason that ten years is the period of incubation and most of our judges are now 55 years of age or older and the peak load of pensions should be reached in ten or fifteen years.

There are sixteen district judges and six justices of the supreme court and on the present salary basis, it will require $32,000 a year for retirement of district judges and $18,000 a year for the retirement of justices of the supreme court, making a total peak load of $50,000. This may be reduced somewhat if judges stay on the bench past age 65. The annual income on the two and one-half percent contribution by judges would be $2,500 a year and leave a possible $47,500 a year to be supplied from other sources suggested in the bill.

Due to the fact that a judge must contribute ten years and be age 65 at the time of retirement if retirement is made mandatory, it will have the effect of persuading candidates in the future to seek the judgeship prior to age 65 and will discourage men over 55 years of age from seeking the office. This, I think, is contrary to the experience of the profession in that generally older men seek the office of judge.

I am entirely in sympathy with the general idea of pensions for judges. However, I feel that the matter requires more study as to details.

CHARLES STOUT: Was there any discussion of whether or not if the Judge accepts the retirement plan he should retire from office? Was there any discussion that the Judge if he should accept the retirement he should therefore retire from practice also? And was consideration given Art. 5, Sec. 27 of the Constitution respecting increases or decreases of compensation?

MR. DON CALLAHAN: There is one thing in the bill I want to call attention to, if this is coming from the Bar or the Judicial Branch of the Bar. There is a provision which sets forth that the Legislature shall appropriate and the succeeding Legislature shall appropriate. Now, of course that doesn't sound very well coming from the Judicial Section because that is absolutely invalid and should be left out.

JUDGE KOELSCH: That, Mr. Callahan, was put in there because some years it might happen that a number of Judges would be drawing pensions and at the same time there would not be quite sufficient to pay the retirement compensations and then, in that event, the Legislature would be called upon. The question was whether a continuing appropriation should be made and personally I am opposed to a continuing appropriation for anybody. I think, if this is a meritorious proposition, they should go before the Legislature and bring it up. Just as you say, it is simply advisory, not binding, on them, not any one of them and the Legislature itself should take care of it.

However, I am satisfied if there is provided $2.00 in each civil case in the District Court and $2.00 from every case appealed to the Supreme Court and 50c on appearance and 50c on the answer and cross-complaint, that, together with what will be paid by the Judges, will take care of it except in exceptional cases and will provide ample funds to pay the compensation.

When you come to look over the history of the Judges that have retired, you will find that, at no one time, were there more than three who would have been entitled to receive compensation. At the present time, under the age of seventy, there would be only three entitled to it if they retired. But it was suggested here by Mr. Paine, we should not retire them at the age of sixty-five because that is the time, if a man has lived a right life, his mental powers should be at zenith. It is an old saying pertaining to Federal Judges that they never retire except for death. Judges who are on the circuit and have full power of their mental capacities, very seldom retire at that age. Probably we could cut the age down to meet certain individual cases. I have one case in mind where a man is only sixty-five years of age. His physical condition is such that it must be torture for him to conduct court, and if he should retire without compensation such as provided here, it would mean bread and butter to him.

MR. ANDERSON: May I ask a question—There is no part of this fund levied against the respondent in the Supreme Court in this bill. Is there any reason for omitting that? There is $2.00 for appeals to the Supreme Court, but why not make the respondent pay when you make the defendant in the District Court pay?

JUDGE KOELSCH: Might be an over-sight. That is a detail that can be corrected. I see too, there is another correction the Judicial

Section yesterday instructed me to make. That is with reference to the manner in which this shall be deducted.

The suggestion was made that there should be some provision that some officer should ascertain whether the Judge attains the age of sixty-five. A section should be inserted that at the time he files the notice to become eligible, he accompany it with affidavits of his age at the time and that it then become a part of the record of his services.

In addition to that the method of making the deduction of the fee was a suggested change. This provides that the State Treasurer shall deduct two and one-half percent. The State Auditor should be directed to do that—to draw separate warrants for two and one-half percent each month in favor of the retirement fund and deliver them to the State Treasurer. That is one of the little details.

PRES. MORGAN: Those are details and the question for this body at the present time is whether or not we favor such a bill. It ought to be left to the parties who are going to draft the bill to make those various changes. I will entertain a motion to accept or reject this report of the Judiciary Committee on the question of Judges' Retirement bill.

JUDGE KOELSCH: I move acceptance.

(Voice): I second the motion.

PRES. MORGAN: All those in favor of the report will signify by saying "aye." Contrary "no." It is carried.

JUDGE WM. M. MORGAN: I move that the recommendation relative to disqualification of judges be approved by this body.

(Voice): Second the motion.

MR. EVANS: I wish to present some objections against adopting this part of the report of the Judicial Section. It occurs to me that nothing would more prejudice the interest of a party in litigation who might present an affidavit of prejudice seeking a change of judges than to amend our present statute so as to require the setting forth of facts upon which that affidavit is based and permitting the judge to be the one to determine whether those grounds are well founded. I think, in my experience, that the present affidavit works successfully. I can see that if a person or party to litigation presented an affidavit setting forth the grounds and the motion was denied, that the judge might feel very much embittered in the conduct of the case.

We have one case in Utah where the parties were accused by the Grand Jury of some offense and brought before one of the District Judges—and apparently the law of Utah must be similar to what the Judicial Section desires to have in this State—and they sought to disqualify the judge on the ground of prejudice and passed it on to one of the other judges in Salt Lake for determining if prejudice existed: the latter required these parties to go ahead with the trial of the case before the Judge they sought to have disqualified as prejudiced against

them. As far as my experience has been, the present statute is working satisfactorily. In our district, there have been very few cases where the parties to the litigation ever sought a change of District Judges based on the ground of prejudice and I don't think any reputable member of the Bar of the State of Idaho would file such an affidavit under our present law seeking a change of judges unless he had reasonable grounds for believing he could not get a fair trial before that judge. For that reason I believe the law should be left in its present condition and parties should have the opportunity of securing a fair and impartial trial.

JUDGE MORGAN: I would just briefly reply by saying this—I am rather inclined to agree with counsel that any reputable member of the Bar will oppose this measure. Unfortunately, we appear to have some not of that description. Very few of them. But this would avoid abusing the privilege of the prejudice statute. It is just a matter of having a statement of facts from which he draws the conclusion that he cannot have a fair and impartial trial. The members of the Judicial Section are of the opinion the abuse is so grave that they ought to go back to where we were prior to 1933, if a litigant desired to change judges or a change of venue, he must not only set forth the conclusion that the judge was so biased and prejudiced against him he couldn't have a fair and impartial trial, but set forth facts from which that conclusion was drawn and allow somebody else to pass upon it. There never was a case prior to '33 where any man was required to go to trial before a biased and prejudiced judge and there never would have been a case if we never had any statute on the subject at all because the Constitution takes care of it. The Constitution takes care of it yet. Now, if you get a judge you have to remove for bias and prejudice, and you have an objection which will justify a reasonable tribunal in determining that, be sure that the Supreme Court is there ready to issue the writ which will prevent the litigant from the necessity of going to trial before a tribunal, which is actually biased and prejudiced. I may say frankly, in my opinion, the law as it is now is a breeder of perjury. I am inclined to think these affidavits not frequently, but occasionally, are made without foundation to them. There are those that are more concerned with it, of course, than I am. The very judges whom it was intended to be rid by this same piece of legislation of 1933 are still running for District Judge.

MR. ANDERSON: I find I can't agree with the learned member of the Supreme Court. Under the old law, the filing of the affidavit resulted in one of two things: the judge ,if he was not big enough to be a judge, became embittered and then he visited his wrath upon the man and his client who dared question his fairness. Now that happened in some cases where the affidavit was overruled. In other cases where the affidavit was overruled, it instilled in the judge a disposition and determination to show the party that he could be clean enough to handle it and give him a fair trial. There is another situation; it has happened where we are before judges before whom we have reason to believe and we do believe we can't have a fair and impartial trial and

if we are required then to tell the judge the facts upon which the conclusion is based—we might not be able to do it or it might be of such a nature it would greatly embarass the attorney and his client. I don't believe that any court should force a litigant into a court before any judge, and I don't understand how the judge would want to try a case, after a litigant had so gone on record. I believe that this recommendation of the Judicial department of this organization ought to be voted down.

MR. PFIRMAN: I heartily agree with the last speaker. No man in this country should be forced to trial of an important lawsuit before a man he didn't trust in that capacity. But you read the case against Featherstone and you will see why you want this statute. I don't believe anybody should be obliged to set up facts for the purpose. Judges ought to be big enough but lots of times they are only men—lots of times they are not big enough. Once you make such an affidavit and you know that everything in it is true you prejudice that judge against you for his whole term of office. I am thoroughly opposed to repeal of the act. A man has no right to go in on an attempt to steal the case from the judge to prolong the time. That is done and we know it. Why can't a provision be put in that act to cut that out?

JUDGE MORGAN: You are familiar with the situation in Ada County in the last six months?

MR. PFIRMAN: I don't believe I am.

JUDGE MORGAN: There have been fifteen or twenty disqualifications one after another.

JUDGE KOELSCH: It seems to me that counsel here made some statements that, if true, certainly are a very severe arraignment of some judges. I don't think they are justified. The Judge has nothing to lose. I have one case in mind where an attorney came to me and said, "Judge, my client signed an affidavit against you and he would rather try it before Judge Brink." I said, "The case goes to Judge Brink." It happened that Judge Brink decided against his client. Some seem to think it is done only by pettifoggers. It isn't. It is done by men who are rated as reputable. I don't see any reason, and they know they have no ground, to change. If they would go to him, I don't believe there is a District Judge in the State who wouldn't accede to their request and change the case to another judge. To do away with part of that question, is the reason I would like to see that statute amended. As Judge Morgan pointed out, if a fellow's case is prejudiced, he has a remedy and he can set it forth and then the Court overrules it, he has his remedy in the Supreme Court. This statute simply opens the door to pettifogging if you want to call it that; it is worse than pettifogging, if I call it.

PRES. MORGAN: I would like to ask some members of the Judicial Branch whether or not they ever attempted to file affidavits of prejudice under the old procedure? I have done it. I realized if I

wasn't right about it I was facing a term in jail for contempt of Court. Unless there is so much corruption in connection with the judge that he should not be on the bench at all, it is almost impossible to disqualify him under your plan. So far, I haven't got the idea of the trial court. It is said the trial judge properly approached will disqualify himself. But if an affidavit is filed then it is his duty to step out, and I am in favor of leaving this law as it is rather than going back to the old one.

JUDGE WINSTEAD: I want to make one observation of the present law. In our district, as some have experienced it, there is one phase which I think is very objectionable; under the present law the affidavit of disqualification can be filed at any time up to and before the time of trial; the objection that I have is this—the attorneys may come in and argue demurrers and motions and then in the event of an adverse ruling, the affidavit is filed. It seems to me if the judge is too prejudiced to proceed with the case, the affidavit should be filed before any proceedings are had. As it works, the affidavit is made out for the purpose of delay and for the purpose of taking a chance on another judge and possibly get two different ideas on the situation and it seems to me that the affidavit should be filed and presented before any hearing in the case.

MR. JAMES: From observations, and I have been told, that is one part of the law that is abused. They will find out the Court's ruling on a demurrer and that the Court is going against them and they immediately file such an affidavit. As it stands now, I am in favor of some such amendment as Judge Winstead suggests. I have seen this situation in parts of the State of Idaho. Some Judges will voluntarily withdraw. The Court is failing of its duty to try a case until such showing of disqualification has been made. Some judges will withdraw on the least intimation if counsel is not satisfied. I say this from experience, I think that the present statute is badly abused. I do think, however, that it could be corrected as suggested by Judge Winstead.

MR. MARCUS WARE: To clarify it a little bit, I think, if it is amended, it should provide the affidavit be filed at the time the party appears and, in the second place, the law should be so amended as to clearly reach Probate Judges in Probate matters. There is no provision by statute calling in a Probate Judge from another county if you attempt to disqualify the Probate Judge at any time.

MR. BROWN: I would like to amend Judge Koelsch's motion; that this Bar go on record as favoring leaving the present statute for the disqualification of District Judges as it is except that the affidavit of disqualification shall be filed before the hearing on any proceeding—in other words, what I am getting at, is the disqualification should be made prior to the hearing of any issue in the matter whether on demurrer or motion or otherwise.

(Thereupon the motion was seconded.)

MR. BOUGHTON: I offer as substitute to all pending motions—that the recommendation of the chairman be not adopted at this time, and that a committee draft an amendment to be taken up at two o'clock this afternoon.

PRES. MORGAN: You have heard the substitute motion.

MR. BROWN: I will withdraw my motion.

PRES. MORGAN: Any remarks. All in favor of the motion, signify by saying "aye."

(Unanimously carried.)

PRES. MORGAN: I will appoint on that committee, Judge Winstead of Boise, Mr. Boughton of Coeur d'Alene and Mr. Jess Hawley.

PRES. MORGAN: I want to announce that you have been extended an invitation to Mr. and Mrs. John Gary's at the close of the proceedings this afternoon.

(Thereupon the meeting recessed until 1:30 P. M.)

(AFTERNOON SESSION, 1:30 P. M., JULY 22)

PRES. MORGAN: The next business on the program is the report of the Prosecuting Attorneys' Section. Mr. Donald Anderson.

MR. ANDERSON: This is the report:

RESOLUTIONS OF PROSECUTING ATTORNEYS' SECTION

WHEREAS, it appears that the present pardon and parole system in this State is unsatisfactory and is unfair to both society and the prisoner, therefore, be it

RESOLVED: That a study be made for the purpose of setting up a non-partisan pardon and parole board, and that a prison reformatory be established for first offenders.

WHEREAS, a serious social problem exists, therefore, be it

RESOLVED: That state hospitals be established for the care, treatment and confinement of inebriates, sex perverts, and persons having venereal diseases.

RESOLVED: That a state police system be established with state-wide jurisdiction, together with a central bureau of identification, and a laboratory for scientific investigation; and that the members of such state-wide police system be selected by Civil Service.

RESOLVED: That the Secretary of State, by Legislative enactment, be required to send copies of all emergency bills to the Prosecuting Attorneys immediately upon the bills becoming effective.

RESOLVED: That all Departments of State issuing rules and regulations and those having authority to enter into reciprocal agreements with other States having or involving penal provisions, be required to furnish certified copies thereof to the Prosecutors of the State.

RESOLVED: That the Prosecuting Attorneys of the State of Idaho express and tender a vote of thanks to Wm. S. Hawkins for his excellent services as President, and to the members of the Coeur d'Alene Bar for their courtesy and hospitality.

PRES. MORGAN: Gentlemen, you have heard the report of the Prosecuting Attorneys' Section, what is your pleasure?

MR. BOWDEN: I move it be adopted.

(Thereupon the motion was seconded.)

All in favor of the motion signify by saying "aye."

(Motion carried.)

PRES. MORGAN: The next matter on the program is the report of the Local Bars Section. Mr. P. J. Evans, chairman.

MR. P. J. EVANS: Mr. President, and members of this association:

Fifteen years and four months ago, our Legislative fathers brought forth a new statute, creating the Idaho State Bar, conceived in the hope that it would improve the morals, and raise the standards of the legal profession, and dedicated to the proposition that the lawyers of this State were entitled to a new and a square deal.

We are met here today, in a great convention, testing whether that statute or any statute, so conceived and so dedicated can endure.

From time immemorial, members of the legal profession have been regarded with suspicion and dislike by the masses of the people. When whirlwinds of rebellion have shaken the world, we have been the first to feel the heavy hand of the mob. Writer and orator, pulpit and press have united in making us the scapegoat for all the ills of society. In the great literature of the world, we are painted as the Pretorian guard of Privilege, the zealous tools of Tyranny. We are held out as corrupt and syncophantic, ever ready to sell our talents to the highest bidder. Bloody Jeffries is pictured as our patron saint. The evil that we have done is magnified with the passage of time, while our good deeds are buried with our bones.

The services and sacrifices on behalf of their country of those great ornaments of our profession such as Demosthenes and Cicero, Ulpian and Quintilian; the great and good chancellors, Sir Matthew Hale and Sir Thomas More; and those luminaries of the American Bar, Patrick Henry, Henry Clay, Daniel Webster, Abraham Lincoln, Colonel Ingersoll, and Clarence Darrow, to name only a few, are remembered to our credit not at all, while our sins are published to the four corners of the earth. Yet it is a truth of the first magnitude, that in the cause of human liberty, no class has been more faithful, more valiant, or more serviceable than the members of our profession.

Their blood has been shed on a thousand battlefields; their voices have been raised in a myriad assemblies; their trenchant pens have rendered immortal services; all in the cause of human liberty. It is not too much to say that no class has contributed more te the development of man from savagery to civilization than members of the legal profession, and what has society rendered in return? Abuse, ridicule and vilification. One of the ancient Greeks said, "It is royal to do good, and to be abused." If this be true ,then we have indeed been treated royally, by mankind.

But in spite of this we must serve society if we would justify our existence. The welfare of society as a whole is superior to the rights of any class. No class has any right to exist unless it does serve society. He who claims rights must assume duties.

But we can neither protect our rights or perform our duties without a strong organization.

This association affords a means whereby that end may be secured. But to accomplish anything, we must have the support of our members. To date we have not had and do not have that support. And an organization that gets no closer to its members than merely to collect dues and meet in convention once a year, cannot get that support. So we must get closer to our members, and the only possibly way to do this is through our local bar organizations. Through them we can reach every individual lawyer in the state. But they must meet oftener. They must encourage the individual to bring his problems up before the local bar for consideration. He should aid and assist in making it a force to be reckoned with.

A strong local bar would be a power for good in every district. It would be a curb on judicial arrogance and would tend to eliminate the shyster and pettifogger. It would tend to create a greater understanding and respect for the ethics of our profession, which too often are more honored in the breach than the observance. And unless we do do this we never will win the respect and confidence of our fellow men. So I commend to you as a remedy for the failures of our association, organization, organization and organization.

(Applause.)

PRES. MORGAN: The report of the Local Bars Section will be submitted to this convention as the various matters come before it next Saturday. The next matter on the program will be an address by W. H. Anderson on the Law Book situation.

(Neither the address of Mr. Anderson, nor of Mr. Mercer of the West Publishing Company, who replied. were written and handed to the Reporter, and therefor do not appear herein.)

PRES. MORGAN: Gentlemen, the matters discussed by Mr. Anderson and Mr. Mercer will come up later for consideration in connec tion with the report.

PRES. MORGAN: The next matter is "New Rules of Procedure in the Federal Courts" by Mr. O. W. Worthwine of Boise.

MR. WORTHWINE: The adoption by the Supreme Court of the United States of the New Rules of Civil Procedure covering procedure in the District Courts in civil actions has been hailed as the greatest step forward in the speedy and efficient administration of justice that has been taken in our history.

As members of the Bench and Bar, we have been confronted with the problem of keeping the machinery designed for the administration of justice up to date; we cannot move with undue haste; since we deal with human rights we cannot grind out justice like an automobile manufacturer does cars; neither can we try new models for a year and then discard them.

Nevertheless, we are living in an age when vast progress is being made in transportation, communication and manufacturing, in social and political adjustments, and many have thought that our methods of administering justice are archaic and outmoded. We have seen the legislative branches of our state and national governments take from the courts vast fields of activity, and we have seen numerous boards and commissions created. The next step may be the removal from the jurisdiction of the courts of the field of litigation growing out of automobile injuries.

If we persist in using outworn forms of procedure, if we continue to ignore the time element, if we fail to realize that we have the ability to take what Judge Denman calls the "Time Lag" out of the administration of justice, if we insist on making it expensive, we must expect to see modern America take from us many other fields of litigation. We must streamline our procedure or we will be streamlined. We still allow twenty days after a complaint is filed for an appearance; then follows the filing of motions and demurrers, term time and vacation time; we still allow ninety days before a notice of appeal need be given; then follows the preparation of a transcript—all of thls when we know that in about 90 percent of the cases we could file an answer in ten days after service of summons and could take an appeal in twenty days after judgment. Some attorneys have adopted the practice, whenever possible, of giving notice at the time of filing the complaint that a temporary injunction will be asked for in ten days or less; usually in such cases the defendant shows up with an answer and affidavits, and the case is at issue and ready for trial, all in ten days or less.

Judge Denman is speaking of the condition of the Ninth Circuit Court of Appeals said:

> "Take our own circuit court of appeals. Of the cases disposed of in 1935-36, 10 per cent were five years between filing below and docketing with us. Next come a group of over four years. In the next group, three years. In the next group two years and four

months, and in the remaining groups, 20, 17, 13, 8 and 6 months.

"The average periods for all of the 270 cases was two years and four months' pendency prior to appeal. It is apparent that the litigants who received federal justice in the groups of 13, 8 and 6 months were lucky exceptions to the evils of the system. What was done for the latter, with proper staffing, could be done for the remaining 70 per cent, which average over five years."

One of the purposes for which the New Rules were adopted by the Supreme Court was to eliminate delay and to remove the causes leading to the taking from the courts of vast fields of jurisdiction.

Methods of procedure, being merely the means by which the rights of litigants are presented to our courts, should be simple, easily understood and subject to speedy administration. Whatever the theory may be in actual practice, during the last 100 years in the United States a great many cases have been decided upon points of procedure and a large part of the time of our courts, both trial and appellate, has been devoted to considering questions of procedure rather than matters of substantive law.

As in any other field of endeavor, the efficacy of the New Rules in securing justice and in taking the "Time Lag" out of administration of justice will depend largely upon the determination of the Bench and Bar, and particularly upon the ability, initiative, and learning of the members of the Bar. The best equipped factory in the world produces nothing when in the hands of "sit-downers." Devise what rules we may, their efficiency will be governed by the use made of them by the Bar.

Under the New Rules as under the old, the dilatory practitioner who files an action, collects his fee, and then promptly forgets that his client intended him to prosecute the case vigorously will still contribute to the delay that statistics show takes place between the filing of an action and its final termination—such a delay as would not be tolerated in any industrial enterprise in America.

By the Act of June 19, 1934, Congress authorized the Supreme Court of the United States to provide by general rules the forms of process, writs, pleadings, and motions, and practice and procedure in civil actions at law for the District Courts of the United States. The passage of this Act and particularly the Rules were the result of years of work by the American Bar Association and others who were interested in reform in procedure.

Since the new rules consist of 86 separate sections, and some of them have subdivisions, it is not practicable at this time to even name the subject matter of each and every section, and it is doubted that, before this Association, it would be advisable to attempt to so do for the reason that many of the provisions of the new rules are the same as, or are similar to the practice provided by our Code.

It is significant that in the very first rule it is stated that the rules shall apply in all District Courts of the United States, in suits of a civil nature, whether in law or in equity, with certain specific exceptions, and then follows this significant statement:

"They shall be construed to secure the just, speedy, and inexpensive determination of every action."

Theoretically, the purpose of all lawsuits since the beginning of the development of jurisprudence has been to secure justice. The securing of a speedy determination of actions is one of the primary purposes of the new rules. Undoubtedly, it was intended that such construction be given to the new rules that they shall secure an "inexpensive" determination of actions; and that the admonition as to expense applies to all the provisions intended to hasten the joining of issues, brevity in pleadings, the securing of admissions and particularly to certain parts of the rules, such as Rule 16, relating to Pre-Trial Procedure, which rule is intended to lessen the periods of time and the amount of money actually spent in the trial of cases.

The second subdivision of the rules relates to the commencement of the action, service of process, pleadings, motions, and orders. The third subdivision relates to pleadings and motions and sets forth that there shall be a complaint, and an answer, a reply, if the answer contains a counterclaim denominated as such, an answer to a cross-complaint, and a third party complaint, and a third party answer, and that no other pleadings shall be allowed, except that the court may allow a reply to a third party answer. Demurrers, pleas and exceptions for insufficiency of a pleading as such shall not be used.

In connection with pleadings one interesting feature of the new rules is that in the appendix 27 forms are set out which are intended for illustration. Form 9 is an example of a complaint in an action for negligence.

The first allegation relates to jurisdiction. Paragraphs 2 and 3 contain the complaint as follows:

"On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

"As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars."

Then follows the prayer.

The other forms as set forth are equally brief. Consequently, we have a solemn admonition from the Supreme Court of the United States

to use brevity in our pleadings. The rules also provide that although the demurrer is abolished a motion may be made on any one of the following grounds:

1. Lack of jurisdiction over the subject matter.
2. Lack of jurisdiction over the person.
3. Improper venue.
4. Insufficiency of process.
5. Insufficiency of service of process.
6. Failure to state a claim upon which relief can be granted.

Subdivision (e) of Rule 12 provides for a motion for more definite statement or for bill of particulars, and a bill of particulars, when it is filed, becomes a part of the pleading which it supports.

Although demurrers are abolished, our own experience in this state shows that even though we do all that is possible for brevity in pleadings, still it is necessary that provision be made for a more definite statement and for a bill of particulars.

Since the Supreme Court of the United States adopted Form 9, which is set forth above, we doubt that a Federal District Judge would be justified in sustaining a motion to make a more definite statement, and it will be observed that the acts of negligence complained of are not set forth in the complaint. The complaint merely stated that "the defendant negligently drove a motor vehicle against plaintiff." Neither are the injuries specified. The complaint merely sets forth "that his leg was broken and was otherwise injured."

It is possible that the framers of the rules had in mind that the courts and attorneys would take advantage of Rule 16 which provides for pre-trial procedure and the formulation of issues, and the rule provides generally that the court in its discretion may direct the attorneys for the parties to appear before it for a conference to consider the issues, which conference then results in an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, and it is specifically stated that the conference shall consider:

1. The simplification of the issues.
2. The necessity or desirability of amendments to the pleadings.
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.
4. The limitation of the number of expert witnesses.
5. The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury.
6. Such other matters as may aid in the disposition of the action.

It is conceivable, therefore, that in a negligence action where a complaint in the form above stated has been filed, that the pre-trial conference may result in a stipulation that a map showing the width of the street, the location of the sidewalks, the position of the car, and other facts, shall be admitted in evidence. The fact that the plaintiff was in a certain position on the street, the condition of the street—whether dry or slippery—the make of the defendant's car, that the driver was properly licensed, and other facts may be stipulated. Likewise, the specific injuries of which the plaintiff complains, as to whether he suffered a head injury, or whether he suffered internal injuries, or whether he is complaining merely of bruises, may be stipulated.

Then, too, the court may limit the number of expert witnesses to be used, and in this connection reference should be made to Rule No. 35, which provides that in an action in which the mental or physical condition of a party is in controversy, the court may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. And if requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report, the court may exclude his testimony if offered at the trial.

By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

To us it is conceivable that in a negligence case to which we have referred that at the pre-trial hearing it may be stipulated that certain medical examinations may be admitted in evidence; that the issues will be narrowed and as experience has shown, the case disposed of.

A very similar practice was evolved in this district in war risk insurance cases. Several years ago it was the practice of the government to produce the various doctors who had examined the plaintiff over a period of years. This was indeed expensive and consumed a great deal of the time of the trial court. Later, it became the practice to stipulate many of the facts such as residence of the plaintiff, the dates of en-

listment and discharge from the military forces, the date of the contract of insurance, the premiums paid, the date of the demand for payment, the date of the disagreement; also certain records were identified by stipulation, and it was also stipulated that certain doctors had examined the plaintiff at a certain time and their findings and conclusions were set forth. This stipulation was then introduced in evidence with a resulting saving in expense and time.

This practice contributed to the remarkable record made by Judge Cavanah during the past ten years. The following table was given me by Mr. McReynolds:

REPORT OF PENDING CASES AND CASES DISPOSED OF IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO FROM JUNE 30, 1928 TO AND INCLUDING JULY 18, 1938.

	Private Civil Cases	U.S. Civil Cases	War Risk Cases	Criminal	Bankruptcy
Pending—June 30, 1928	113	34	0	161	304
Commenced since June 30, 1928	555	520	347	3010	1251
Closed since June 30, 1928	655	528	346	3167	1503
Pending July 18, 1938	13	26	1	4	52

It will be noted that in the ten-year period 5683 cases were filed in this district and 6199 cases were closed; 516 more were closed than were filed; 655 private civil cases were closed and 346 war risk cases; in addition 528 government civil cases (not war risk) were disposed of; 3167 criminal and 1503 bankruptcy cases were closed.

There remains on the federal calendar in this state 4 criminal cases; in one the defendant is already in the penitentiary, in another the defendant has not been apprehended, and the other two are on parole.

Of the 13 private civil cases only one is a year old, 2 have been filed for 10 months and the average age is 6 months.

But the outstanding fact is that 346 war risk insurance cases have been disposed of, and the one remaining has been tried once. In these 347 cases there were 347 demurrers, 347 motions to strike. They involved about $5,000,000.00; about 200 were tried on their merits; there were about 180 jury trials; construction of vague statutes and difficult points of evidence were involved; over 50 were appealed to the Circuit Court of Appeals and at least 2 to the Supreme Court of the United States.

How was it possible for one Judge holding court twice a year in four divisions to handle this vast business and reduce by 100 the number of private civil cases pending, and reduce by 8 the number of United States civil cases pending, and by 157 the number of criminal cases, and by 252 the number of bankruptcy cases pending?

The answer in part is the pre-trial stipulations by the parties in war risk cases; also the fact that jurors were called from divisions rather than counties; the examination of jurors by the court; that the judge has life tenure and did not have to worry about reelection; the power of the court to grant directed verdicts even if there was some evidence to support a verdict; the power of the court to control the course of the trial; the fact that the court insisted on the demurrers and motions and the trial of cases that were ready for trial; the constant insistence by the court that counsel "get down to the point and quit wasting time."

Rule 11 regarding the signing of pleadings provides that every pleading must be signed by an attorney of record in his individual name. Of course, a party may sign his own pleading. Except where specifically provided by rule and statute a pleading need not be verified.

However, the signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that is is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Throughout the new rules we find provisions placing responsibility upon the attorney; he is liable to have costs imposed if he refuses to admit certain documents, if he makes the record on appeal too long.

Subdivision V embraces Rules 26 to 37, inclusive, and relates to Depositions and Discovery.

An interesting thing concerning the use of a deposition is that it may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness. The deposition of a party may be used by any party for any purpose under certain conditions: such as

Absence from the jurisdiction.

Death.

Sickness.

A party may read from a deposition only those parts as he may desire to read. And if only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Rule 36 relates to Admission of Facts and of Genuineness of Documents.

At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the

genuineness of any documents described in and exhibited with the request, or of the truth of any relevant matters of fact set forth therein.

If a party after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorneys' fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

Subdivision VI includes Rules 38 to 53, inclusive, and relates to Trials, and in any law action a party may serve a written demand for a trial by a jury not later than ten days after the service of the last pleading directed to the issue, and unless he does so a right to a jury trial is waived.

Rule 46 provides that:

> "Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him."

It appears that probably the object that is sought to be accomplished by the above rule is the abolition of the necessity of taking exceptions to adverse rulings by the trial court. If this is the purpose the rule is not clear. Our Code provides that exceptions are deemed taken to all adverse rulings made by the trial court. It will be noted that Rule 46 states that all that is necessary is that a party, "at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor."

Does this mean that an exception is deemed taken to the rulings of the court on a point of evidence, where an objection is made, for example, upon the ground that it is incompetent, and then the court rules that it is competent and admits it and then the party makes known to the court his objection to the action of the court and states additional grounds of objection thereto? It will be noted that the disjunctive "or" is used. One basis for an exception being that the party "make known to the court the action which he desires the court to take" and then follows the words "or his objection to the action of the court and his grounds therefor."

Was it intended by this rule that the grounds of an objection to evidence must be stated before the court rules? Or is all that is necessary for a party to do is to state that he desires the court to overrule or sustain an objection, as the case may be, and then after the court has taken the action to state the grounds why the court should have taken another action? I believe that our state statute is much clearer than the above rule.

In connection with Rule 46 it is interesting to consider Rule 51 which provides that written requests for instructions may be submitted to the court.

> "The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

It is to be assumed that under this procedure written requests will be submitted by counsel and the court will go over the same and then advise counsel, either in open court or in chambers, as to what instructions he is going to give. I believe that this will be of great assistance to counsel in arguing cases. Sometimes under the old practice, the effect of an argument by counsel has been entirely lost because the court did not give the instructions that counsel anticipated, but gave instructions that he did not anticipate, and much time has been wasted.

In connection with Rule 46 which attempts to abolish formal exceptions, it is interesting to note that so far as exceptions to instructions to juries are concerned, considerable formality is still preserved. The objection must be made before the jury retires and counsel must state distinctly the instruction given or refused to which he objects and the grounds for his objection.

Many of us have felt for many years that it was necessary, in taking an exception to an instruction in the Federal Court, to state grounds of the objection, but this rule makes it very clear that it is necessary so to do. I believe that the federal practice in regard to objecting to the giving or refusing to give instructions is better than our state practice, because it gives the trial judge a chance to correct errors at the time of the trial.

Rule 48 provides that the parties may stipulate that the jury may consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors may be taken as the verdict or finding of the jury.

The statute at the present time requires the verdict of a jury in the federal court to be unanimous. It is to be assumed that this rule amends that provision of our federal statute, making it possible for the

parties to stipulate that any number of jurors down to three may act as a jury, and that any majority may render a verdict.

It is to be assumed that counsel who believes that he has a good case will insist that a jury be reduced in number and a verdict be given by a majority, and counsel, who represents a defendant and believes he has a desperate case will insist on a jury of twelve and that the verdict be unanimous.

Subdivision IX containing rules 72 to 76, inclusive, relates to appeals. A form of notice of appeal is set out in Form 27 and is very brief. The notice that an appeal is taken is served by the clerk by mailing and such notification is sufficient even though the attorney or the party be deceased. The cost bond is fixed at $250.00 and a judgment may be entered against the surety in either an appeal or supersedeas bond and the liability may be enforced on motion without the necessity of an independent action.

Rule 76 provides for an agreed statement in case questions are presented which can be determined without an examination of all the pleadings, evidence and proceedings in the court below, and Rule 75 deals with the record on an appeal in case an agreed statement cannot be had.

Rule 75 (a) provides:

> "Promptly after an appeal to a circuit court of appeals is taken, the appellant shall serve upon the appellee and file with the district court a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal. Within 10 days thereafter any other party to the appeal may serve and file a designation of additional portions of the record, proceedings, and evidence to be included."

It is then provided that if there be designated for inclusion any of the proceedings which were stenographically reported "the appellant shall file with his designation two copies of the reporter's transcript of the evidence or proceedings included in his designation," and thereafter such parts as the appellee desires to have added and one of the copies shall be for the use of the appellate court in the printing of the record and one copy for the use of the other parties.

Rule 75 (c) provides:

> "Testimony of witnesses designated for inclusion need not be in narrative form, but may be in question and answer form. A party may prepare and file with his designation a condensed statement in narrative form of all or part of the testimony, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part thereof."

Rule 75 (d) provides:

> "If the appellant does not designate for inclusion the complete record and all the proceedings and evidence in the action, he shall serve with his designation a concise statement of the points on which he intends to rely on the appeal."

The rules also provide for an abbreviated record and for punishment by imposing costs upon offending attorneys or parties in the event that the record is not abbreviated. The record shall be transmitted by the clerk to the appellate court and included in the record transmitted shall be

> "any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The clerk shall transmit with the record on appeal a copy thereof for use in printing the record, if a copy is required by the rules of the Circuit Court of Appeals."

Provision is made for the certifying of original exhibits to the Circuit Court of Appeals. Then follows this provision of the rules:

> "What part of the record on appeal, filed in the appellate court shall be printed and the manner of the printing and the supervision thereof shall be as prescribed in the rules of the court to which the appeal is taken."

From these rules it will be seen that the rules as prescribed by the Supreme Court of the United States do not make the printing of the record by the Clerk of the Circuit Court of Appeals mandatory, but seems to leave it to the rule-making power of the Circuit Court of Appeals.

I believe that on the whole we in this state have found the practice of submitting to our Supreme Court a record of the trial proceedings as made up by the reporter to be very satisfactory and our state practice eliminates the cost of printing the record, and it may be possible for the Circuit Court of Appeals to adopt a rule providing for the filing of copies of the reporter's typewritten transcript of the proceedings had at the trial, together with the Clerk's typewritten transcript of the pleadings just as we do in our state practice.

The rules of the Ninth Circuit Court could provide for an assignment of errors in the appellant's brief as we do under our state practice, and this would be one way to follow Rule 1 of the new rules so that they would secure the just, speedy and inexpensive determination of appeals.

In a case involving from $20,000 to $25,000 judgment, the additional cost of printing the record amounts to little compared with the amount involved, but where the amount is only from $3,000 to $5,000, the printing of the record is an important item. I do not believe that where it has taken weeks to try a case that we should ask the Circuit Court of Appeals to use a typewritten record on appeal, but where the case only takes one or two days to try and the typewritten transcript of the trial proceedings contains less than 1,000 pages, it occurs to me that it should not be necessary to have the record on appeal printed.

I would suggest, therefore, that this Association pass a resolution suggesting to the Circuit Court of Appeals that in cases involving some certain amounts, say not to exceed $20,000, and where the reporter's transcript does not exceed 1,000 pages of legal size paper, that it be permissible to file three typewritten copies of the reporter's transcript and three typewritten copies of the clerk's transcript and that the briefs contain an assignment of errors. In other words, as to the limited class of cases referred to, the practice be made the same as it is in our state courts.

In the new rules we see the power of the Supreme Court of the United States to make rules extended to actions at law, and the rules are the product of the work of a committee of distinguished lawyers, judges and scholars, and the result of the labors of the committee may be likened to the erection of an entirely new processing plant.

For the most part the new features constitute an improvement. In some particulars the parts of the machinery installed are not as satisfactory as those that we already have in this state, and we probably should feel complimented that so many parts of the machine that we have erected by adding to from time to time have been incorporated in the new structure, but we have a sound basis for the opinion that if our Supreme Court were vested with rule-making power that it could erect another processing plant using the best in the new rules of federal procedure and the best that we have been able to devise under our present system, and by so doing we may reach that high state of efficiency that will tend to increase rather than decrease the jurisdictional field of our courts.

PRES. MORGAN: Those of you who have programs will note at this point we were to have a discussion on these rules. However, in view of the fact that the discussion will necessarily come up in connection with the report of the Local Bars Sections report, I think we shall pass that at this time because I want to go back and ask for a report of that committee that was appointed this morning to report at two o'clock.

JUDGE KOELSCH: After giving consideration to Chap. 218 of 1933 laws, we have reached the conclusion that it is the intention and desire of this association to retain the form of affidavit therein provided and that the suggested amendment to this section is unnecessary, the reason being that this present statute provides that the affidavit must be filed at least five days before the day appointed or fixed for the hearing or trial of any action, motion or proceeding, provided such party shall have had notice thereof for at least five days and in case he shall not have had such notice he shall file such affidavit upon receipt of said notice. We take the position that the submission of the motion to a court for hearing and determination is a submission to the jurisdiction of that judge under the present statute. We therefore make no recommendation. I move the adoption of the report.

(Thereupon the motion was seconded, put to a vote, and carried unanimously.)

PRES. MORGAN: The next order of business is an address upon The Idaho Pardon and Parole System, by H. H. Miller of Boise. Some of you gentlemen may not understand why a layman is on our program. The matter which he is about to discuss came up at Idaho Falls and at that time the Bar Commission was instructed to take up this subject and analyze it and present it at this meeting, and in doing that, we saw fit to call in a man who, we felt, was in position to handle the matter and present it to you in full form. For many years Mr. Miller has been a member of the staff of the Idaho Daily Statesman at Boise, in close contact with the political, administrative and legislative activities at the the Capital, of which he has made close study and about which he has written much. He was made Chairman of our Committee, and directed its study, the results of which he is about to present.

MR. MILLER: I am very diffident about addressing a bunch of lawyers who probably know more about the subject than I do.

First, I wish to give you the list of sub-committees that our committee appointed to study the matter—and to whom much credit must be given for some very difficult and arduous labor.

The object of the general study was to prepare as complete a summary as possible of the faults and failings, and the virtues, of the present Idaho pardon and parole system. The plan was to assign to groups of three, with, as far as possible, one layman and two lawyers in each group, specific topics for study and report to the group of five which was to prepare a general statement, including conclusions, to be presented at the Bar. Each group might either work independently of each other, or might work as a group.

I—Historical basis of the pardon system and its development into the present system, with emphasis on the inconsistency of the sovereign prerogative being exercised by a group of untrained administrative officials. Take in indeterminate sentence law, discuss it. H. H. Miller, Edwin Snow, Judge Isaac McDougall.

II—Law and mechanics of pardons and paroles in Idaho, and the basis on which decisions are made. Franklin Girard, Judge C. F. Koelsch, Z. Reed Millar.

III—Federal and other state systems. John Kenward, Elizabeth Laubaugh, Sam S. Griffin. Sub-committee: Fred Taylor, Oliver Koelsch, James Butler, Cleo Schooler, William Johnston, Joseph Leggett.

IV—Proposals for reform, past, present and future. Rev. Frank A. Rhea, Paris Martin, Jr., Judge C. E. Winstead.

V—Statistics: number of applications, granted, refused; reprieves, conditional pardons, past convictions, subsequent records of pardoned men. Larry Quinn, James Munro, J. J. Turner.

VI—General conclusions and recommendations for Idaho. H. H. Millar, Judges C. F. Koelsch and C. E. Winstead, E. P. Barnes, Saxton Bradford.

It will be noted that for the most part the members of this committee were from Boise. This was to facilitate conference, do away with such long-winded correspondence, and because so much of the study could be most conveniently made in the capital city, where the records were available, and not because of any feeling that Boiseans are any better able to handle the problem. Even if the members of the various groups worked independently, they would want to compare notes as they went along, and probably present a single report as the work of their group.

I want, also, especially to thank Miss Rose Cohn, Reference Librarian of the Carnegie Library at Boise, who compiled a most comprehensive bibliography on the subject matter for your Committee.

The question of the release of a man from prison naturally divides itself into two divisions—the unconditional release, as represented by the straight pardon or commutation of sentence to a definite term in the future; and the parole or the conditional pardon.

Most important of these, from the standpoint of society, is the straight pardon. It is granted at any time—perhaps two minutes—after the prisoner has entered the penitentiary. It is regulated by no restrictions; under the constitutional provisions of the United States and most of the states it cannot be limited, for any such legislative enactment would promptly be held unconstitutional.

Whence came this plenary power of pardon?

It arises from the old divine right of kings theory. In medieval and early modern states the king was assumed to be supreme. He was the actual proprietor of all the property and all the lives of his subjects, and could dispose of them as he pleased. Naturally if he imposed, either in person or through a subordinate, penalties on a man, he had the power to revoke those penalties and give the man his freedom, or restore his property. It was, naturally, unregulated by law, for the king made the law, or even by custom.

This was theoretically sound, for the king was not only the state, he was the overlord of his people.

This concept of the sovereign power was so strongly ingrained that when the colonists set up a new government under the Constitution of 1787, while they questioned many of the king's prerogatives, they nevertheless still had the view of the president as the repository of the powers of the sovereign, the legitimate heir of the king of England. They overlooked one fundamental distinction. The king of England was the sovereign; he was literally, in the words of Louis XIV, the state. Under the American system the president, or the governor of a state,

is by no means the sovereign; the whole people are sovereign. The president, or governor, is merely a temporary executive. He changes from time to time.

Further, he partakes of none of the sovereign attributes of the king. Yet the popular conception of the pardoning power, and the interpretation placed upon it by many executives, is just the same as the old royal conception of the pardoning prerogative—witness the quaint custom in some states of turning loose a batch of prisoners indiscriminately at Christmas time just as a gesture of good will.

The constitution of the United States makes only a brief mention of the fact that the president "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

Constitution makers of the various states, sensing more or less clearly this important distinction, have provided a wide variety of means for checking the unlimited power of pardon in the executive. Filed with this report are summaries both of the constitutional provisions of the various states, together with resumes of the legal provisions. In addition this information has been summed up in tabular form. The whole will be a part of the report.

This survey shows that in 21 states the governor alone has the pardoning power, in nearly every case however hedged about by legislative restrictions.

There is a striking similarity in the language of the constitutional provisions in these states, suggesting that possibly they are all part of the same stream of evolution. In two states the power to pardon is lodged in a board alone. In 10 states the governor acts upon the advice of an advisory board, and in 17 states the governor, sitting with his board, decides.

In some states which have an executive council the power is lodged with the governor and the council; in one case the consent of the senate is required. In Rhode Island the power is lodged jointly with the governor and senate; and in Vermont the general assembly apparently possesses the pardoning power, for the governor may grant respite only until the next session of the general assembly.

In a majority of states, regardless of who holds the pardoning power, reports to the legislature of action on every case, with the reasons therefor, must be made. This is mandatory in Idaho, but careful scrutiny of the records fails to show where any governor has ever paid any attention to this provision.

Thirteen of the pardon boards studied consist of elective officials. There is the widest variety of choice of officials for these boards in other states. Florida, for instance names the commissioner of agriculture on the board; other states have the commissioner of finance or the commissioner of highways, or some other officials equally as remote from

the subject of pardons, on the board. Many states recognize the courts by placing the chancellor, or members of the supreme court, on the pardon board.

Ohio appears to have a well thought out scheme. How it works there are of course no data to indicate. The governor has the pardoning power, but he is assisted by an advisory board of four members appointed by the director of public welfare. They must have special training, and serve four years. Their terms are staggered. They receive $6000 a year for their services. No more than two shall be of the same political party.

In Idaho the constitutional provision is extremely definite in its provisions. It reads as follows:

"The governor, secretary of state, and attorney general shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made, and regulate proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.

"The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the legislature, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the board made thereto."

This provision, particularly as to the written reasons and written dissents, and the report to the legislature, is largely ignored in actual practice.

The legislature has implemented this constitutional provision by two laws, the indeterminate sentence act and the parole statute.

These two laws must be read and studied together and interpreted against each other.

The judge, sentencing a criminal, fixes his maximum and minimum terms. There is a tendency on the part of pardon board officials to interpret the minimum term as the actual sentence, and to argue that a man is "entitled" to a pardon at the end of his minimum provided he has not forfeited consideration by outrageous conduct. The fact is, however, that the minimum sentence merely represents the earliest point at which a convict is eligible for parole. The courts of this state have held that the sentence actually is the maximum, and the convict is entitled to nothing by right until he has served that maximum.

Under the parole law the individual is eligible for parole at the expiration of his minimum sentence, provided that he has not been convicted for a felony previously, is not serving a life sentence, and has employment in sight. With the increase in recidivism in this state these provisions have proved too stringent for most recent pardon boards, and the parole has fallen into disuse; instead has been evolved the conditional pardon system. Since it is not recognized by law, the rules of the same can be varied by successive pardon boards, or can be ignored entirely. There doesn't seem to be much doubt that the conditional pardon is perfectly constitutional, as witness the provision that said board of pardons or majority thereof shall have power to "grant . . . pardons . . . upon such conditions as they may impose in all cases."

The conditions imposed are usually about the same as those imposed for parole, either from the penitentiary or from the bench.

Incidentally, there appears to be a conflict between chapters 38 and 39 of title 19, covering this question of paroles, but the codifiers in their annotations indicate that probably chapter 39 supersedes 38.

While not strictly a part of the pardon and parole system, the governor's reprieve power is interesting chiefly for the abuse of it in recent years. Prior to 1930 it was used sparingly, and the men reprieved were required to go before the next pardon board. Since that time, however, it has in many instances operated almost as an unconditional pardon, particularly in the case of men imprisoned for misdemeanors, who ordinarily do not take the trouble ever to go before the pardon board. Any scheme of reform should certainly pay some attention to this condition.

To be entitled to consideration by the board, the prisoner must make formal application to the board, and must advertise for 30 days

prior to the board meeting in some newspaper of general circulation in the county where he was sentenced. It is required to give notice of applications to the prosecutor and the judge.

When these formalities have been completed, the case is before the board, which considers it at an open hearing. If the prisoner has friends or counsel the board will hear them; letters from interested persons are read and petitions considered. Frequently, whether consciously or unconsciously, board members show an inclination to be swayed rather by the political effect of their actions, than by the facts of the case. This is but natural in a board composed exclusively of politicians, whose political life is at stake every two years.

The reports of prosecutors and judges, presented at the time of commitment, are studied, together with the report of the federal bureau of identification as to the existence of a past criminal record.

If no personal appearances are made for the petitioner, it used to be the custom for the board to adjourn to the prison and hold personal interviews with applicants. The present board has discarded that practice, and unless the petitioner is represented by friends, ordinarily his case is decided without any reference to the personal element.

Each meeting the warden prepares a list of recommendations on every man before the board, and to a large extent these recommendations are followed. Latterly the present warden has set up an unofficial and extra legal advisory board, consisting of the five ranking officers of the penitentiary, to consider all cases and make the recommendations.

In the case of conditional pardons or paroles, the prison parole officer is charged with the duty of checking up on the conduct of men released, and reporting when they have violated the conditions set forth. This officer is not responsible to the board, but is appointed by the governor alone, and is responsible solely to the governor.

It is obvious that with power lodged in the hands of a board of this character there can be no continuity of policy, and caprice will govern quite as often as thoughtful attention to details. Most pardon members are sincere in their beliefs, and try to do their duty according to their lights, as far as I have observed their work over the last 15 years, but their beliefs and prejudices guide them more often than any soundly thought out philosophy of penology.

I have seen in my time pardon board members who would never vote to let out a second offender, no matter what the circumstances; men who would never pardon sex crimes under any conditions, men to whom the prohibition law violator was anathema, and should remain in for life; men who would always vote to free a bad check artist or confidence man; men who felt that murder was a mere peccadillo, and the murderer should be turned loose "because the ordinary murderer never kills twice;" and men who took the oppositely extreme view, that every killer should be hanged, regardless of the circumstances.

Through all boards runs alike the same fear of freeing notorious prisoners, for fear of public opinion. That is particularly true in the cases of Henry Gusman, Lyda Southard and Angela Hopper. At the recent meeting of the pardon board one of the members remarked in my hearing, "I think we ought to parole Mrs. Hopper, but I guess we'd better wait till after election."

Boards during these fifteen years have ranged from the extremely hard boiled to the absurdly lenient, with all the graduations in between. A board nearly always takes its complexion from the most forceful member, who is able to dominate the other two members; and when you have two forceful characters on the board there is going to be trouble.

Now statistics aren't particularly valuable in a study of this kind, for it's only in the exact sciences that figures mean anything; whereas in penology every case is on its own merits. One cannot scrutinize the work of one board and say "it issued too many pardons" and of another board, and say "it didn't issue enough pardons." Every case is all by itself. There might come some meeting of the board where every one of the applicants was worthy of release; another meeting where not a single man had earned his freedom. Nonetheless, it is interesting to note some of the figures given by the statistical history of the Idaho State Penitentiary as compiled just recently by Ed Whittington, parole officer. A copy of this history is also attached to the report, and is available for anyone who wishes to look it over.

There had been, up to March 31, the date of the report, 5685 prisoners passing through the penitentiary. Twenty of these were sentenced to death for murder. Of these, one received a new trial and was sentenced to life imprisonment, 11 were commuted to life imprisonment, six went to the gallows, one committed suicide on the eve of his execution, and one is awaiting action on his appeal.

Eleven other prisoners committed suicide, three were killed, 60 died from natural causes, 28 were sent to the insane asylum, 18 were deported, 48 escaped and are still at large, 28 were released by court order, 1606 were given outright pardons, 1671 were released at the expiration of their sentences or by commutation, 1855 received paroles or conditional pardons and 350 were still serving.

In the past ten years 456 prisoners have been paroled or conditionally pardoned, and 47, or 10.3 per cent have been returned as parole violators. Since the present board took office 133 have been conditionally pardoned, 19 being returned as parole violators.

The problem of the recidivist is especially emphasized by the fact that on June 30 this year the total prison population was 358, of whom 243 had previous penitentiary records, some as high as five or six prior convictions. This does not include those with jail sentences or terms in reform schools. This indicates principally that the judges of our courts are coming more and more to realize that a penitentiary is no place for the young fellow who oversteps the legal boundaries and be-

comes subject to a felony charge. There is an increasing number of bench paroles, which seems, from results, to have worked out well. With less than one-tenth of one per cent of the population in prison, Idaho really has no serious crime problem. The real problem is to insure the future reformation of the young fellows who have made one false step, but that, together with the question of segregation of first offenders, is in another field from this study.

The power of the warden, or the warden and his advisory board, to make definite recommendations on individual prisoners—recommendations which are largely accepted by the board—brings up another question.

It is natural for the warden to regard more favorably the plea of a docile, well-behaved prisoner, who always does what he is told, as compared with the obstreperous and recalcitrant "tough guy" who rebels at prison discipline and resents restraint. The prison officials naturally are concerned with the conduct of a man while he is in their charge, and not so much interested in his previous record.

Yet facts show that the reclaimable prisoner, the first time loser who has never seen a penitentiary before, is less likely to be amenable to discipline than the old lag, who knows his way about. The young lad from the farm or factory is high spirited, an individualist, who objects to the restraints of prison life. He rebels at what he thinks are arbitrary restrictions upon his movement, and is in hot water with the guards. The old time convict with experience in many prisons knows that to get free he must be on the good side of the guards, and so in most instances is docile, willing, and anxious to curry favor with the guards. The result is that the old timer is more likely to get a favorable vote from the prison advisory board than the newcomer, who never has been in prison before, and because of the lack of background of the prison board members the recommendation of prison officials is likely to prevail. This is unwholesome and has resulted in some sad situations, case histories of which are available in penitentiary files, but under the present system it cannot be helped.

It is noteworthy that when the notorious William Mahan, a convict with a long record of previous convictions, came up for pardon he had a recommendation from the warden on the ground that he had been a model prisoner. He was pardoned, and went out to engineer the famous Weyerhaeuser kidnaping.

Proposals for reform of this condition have been as numerous as the autumn leaves. Mostly these reforms in the past have been based upon the requirement of a constitutional amendment changing the present system to require a board of experts trained in sociology and chosen in some manner as nearly free as possible from political influence.

One of the biggest handicaps to reform has been, in fact, this requirement of a constitutional amendment. In trying to prepare recommendations, your committee pondered the matter for a long time, without being able to discover any feasible method of reform that did not require an amendment.

Perhaps the biggest trouble is the personal element. It is seldom that the board has in its membership men who regard this duty as anything more than a troublesome and disagreeable chore to be gotten over with as rapidly as possible.

It has been suggested that the board set up alongside it a volunteer board of men and women who take deep interest in the problems of sociology and penology, and who would be willing for a nominal daily stipend to study the cases and prepare lists of recommendations. That suggestion, however, would be merely a self denying ordinance on the part of the board. When tearful relatives and political hacks began turning the heat on board members the recommendations of such an advisory board would go out the window.

A full time board, paid as highly as such experts would be entitled to demand, probably would strike the legislature as entirely too costly a gadget, although of course the present situation is also an expensive little trinket.

Washington has contributed an interesting system, which reports say is doing right well. Washington also has the indeterminate sentence law, incidentally, but applied in a slightly different manner.

The 1935 Washington legislature created a board of prisons, terms and paroles to exercise the functions now exercised by our state pardon board, and revised the system of penalties, paroles and pardons in effect in that state.

This board consists of three members, each appointed by the Governor with the advice and consent of the senate. The terms are staggered, and will be for six years, one term ending every two years. The members of this board are forbidden to engage in any other business or profession during their incumbency of office, service as the representative of any political party or an executive committee or other governing body thereof, nor as an executive officer or employe of any political party or association. The chairman's salary is fixed at $4000 and the others $3500 apiece, together with actual and necessary expenses incurred in the discharge of their official duties. The first chairman was designated by the governor, the succeeding chairmen are chosen by the board.

The board is required to meet at the penitentiary and reformatory at such times as may be necessary for a full and complete study of the cases of all convicted persons whose terms of imprisonment are to be determined by it, or whose applications for parole come before it. The reports to the legislature are also required.

Don't legislators ever get tired of requiring reports they never get?

Incidentally, the new statute provides that there shall be no consideration by the board of any persons convicted of felony, first degree murder, carnal knowledge of a child under ten years old, or of being an habitual criminal within the meaning of the statute.

In all other cases, the court may sentence persons convicted of a felony either to the penitentiary, or, if the law allows, to the reformatory, and shall fix the maximum term only. The maximum term fixed by the court shall be the maximum term provided by law for the crime for which such person was convicted. If the law doesn't provide a maximum term the judge must fix one, which shall be not less than 20 years.

After the admission of the convicted persons to the penitentiary or the reformatory it shall be the duty of the board to obtain from the sentencing judge and the prosecuting attorney a statement of all the facts concerning such convicted person's crimes and any information they may possess relative to such convicted person. It is made their legal duty to furnish this information and also to indicate what in their judgment should be the duration of the imprisonment. We have a similar provision in Idaho, more honored in the breach than the observance.

Within six months after the admission of such convicted person to the reformatory or penitentiary the board is required to fix the duration of confinement. The term of imprisonment shall not exceed the maximum fixed by the court or by the law. The board is given power to revoke the sentence fixed by it for infraction of rules after a hearing.

Herewith are given some limitations on the powers of the board:

(a) For a person not previously convicted of a felony but armed with a deadly weapon either at the time of the commission of his or her offense, or concealed deadly weapon at the time of his or her arrest, the duration of such person's confinement shall be fixed at not less than five years;

(b) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of the offense or a concealed weapon at the time of arrest, the duration of such person's confinement shall not be fixed at less than seven and one-half years.

A deadly weapon is defined to include a black-jack, sling shot, billy, sand club, sand bag, metal knuckles, any dirk, dagger, pistol, revolver or other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

The Board has the power to grant credits on terms on the recommendation of the superintendent of the penitentiary or reformatory.

(c) Any person who shall have been convicted of embezzling funds from any institution of public deposit of which he was an officer or stockholder such person's confinement shall be fixed at not less than five years.

To assist it in fixing the duration of a convicted person's term of confinement and supervising and regulating his or her activities while on parole, it shall not only be the duty of the board thoroughly to inform itself as to the facts of such convicted person's crime but also to inform itself as thoroughly as possible as to such convict as a personality. The board of prison, terms and paroles must therefore, adopt and apply an effective technique of investigation to develop information for that purpose.

The law provides that good time reductions shall never exceed one-third of the sentence fixed by the board. The board has powers to fix conditions of parole. They must keep a complete record of every person released on parole.

As the Washington constitution in section 9 of Article 3 places the pardoning power in the hands of the governor, it is expressly provided in this law that no provision therein contained will limit or circumscribe the governor's power to pardon or to commute a sentence and he may also revoke a parole granted by the board.

The law further provides that from and after the suspension, cancellation or revocation of the parole of any convicted person, by the governor or the board, and until his return to custody he shall be deemed an escapee and a fugitive from justice and no portion of the time during which he is an escapee and fugitive from justice shall be a part of his term.

This law also provides that when a court suspends sentence the board shall have jurisdiction and shall promulgate rules and regulations for the conduct of such person during such suspension of sentence.

This revised set-up in Washington appears in sections 10249-1 to 10249-8, Remington's Revised Statutes of Washington, 1937 Annual Pocket part for Volume 10.

Washington also has a statute which authorizes the governor to enter into compacts with other states which provide for out of state supervision of paroled persons from the state's parties to such compact. This was adopted at the 1937 session of the state legislature.

All this leads, naturally, to the question, where do we go from here, so far as Idaho is concerned?

Obviously no Idaho legislature is going to adopt a high-paid, permanent board system in Idaho. Obviously also, we have to do something.

There are several recommendations the State Bar can make. Some of them are possible of enactment at the next session; some of them will require years of education and constant plugging.

I may say when I undertook this task I knew I was going to go up against the most keenly analytical minds in the state, bar none, and so

I chose the men who would advise me with extraordinary care. These recommendations are not solely my own, though I own joint authorship in them. They have been forged from the red hot anger of judges, law enforcement officers, prosecutors, and high minded attorneys enraged at miscarriages of justice. They have been tempered with the desire to do justice to all men. I coincide with most of the recommendations (I must be entitled to some mental reservations) and I believe it's the best we can do under present conditions.

First. The present parole and indeterminate sentence law should be rewritten as a unit, not as two separate laws, and coordinated so that the parole board, whoever is on it, will have some idea what it's all about. The two laws were written to operate together; nobody has ever given them a chance to see how they would work if they were applied the way their authors intended.

You could do that without any laws or constitutional amendments, just simply by carrying out the law.

The conflict between chapters 38 and 39 of title 19, referred to before, should be ironed out.

It might not be a bad idea if we'd go out and look for men of broad vision and human understanding for our state offices, instead of plausible speakers who happen to bear the right party label. And that isn't a nasty crack, for both sides have been equally guilty of foisting half-baked sentimentalists on us. But that's something the State Bar can't be expected to undertake. You can't make the electorate half way sane by passing resolutions at a State Bar convention.

But this committee has some recommendations. They are a compromise between what we'd like to have recommended, and what we felt we could get away with under present Idaho conditions.

The board should have experience. That of course is fundamental.

There should be no prohibition against bringing an expert in from some other state. After all, residence in Idaho doesn't automatically qualify a man as an expert on penology. The idea that all Idaho jobs belong to Idahoans regardless of the necessary qualfications isn't what it's cracked up to be.

The pardon board should be composed of the Governor—who of course has the pardoning power anyway—the chief justice of the supreme court, and an expert, chosen by the state board of education on the basis of his sociological and psychological qualifications. He is supposed to be an expert in his line. He must act as parole officer, and watch the records of all the lads who sometimes create so much trouble. He is to be paid an adequate salary, and to have the same restrictions on outside activities that have been applied to the Washington gentlemen.

The budget must include a reasonable sum for him to investigate the various applicants—in other words, the expense account must not be scamped.

Your Committee thinks that some things could be done which would perhaps make this a better set-up, but it also feels that in the present condition of Idaho penology it is a step in advance.

WM. HAWKINS: I move the Bar extend a vote of appreciation to Mr. Miller. Not being a member of our associaiton, we have rather imposed on Mr. Miller to make that report.

(Thereupon the motion was seconded, put to a vote and carried unanimously.)

MR. HAWKINS: Another motion, Mr. Chairman; the Prosecutors' Section adopted a resolution along the same lines as that report and at this time I move that the Committee of Resolutions draft the necessary resolution to make recommendations to correct our present pardon and parole system.

(Thereupon the motion was seconded.)

PRES. MORGAN: The program provides for a discussion on this matter by Judge Winstead.

JUDGE WINSTEAD: This is a controversial question and I have jotted down most of my remarks.

We have just listened to a very interesting and instructive paper by Mr. Miller upon the subject of "The Idaho Pardon and Parole System."

As set up by the Idaho Constitution in section 7 of article 4, the governor, secretary of state, and the attorney general constitute the board of pardons. In 1909, the board of pardons together with the warden were made a prison board for the enforcement of the indeterminate sentence law. In 1919, the prison board was abolished and its duties were imposed upon the board of pardons. Sec. 19-3901, I.C.A.)

The basic weakness of the Idaho system lies in the fact that the pardon board is composed of elective officers without regard to their experience, fitness, or capacity for the work involved. The members are saddled not only with the duties and responsibilities of the offices to which they are respectively elected, but also with many board duties such as the land board, the board of examiners, the board of equalization, etc., with the result that as a board of pardons they neglect the fundamental idea of the indeterminate sentence law, namely, the consideration of the convict as a personality.

To consider the convict as a personality requires time and a thorough study of the individual. As a prelude to this an examination of the facts relative to the crime is essential. Then the individual himself

should be studied, for the ultimate consideration in all effective pardons and paroles is the question whether or not the individual has learned his lesson and is ready to be returned to society. To determine this question it is necessary to know the mental attitude of the individual, his ability and desire to become a normal citizen in the community. The offender who through economic or social pressure has broken the law is entitled to different treatment from the mentally deficient, the warped personality, the moron, and the wilful repeater.

As suggested by Mr. Miller, the penitentiary record should not be the main basis for commutation, for the repeater is more tractable than the first offender. The former knows from experience that full compliance with every prison rule and making himself agreeable to guards and other prison authorities can be capitalized through a shorter term.

Unless due consideration is given to the prisoner as a personality, we can expect no improvement in our penal system.

As now constituted the Idaho board of pardons is purely a part time and side issue job. Its hearing is more or less an ex parte proceeding with only the prisoner represented. The skillful lawyer presenting an application for parole or pardon, especially if the convict or his family has money, can get the petition signers of the community on any sort of a petition, turn on the political heat a little here or there, and raise a smoke-screen to befog the real facts and conditions surrounding the crime. As a result the granting or refusal of the parole or pardon is often a matter of political expediency. To correct these weaknesses calls for a non-partisan, disinterested, and competent board with part or all of the members giving full time service to the duties of the board.

In the state of Idaho we are always confronted with two conditions which so often interfere between theory and practice in governmental affairs. In the first place, we have a territory almost equal in area to the area of the states of Ohio, Indiana, and Illinois combined. Then we have a scattered population which if combined would only make a third-rate eastern city. A theoretically efficient set-up for our penal institutions would call for the expenditure of an amount of money which a practical minded legislature under the pressure of a tax-ridden constituency will oppose for political reasons only.

In considering this question we are also faced with too much constitution. Most any change will require constitutional amendment. In a state such as Washington, where the pardoning power is vested in the governor alone, the matter can be handled by the state legislature.

In 1935, the legislature of Washington created a "Board of Prison, Terms and Paroles" to exercise the functions now exercised by our state board of pardons, and revised the system of penalties, paroles and pardons.

As stated by Mr. Miller, this is a full time board with staggered terms and adequate provision for salaries, assistants, and expenses. Under this system the trial court in pronouncing sentence merely fixes

the maximum term of imprisonment. Then this board within six months from the receipt of the convict in the prison must fix the term to be served, which in no case shall exceed the maximum term provided by law for the offense charged.

The Washington statute in meeting one of Idaho's greatest problems specifically provides in part as follows:

"To assist it in fixing the duration of a convicted person's confinement, prescribing treatment for such person while in confinement and supervising and regulating his or her activities while on parole, it shall not only be the duty of the board to thoroughly inform itself as to the facts of such convicted person's crime but also to inform itself as thoroughly as possible as to such convict as a personality. The board of prison, terms and paroles must therefore, adopt and apply an effective technique of investigation to develop information for that purpose."

There is no question but that in any improvement in the Idaho system one or more full time employees or board members must be provided. To get efficiency and intelligence requires compensation. For service you get what you pay for. The question is how far are the people of the state willing to go to correct the sore spot in our penal system.

While the Washington system has only been in operation a short time, it appears to be effective and a good investment for the state. I do not know what the budget allowance is for this board, but the salaries aggregate $11,000.00 per annum, and I assume that the expenses for clerical assistance, travel expense, etc., will bring the annual expense up to around $20,000 to $25,000 per year.

Personally, I believe that it would pay Idaho to amend its constitution so as to provide the full Washington system. Crime produces an economic loss. It is more important to the future welfare of the state to spend the money necessary for an efficient penal system where convicts can be rehabilitated than to spend it on some of the projects which every legislature tries to promote.

The committee working with Mr. Miller in an advisory capacity suggested a modification of the Washington system and a revision of our constitutional set-up by recommending a board of three members. One member would be the governor, the chief executive officer of the state. Another would be the chief justice of the state supreme court, a non-partisan judicial officer, trained in the law and more or less familiar with penal problems. For the third member they would select a layman, a full time salaried employee, chosen by the state board of education for his knowledge of the duties of his office, a student of sociology and penology. It was thought that the state board of education would be in a better position to make this selection than any other board or officer in the state, for it is accustomed to employ men without consideration of their political affiliation.

We have had a lot of conversation in this state in recent years over our crime problems, our pardon boards and prison management.

As stated above, any change will involve constitutional revision. A constitutional revision takes time and education, and when an amendment once carries it is a hard job to change it. It is time to get away from conversation and to get action. The State Bar can do something beneficial to the whole state by sponsoring a constitutional amendment to change the personnel of the board of pardons so as to provide for one or more full time members having some knowledge and information of the problems involved, and capable of studying and treating each individual found guilty of crime in the manner contemplated by the framers of the indeterminate sentence law, as a personality and not merely as a number.

Because of the rigidity of any constitutional amendment, the result desired in Idaho might be obtained by repealing section 7 of article 4 of the Idaho constitution and the substitution in lieu thereof of the Washington constitutional provision fixing the pardoning power in the governor. That would permit the state legislature to make such changes in the pardon board as experience and practice may require. This is suggested only as an alternative. It has advantages over the present Idaho system, modified by the inherent weakness of final pardoning power in a single officer, subject to human frailities and the possibility of a sentimentalist in that office.

Now, in regard to the motion, Mr. President, it occurs to me for the work done by this committee, and particularly Mr. Miller, in assembling this data upon the work of our Pardon Board, that the motion should be revised so as to provide for the appointment of a committee to study this report, analyze it and from it to recommend either to the Board of Commissioners or Legislative Committee of this association a suggested change in the law. Now, as to the recommendation of the committee, making the Chief Justice of the Supreme Court a member, it occurs to me and some of the members of the association, that one of the members of the Court should be designated by the Court itself or by the Chief Justice and in that way it might be possible to have a continuity in that representation rather than to designate the Chief Justice who changes office every year. It seems to me this is a matter which should be studied out carefully. We have to amend our constitution if we are going to change that pardon board. If we get an amendment it should be one which will be satisfactory and which will be practicable and avoid the necessity of any constitutional amendment and amending the amendment as some of the motions that have been made here today. I am satisfied in my own mind as to what the proper procedure should be. As I said, we have a small state in population, but if we are going to rehabilitate and keep from view 240 some repeaters out of 350 or have about sixty per cent of our violators back in the penitentiary, men who have repeated anywhere from one to five or six times, it is time we really should do something about it and I therefore move, as a substitute, that a committee be appointed to analyze the report and data which has been presented here today and then to recommend to the Legislative committee of the Bar such constitutional

amendment or such satisfactory provisions as it may deem fit to meet the problem, that is, the reform in our present system.

MR. PFIRMAN: I will second the motion.

PRES. MORGAN: All those in favor of the substitute motion, signify by saying "aye."

(Carried unanimously.)

PRES. MORGAN: At this time we will have Mr. Robert H. Elder of Coeur d'Alene discuss the "Importance of National Labor Relations to the Idaho Lawyers and Clients."

MR. ELDER: Mr. President and gentlemen of the Bar Association, I think this subject is one that will well be discussed on a hot afternoon.

A new relationship has been established between the employer and his employees by the Federal law. The problems under this new relationship arise under the following acts of Congress: the Norris-LaGuardia Anti-Injunction Act, the Walsh-Healey Public Contracts Act, the Byrnes Anti-Strikebreaker Act, the Wage and Hour Act, and the National Labor Relations Act.

NORRIS-LA GUARDIA ANTI-INJUNCTION ACT

This act, regulates, defines and limits the powers of the Federal Courts to issue injunctions in labor disputes. The act is thus procedural in nature and deals with the courts' powers and not with labor's rights. No Federal Court may issue an injunction, temporary or permanent, in a case involving or growing out of a labor dispute except in strict conformity with the act and its avowed policy.

WALSH-HEALEY PUBLIC CONTRACTS ACT

This act requires that persons or corporations supplying tangibles to the government in contracts over $10,000.00, must conform to the labor provisions of the act, which include:

1. No labor employed in the manufacture of materials shall work more than an eight-hour day nor more than a forty-hour week.

2. No labor of a boy under sixteen, of a girl under eighteen years of age, or of a convict may be used in the manufacture.

3. Minimum wages, as determined by the Secretary of Labor to be the prevailing wage for similar work, must be paid.

4. Working conditions must be sanitary and not hazardous or dangerous to health or safety.

The main purpose of the act is to regulate wage, hours and working condition standards in employment under contracts with the United States. Here in very bold terms is a re-enactment of many salient provisions of the N.R.A. for a limited group of employers.

BYRNES ANTI-STRIKEBREAKER ACT

This act seeks to prevent the passage between the states of persons engaged in the business of breaking strikes. This act does not make the breaking of a strike or the interfering with labor's rights unlawful. It merely makes it a felony to transport persons from state to state with the intent of interfering with the workers' rights to peaceful picketing and organizing for the purpose of collective bargaining. Under the National Labor Relations Act, we find strikebreaking itself declared illegal, and in the Remington-Rand case, the Labor Board found the company guilty of an unfair labor practice due to their strikebreaking activities, although James Rand, an officer of the company, was acquitted in the United States District Court of charges of strikebreaking under the Byrnes Anti-Strikebreaker Act.

WAGE AND HOUR ACT

This act, known as the Fair Labor Standards Act of 1938, was signed by the President June 25th and will become effective October 24, 1938.

This act provides a statutory minimum age and maximum workweek for employees engaged in commerce or in the production of goods to be shipped in commerce. To administer the law, it creates a new division in the Department of Labor under the direction of an Administrator to be appointed by the President. The law requires the Administrator to appoint an advisory Industry Committee. It also fixes the procedure for each industry for prescribing minimum wages by industries at variance with the statutory standards fixed by law.

This act is based on the asserted power of Congress to regulate interstate commerce. The term "commerce" means trade, commerce, transportation, transmission or communication among the several states or from any state to any place outside thereof.

Every employer is required to pay to each of his employees who is engaged in commerce or the production of goods for commerce, not less than twenty-five cents an hour for the first year, not less than thirty cents an hour during the next six-year period, and not less than forty cents an hour, thereafter. The twenty-five cents minimum will take effect on the 24th day of October, 1938.

The act also provides for maximum hours of employment. Forty-four hours per week during the first year from the effective date of the act; forty-two hours during the second year from such date and forty hours after the expiration of the second year.

The act sets forth an elaborate definition of oppressive child labor, and provides that no producer, manufacturer or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom, any child labor has been employed.

The definition of oppressive child labor referred to includes:

1. The employment of any persons under the age of sixteen years in any occupation.

2. The employment of any persons between the ages of sixteen and eighteen in any occupation which the Chief of the Children's Bureau has declared to be particularly hazardous or detrimental to the health or well being of children between such ages.

Certain industries are excluded from the provisions of the act including Agriculture.

Every lawyer should make a careful study of this act. While at present most industries in Idaho are paying a higher wage than the minimum provided, no doubt every industry will be compelled to make reports of the number of employees, classification, hours of work and rate of pay. The administration of this act will be of vital interest to every industry in Idaho.

NATIONAL LABOR RELATIONS ACT

This act is the most revolutionary and important legislation recently enacted by Congress. The act grants to labor, rights which may be defined in the following terms:

1. To form, join or assist any labor organization regardless of its affiliation.

2. To bargain collectively through representatives of their own choosing.

3. To engage in joint activity for collective bargaining, mutual aid or protection. This embraces the right to strike.

4. To call for assistance of the N.L.R.B. if any employee's rights are denied or if any unfair labor practice is committed.

5. To call upon the N.L.R.B. to determine which representatives are entitled to exclusive bargaining privileges.

Representatives chosen by the employees of any employer, have the exclusive right under the collective bargaining provisions of the act, to represent all the employees in respect to rates of pay, hours of employment, or other conditions of employment, and while the act provides that any individual employee or group of employees shall have the right to present grievances to their employer, the right of an individual employee to present grievances to his employer is limited to questions other than those with reference to rates of pay, hours of employment or other conditions of employment. So, the extent to which an individual may remain his own bargainer is limited to those points and questions which are not delegated to the bargaining agency. The law declares that it is an unfair labor practice:

1. To interfere with, restrain or coerce employees in their effort to enjoy their rights under the Act.

2. To dominate, control or contribute financial or other support to any labor organization, or to interfere with the creation of functioning

of any labor organization. This includes the sponsoring of company unions or the obstruction of independent unions.

3. To encourage or discourage membership in any union by discrimination in (1) hiring and (2) tenure, term or condition of employment. The employer, may, however, enter into a "closed shop" contract with any union, agreeing to employ members of that union only, if the union represents the majority of employees and is not a company union or one which is dominated, controlled or financed by the employer.

4. To discharge or in any way discriminate against an employee because he has complained of his employer's violation of the Act or has testified against the employer.

5. To refuse to bargain collectively with the representatives of the employee's own choosing.

The Board is composed of three members. The act lays down no qualifications for its members. The three who now serve all have a strong pro-labor bias.

The Board is authorized to prevent unfair labor practices and may hold hearings, make findings and enter orders, and while the Board has no power to enforce its orders, it may petition the Circuit Court of Appeals for enforcement of its order, where the employer refuses or fails to comply with the order. The findings of the Board on matters of fact, are conclusive upon the court if supported by any evidence.

In construing the Act, the Board has held that the employer must observe the right of labor to join or form a labor organization, must observe strict neutrality; must use no influence to sway employee's choice of representatives; must not discourage union membership; and must not use strike breaking agencies, detectives or missionaries.

The act provides that employees or their representatives, may file charges. Upon these charges the Board issues a complaint against the parties named as offenders in the charge. From this time on the Labor Board carries on the prosecution. The Board assumes all expenses and costs. The Board in advance of the trial, and in the capacity of inquisitor, may go into the records and files of the respondent, take copies of any record for the purpose of convicting the respondent. In other words, the Board may go on a fishing expedition through the books, papers, letters, telegrams and other records of the respondent. The Board may set the hearing at any place and at any time to suit its own convenience, and the respondent is compelled to go or suffer the consequences. The respondent must pay all his own expenses. At the hearing, the Board acts as complainant, the Board acts as prosecutor, the Board acts as judge. The Board is not required to follow the ordinary rules of evidence or procedure which govern courts of law and equity. The Board may proceed on or off the records, introduce hearsay evidence or receive loose opinion evidence, and give so much weight to all such evidence as it pleases to do, and Uncle Sam foots the bill. All costs except the costs of the respondent is paid by the Federal

Government, and the respondent, even though he should be so fortunate as to win, which is relatively unknown, has to pay all his own costs and disbursements.

The act is based upon the theory that Congress has the right to regulate manufacturing, processing and selling in relation to labor engaged in interstate commerce. The Supreme Court has sustained the constitutionality of the act and has also sustained the procedure of the National Labor Relations Board. Prior to the adoption of the Wagner Act, it was thought that shipments across state lines constituted interstate commerce, and it was such shipment across the state lines which subjected the shipper to federal regulation. However, under the recent decisions of the Supreme Court, Congress has the right to regulate manufacturing, processing and selling, in their relations to labor, if such manufacturing, processing and selling, in any material extent, influences the stream of interstate commerce—although that industry when viewed separately is entirely local. These decisions deal a death blow to the traditional concept of interstate commerce.

In a case against the Consolidated Edison Company of New York, the Labor Board recently made some very far-reaching rulings. This case involved the selling of electricity in the State of New York. The Consolidated Edison Company is located in the State of New York and sells all of its product to other companies located in the State of New York. The Board, however, found that companies to whom the Consolidated Edison Company sold electricity in turn transported the electricity across the state lines, and for that reason the Consolidated Edison Company was engaged in interstate commerce. This is by far the widest definition or interpretation ever given to the interstate commerce clause of the Constitution.

This case has been appealed to the Supreme Court of the United States and if the Supreme Court of the United States affirms this decision, there would appear to be little left between intrastate and interstate commerce. If this ruling of the Board is sustained, it is not a far stretch of the imagination to say that the court will sustain the board in taking jurisdiction over all our industries.

This act numerates certain things that an employer must not do, and states that if he does those things, it shall constitute an unfair labor practice, on the part of the employer. No one should quarrel with the statute in so far as the act designates an unfair labor practice, but this statute has been so constructed by the Board as to make it wholly impossible in many cases for an employer to perform his ordinary managerial duties. It has resulted in breakdown of discipline and in loss of efficiency.

The Board has gone so far as to compel the employer to reinstate employees who had pleaded guilty or been convicted of obstructing the mails, assault and battery, rioting and malicious destruction of property, interfering with railroad tracks and carrying concealed weapons. The administration of this act is breeding disrespect in the minds of the public.

The Wagner act differs basically from other Federal laws. The Federal laws commonly deal with the questions affecting the general public, and are enacted to protect the public interest. The Wagner Act does not do so, and was not intended to do so, it is legislation for the benefit of a class. The act is based upon the proposition that employers as a group, impose upon their employees and keep them in economic and social bondage. This, of course, is not true. True, some employers are guilty, and such action should be curbed, but it is unfair to say that the industrial strife existing in this country is due to the attempt of the employers to subjugate their workers.

Have the purposes of the Wagner Act been fulfilled? Has the obstruction of interstate commerce diminished by reason of the enactment of this law? The answer must be no. Since the Act became a law, labor has engaged in the most violent organizational controversy known to this country. Strikes have occurred in many of the larger industries; property has been burned and destroyed; a form of sabotage known as the sit-down strike and the slow-down strike were developed; many major industries ceased operation, and by reason of the unrest, both labor and industry have suffered an immense loss.

Every employee should have the right to decide, of his own free will what union, if any, he desires to join, and whether he wants to continue at his job; and he should not be coerced by his employer or by other employees or by a union. This freedom is, and it should be, guaranteed to every citizen and no democratic government should permit any citizen to be deprived of this right. The act should denounce unfair labor practices on the part of employees and on the part of a union as well as employers. The Wagner Act as written and as administered treats the employer and employee as enemies. This, I believe, to be fundamentally wrong. It wholly ignores the mutual interest of the employer and the employee, and if this is not corrected, in my opinion an irreparable harm will result to our industries.

The charges filed by the labor board and prosecuted by the labor board should be tried by an impartial tribunal, and such trials could be had in the United States District Court at a fraction of the expenses that is now incurred by the labor board.

The enactment of these various laws and their administration is bringing to the world a most remarkable exhibition of trial and error in government. If society is to continue on its present basis in this country, substantial justice must be done to all people and all units of our society, for the reason that no government can last that does not do substantial justice to its citizenship. We must make a choice between our constitutional society which upholds the right of private initiative and a coercive and untried system in this country which lodges control over the freedom and liberties of our people in a bureaucratic government. The citizenship in this country has obtained the highest degree of personal liberty and of personal rights that has ever been enjoyed by the citizens of any country, but with the coming of

the industrial age, society is arraigning itself in classes and many people resent the constitutional restraint which is placed upon them under our constitution and are urging the return to parliamentary government and it is proposed, and these laws have departed from a government by law to a government by bureaus.

It has been well stated: "Above all we must not substitute restraint and oppression for liberty, exploitation of class by class for justice, or, in the name of equality, restore class privilege under the law."

MR. ELDER: continuing) I was interested in a set of law books today. I have studied law for years and accumulated a few books and I say, if the procedure continues as it has in the last four or five years, you won't need any law books except Federal Statutes and Federal Interpretations in the next few years. The matter of State's rights and state law is fast being eliminated from consideration. Now, gentlemen, this thing is pretty important. These laws are very important. The tendency of the times is very important to lawyers and to the judiciary. If we are to maintain society in this country organized upon the basis on which we have prospered for the last one hundred and fifty years, then we must heed the warning, the warning bells that have been ringing in our ears. It is time that all lawyers take heed because if we permit this thing to go on, if we get away from constitutional action, if we get into these Boards, and bureaus and permanent regimentation—and that is all that it is—where are we going finally to end? Have you ever known of a Board—have you ever known of a member of a Board that wanted to surrender any of the power given to him in any of these bureaus? Take your Industrial Accident Board or your Public Utility Commission. They want more power all the time—not less.

Now, some of these boards were developed because we thought we had need for them. Then you gave these Boards power to decide a question and bind the Courts with that decision. I don't agree with it. I think it is going to be detrimental and cause us much trouble if we don't take heed and stop this development of this bureaucratic government. Above all, gentlemen, we must not substitute restraint and oppression for liberty; exploitation of class by class for justice; or, in the name of equality, restore class privilege under the law.

(Applause.)

PRES. MORGAN: We will now have the report of the Canvassing committee.

ROBERT McFARLAND: Of twenty-three ballots cast Mr. Abe Goff of Moscow received twenty-one votes. One disqualified on nonpayment of license and one blank.

PRES. MORGAN: Gentlemen, your new commissioner for the Northern Division for the coming three years is Mr. Abe Goff of Moscow, Idaho. We will now take a recess until 9:30 tomorrow morning.

JULY 23, 1938

9:30 A. M.

PRES. MORGAN: I have decided, as a first order of business, to listen to the report of the Local Bars Section. Mr. Evans, Chairman of the Local Bars Section will now make that report.

MR. EVANS: The Local Bars Section met Thursday in two sessions. We took up for discussion and discussed quite thoroughly the propositions that were contained in the program of this convention of which all of you have a copy.

We took up the printed proposed resolutions presented to you, and discussed them and made certain recommendations as to what the Local Bars Section believed should be done with those resolutions, so I will take the resolutions up first.

(The Proposed Resolutions are printed herein at page 37.)

The Local Bars Section recommends to this convention the adoption of proposed resolutions No. 1 and 2. Recommends the rejection of No. 3 and No. 4. With reference to No. 5, dealing with the subject of oral argument in the Supreme Court, as set out in resolution No. 5, the Section recommends the rejection of sub-division "A" providing that fifteen minutes more time be given for appellant on appeal than is given to respondent because of necessity of statement of facts by appellant.

Recommend the adoption of sub-division "B" and recommend the adoption of sub-division "C" with the proviso that argument shall not be limited on appeal to the points upon which the Supreme Court desires oral argument and recommends the adoption of sub-division "D" that the Court, after examination of the records and briefs, may submit to attorneys questions to be briefed or further briefed.

The Section recommends the adoption of proposed resolution No. 6 providing for an increase in the license fee to be paid by the members of this Bar.

The Section recommends adoption of proposed resolution No. 7 with the addition that we are recommending that this convention go on record as favoring abolition of the Industrial Accident Board. Now, some have no love for that Board; at least their friends didn't attend the meeting of the Section.

The Section went on record as recommending the adoption of proposed resolution No. 8 providing for increase in the investigation and examination fee to be charged candidates for admission to the State Bar.

The Section on proposed resolution No. 9 decided to leave that matter to the convention without recommendation. That is the resolution dealing with the appointment of a standing committee on law

books, publications and directories. We didn't have enough information to enable us to act intelligently and the proponent or proposer of that resolution should present arguments in favor of that action to the convention and the convention take such action as it may deem advisable.

The Section also referred resolution No. 10 dealing with amendments to the Canons of Professional and Judicial Ethics to this convention without recommendation so that the proposer of that resolution may present his reasons to this convention. With reference to the matter of uniformity in examinations of titles, that also was left to this convention without recommendation so that you might take such action as you deem advisable after hearing the address on that matter and the discussion. Not having had the opportunity to listen to any of that we felt we were not in a position to make any definite recommendation. With reference to the amendment of uniform local by-laws relative to fee schedules, the resolution was adopted providing that the fee schedules adopted by the respective local bar associations of this State be submitted to the State Bar Commission for approval and that thereupon such schedule should be the official schedules of the different districts and that the Board draft regulations for disciplinary action for violation of such schedules so adopted.

A committee was also decided upon to provide for the future organization and conduct of the work of the Local Bars Section. The President of this Bar was directed to appoint such committee and the chairman of the Local Bars Section was associated with that committee with instructions to draft a plan of organization for the future conduct of the work of the Local Bars Section. If they will proceed upon the performance of their duties the work of the Local Bars Section will be better conducted in the future than it has been in the past, as we are beginning to have some concrete ideas as to how those matters should be conducted.

And, with the exception that the chairman was sentenced to serve another term, that completed the action of the Local Bars Section.

PRES. MORGAN: If there is any member present who does not have copies of those printed resolutions, they are here at the desk and it will be an aid to have them in your hands.

As a matter of expediting business, in the absence of objection, we will take these resolutions up and proceed with them for a little while.

JUDGE REED: I move the report be received and placed on file.

JUDGE WM. M. MORGAN: Second the motion.

PRES. MORGAN: It has been moved and seconded that the report be received and placed on file. All in favor of that motion signify by saying "Aye."

(Carried.)

PRES. MORGAN: There are a few of these we can dispose of

without interfering with the rest. For instance, the report on increase of lawyers annual license fee. There is no address on that subject.

MR. HYATT: I will move the adoption of proposed resolution No. 6.

PRES. MORGAN: It has been moved and seconded, that the report with reference to increase in lawyers annual license fees be adopted. Any remarks? All those in favor of the motion signify by saying "Aye."

(Motion carried.)

MR. PFIRMAN: Mr. President I move the adoption of resolution No. 5 with amendments proposed by the Local Bars Section.

(Thereupon the motion was seconded.)

PRES. MORGAN: It has been moved and seconded that proposed resolution No. 5, as reported by the Local Bars Section committee be approved. Are there any remarks?

All those in favor of the motion will signify to the same by saying "Aye."

(Carried unanimously.)

Taking up now proposed resolution No. 8 which reads "The expense of investigating and examining applicants for admission to the Bar greatly exceeds the $3.00 fee now required to be paid by applicants, and such additional expense is a burden upon the finances available for the work of the Idaho State Bar: Now therefore, resolved, that the Supreme Court be, and hereby is requested to require applicants not theretofore admitted to practice elsewhere to pay an investigation and examination fee of $25.00 and those theretofore admitted elsewhere to pay an investigation and examination fee of $50.00 and providing that the Board may keep the fees so paid in a fund from which the Board may pay expenses of and connected with investigation, examination and admission of applicants."

Do I hear a motion on that?

MR. BOUGHTON: I think that matter was quite thoroughly covered by the Secretary's report. I move the adoption of the proposed resolution.

PRES. MORGAN: May I offer a suggestion to keep away from a lot of amendments here. Will you move to adopt that, but to amend so as to give the Board control of the funds for all purposes and not for examination purposes only?

MR. BOUGHTON: I incorporate that in the original motion.

(Motion seconded.)

MR. HUFF: It states that the fee will be $25.00 and $50.00 to be used by the Commission then. I thought the $25.00 was supposed to take care of the library fund. Would $25.00 of this library fund be eliminated under this resolution?

JUDGE WM. M. MORGAN: The amount of the library fund is fixed by the Legislature.

PRES. MORGAN: The $25.00 fee which goes to the State Library does not help the Idaho State Bar to conduct its affairs.

MR. HUFF: It is very easy for us to pass resolutions for somebody else to pay things. This resolution is directed at a great many young people whom we will have coming up for Bar examinations. I think we should consider very carefully whether or not we should make a fee of this size when it means they will have to pay a $25.00 library fee plus $25.00 or $50.00. Everybody realizes the present $3.00 fee is not sufficient, but I doubt the advisability of putting $25.00 extra on, particularly when seven-tenths of them failed. Are the fellows who failed supposed to support the Bar association?

MR. ESTES: The $25.00 library fee is not paid until after the examination is passed and when the applicant makes application for admission after he passes the examination.

MR. POTTS: Mr. President, I am not quite in favor of this suggestion, nevertheless I am going to make it. I don't question the necessity of increasing the fees generally, but I can't see the fairness or justness of increasing it to $25.00 upon the young fellows who are so unfortunate as not to pass a Bar examination. I know it will be said that the expense is just the same whether the applicant is admitted or not, but the result isn't the same by any means. Here is an enormous increase from $3.00 to $25.00 and, for the time being, I think it should not be taken in one jump but gradually. I offer as an amendment to the resolution this clause to be inserted after the figures "$25.00," "said fee to be refunded to the applicant who is not admitted."

MR. HUFF: I second the motion.

MR. WOLF: I don't agree that we should offer $25.00 to fellows who fail in the examination. Why should it be offered to him and not to a man who succeeds? If the fee is raised the man who is doubtful about passing, isn't going to be anxious about submitting himself for examination. In other words they will not go down and submit themselves for examination without any idea as to whether they can pass or not. If you returned all the fee, the lads who fail will not have any fee for cost of examination. It will throw the entire burden of cost of examination on the fellows that do succeed.

MR. NELSON: I suggest a fee of $10.00 for all applicants and cut out the phrase permitting use of the money for all purposes. I can't see any justice whatever in making the young man who is an applicant for the Bar pay his way through law school and pay that money to this Bar for any other purpose than his examination fee.

If he becomes a lawyer then he may pay, but why any of his charge should go for any other purpose than the cost of his examination I can't see. I would gladly support the motion if it were made $10.00 when it goes for fees.

PRES. MORGAN: I apprehend that some of you perhaps either didn't hear the Secretary's report at the opening of this convention or, if you did, you didn't heed what there was in it. In a careful analysis, a break down, even to the postage that was spent, made by the Secretary, of the cost of giving the examination to these young men, it shows that costs exceed $25.00. Now, it may be possible that it works a hardship upon some individual to pay $25.00 to take that examination but it works a hardship on every member of this Bar to pay expenses of the fellow that wants to go in a competitive field. We don't want to extract anything from the young men of this State who desire to become lawyers but we do want them to pay their way. The fact of the matter is that is one of the greatest expenses we have to meet and the only means we have of meeting twenty-two dollars and some cents of the expenses is out of the $5.00 the members of the Bar pay here as a membership or license fee. If there is any justice in that, I fail to see it. All we are asking them to do, is not to make a donation, but to actually pay the expense of giving them this examination.

If a lawyer wants to come in here from some other State we think he should pay the expenses of making the investigation, and there is now a National Bar Examiners organization that makes that investigation and charges $25.00 for it. This is not a matter of working a hardship on anybody, it is simply making them pay for the expense of taking this examination. That is all we want them to do. I fail to see why the lawyers of this State should pay the expense of someone who wants to become a member of this Bar.

MR. HUFF: As to the matter of expense of the young man who wants to become a member of the Bar, you gentlemen as tax payers of this State are paying the expense of educating these young men. Mr. Morgan's argument is he wants the young men to pay the cost to the Bar. I think we have a duty of educating our children. In making the raise, all we are doing is closing our Bar. If there are two or three fellows who come in here to take the examination the only additional cost should be the mimeographing of two or three extra sets of questions. Of course it is possible some minimum fee should be made. If it costs some money to this association to give to these young men a chance for an examination, we ought to be able to pay something to give them that chance.

MR. BOUGHTON: May I suggest that somebody be requested to read that report.

MR. GRIFFIN: It seems to me the complete answer to Mr. Huff is that the tax payer of the State of Idaho isn't paying any of these expenses. Only the lawyers are paying these expenses. As it stands now you lawyers, not the taxpayers, are paying $22.99 for every applicant who takes the examination, win, lose or draw, and that amount represents the greater part of the deficit which we now have and every year have had in this organization. The only reason we have been able so far to keep up the expense is because in the beginning of the organization we had a surplus. Now, there are many things that the Bar Commission would like to do for the lawyers themselves, including those who will be admitted, that cannot be done now because, if they were done, we would have four or five times the deficit we have now; our surplus at the end of this year will probably be nil.

Idaho charges less than any other state in the Union. Only one state approaches it. Most of the states run from $10.00 to $50.00 and the applicant pays it. If it is unjust here it is unjust in every state in the Union. If you want the figures, I can give them to you. I could give you an analysis showing you what it costs for stationery and forms and traveling expenses if you want that analysis but it is pretty detailed.

MR. WHITLA: I think there are two different matters involved. One is investigating the man who comes from another state and who has been admitted in another state. According to the Secretary's report it costs much more to make such an investigation. On the other hand, when we have a young fellow who comes here to take the examination I think there is a general feeling among the members of the bar we should do something for the young man who desires to take the examination—to take him in if he is fitted to practice law in this state and give him a chance to do so. I think there is a general feeling that anyone coming here from another state should not be permitted to do so until a proper examination of his character has been made. If he comes from another state, I think he should be charged everything this Bar has to pay for making the proper examination to see if he is qualified to practice. So far as the young attorney is concerned, in making his application, I think this Bar can afford to be very liberal to the extent of digging down in our own pockets to give him an opportunity to try this examination to see if he is qualified to practice law in the State of Idaho. I think the two should be divided.

PRES. MORGAN: The difficulty is there is a limit to the pockets of the Idaho State Bar.

MR. POTTS: I think we approach this subject from the wrong angle when we think we are extending the benefit to the young man who takes an examination and therefore we should charge him the full cost of examination. The truth of the matter is we are doing it for ourselves as a profession. We are trying to keep out the unfit and the unprepared and it is as much to the benefit and interest of the Bar and the fellow who is practicing law as it is for the advantage of the young men who are trying to get into the profession. It has been suggested to me by several, and I think it would be more proper, in place of the amendment which I offered, to refund the $25.00 to those applicants for examination, other than those who come in under the $50.00 class where the real expense is for investigation and so forth.

You can't tell me this Commission has to spend a lot of money investigating boys at the University of Idaho or from reputable law schools. Where you expend your money is for investigation of some attorney who comes out here who has been in the practice, where it is really necessary to make an investigation as to his career and his conduct in the profession.

Now, as to that particular fee of $25.00, applicable generally to graduates of law schools—if they are graduates from the law school of the University of Idaho I suggest that the amendment be in this language, "$15.00 of said fee be refunded to the applicant who is not admitted."

PRES. MORGAN: Let me ask you this, Mr. Potts, before the seconding of the motion, do you limit that to the individual who has not heretofore been examined? In other words, this would apply to our local people and students, but do I understand your motion to refer to the $25.00 that you spoke of a moment ago as an investigating fee for attorneys coming in here from some other state. We would not know whether he was in good standing. Fifty dollars fee covers that. In other words, $25.00 for investigation and $25.00 for examination.

MR. POTTS: I am not saying anything about the $50.00. That is all right.

PRES. MORGAN: In other words, just the first time the applicant takes the examination, if he fails, he is refunded $15.00.

MR. WHITLA: Second the motion made by Mr. Potts.

PRES. MORGAN: You have heard the amendment, gentlemen, are there any remarks?

JUDGE MORGAN: Let me ask a question—what do you mean by original applicant—a fellow who has applied heretofore and had an examination and has failed and came back for a second or third or subsequent examination?

MR. GRIFFIN: Judge Morgan, let me suggest just one further proposition. When the applicant is approved in the first instance he gets a certificate which entitles him to two examinations without reinvestigation. Now, if he passes beyond that point, he has to reapply and I assume, he would have to pay the fee again.

JUDGE MORGAN: That is, suppose a man takes the examination and fails, he has to pay the $25.00 and he gets $15.00 back. Upon that $10.00 he would be given the opportunity to take another examination?

MR. GRIFFIN: If he is coming up for re-examination I think we would hold that fee of $25.00 until his certificate runs out and then refund it.

JUDGE MORGAN: In other words, his only fee for examination is $25.00 if he is ultimately defeated.

PRES. MORGAN: That would be manifestly unfair because it costs as much to give that second examination as the first one.

MR. HORNING: I might suggest, in keeping with some of those other amendments, I might offer one to the effect that the unsuccessful litigant should have his filing fee returned, or a man who filed in the primary for county officer if he is defeated should have his fee returned or if the Bar owes so much to these young attorneys, they should give their examination free of charge.

PRES. MORGAN: All those in favor of the amendment will signify by saying "Aye."

The amendment is carried.

Now the question is as to the motion as amended. All those in favor of the motion as amended will signify to the same by raising the right hand.

(Thereupon President Morgan declared the motion carried.)

PRES. MORGAN: I think now, gentlemen, we will resume our regular order of business. At this time we will listen to an address by John P. Gray of Coeur d'Alene on some of the problems in mining law.

MR. JOHN P. GRAY: Mr. President and gentlemen and ladies—instead of undertaking to discuss some of the technical questions of mining law, I think it would be better if I might take up with you a few of the problems which come to those of us who live in a mining country in our day to day practice. But, before discussing any of them, I do want to call attention of the Bar to a matter which I believe has been before the Local Bars Section but which I have not heard mention of here.

Mr. Hardy of Grangeville has called attention of the Association to the fact that at the last Session of the Legislature the provisions of our code authorizing the sale of mining property held by an estate upon option or deferred payments were repealed so that the executor or administrator of an estate, unless given express power in a will, has no authority to execute an option upon such property or to dispose of it except in the same manner as other real estate. Manifestly that is impossible. It is almost impossible to take a mining interest, put it up and sell it for cash or its equivalent, as in the case of ordinary real estate. The result is that if a piece of mining property gets into the hands of the estate, it must either be sacrificed to meet debts of the estate or those interested must await termination of administration before it can be optioned or sold. Mr. Hardy calls your attention to the fact that in his county a number of instances have arisen where it is impossible to dispose of interests in mining claims held by estates and he suggests that the law, which was previously in force, be reenacted. I entirely agree with him. I think there is little danger of the estate being injured. Such sales and options upon mining interests could only be made after notice and after approval by the Probate Court. I submit this for your consideration.

Many years of practice in the mining community have taught me certain things which I think every lawyer should have in mind. I rarely have occasion to examine the title of a mining claim or mining property or to give advice concerning a mining claim but that I find some defect in the location of the claim. As a matter of fact, the government is very generous in permitting its citizens to go upon the public domain and locate mining claims. All that it asks is that the prospector or locator make discovery of a vein of mineral bearing rock. He does not have to find commercial ore or anything of that kind, simply a vein of such character as to induce him to expend his time in development.

The only other thing that the general government asks is that he should monument it, so that others may be given notice that he claims that ground. That is not a difficult thing for a man to do, to make the discovery first and then monument the ground which he wants to claim and yet, in almost every case, you will find that there is some little difficulty about the monumenting of the claim.

The State has added certain other provisions .It requires that he should put a post at each corner which shall be four feet high and four inches square or four inches in diameter. Or, that he shall mark a tree at these corners of that site. Also, that he should put a notice of location upon a post at the point of discovery. The State then gives him sixty days within which to sink a shaft ten feet in depth from the lowest part of the rim which shall cut the vein which he claims ten feet below the lowest part of the rim of the shaft and shall have one hundred and sixty feet of cubic excavation. Well, it is a strange thing. Whenever a controversy arises involving mining claims, and they do frequently, you will almost always find that the locator has either put a two-inch stake at a corner or has failed to establish one of the several stakes which are necessary, perhaps thinking he would go back another day and establish it, which he neglects or forgets to do. More often he fails to sink a legal discovery shaft. In other words, he locates what may become very valuable and yet he fails to perform those simple tasks which the law imposes upon him.

Now, when a man comes to you with a mining claim, the title of which is questioned, the lawyer should have no difficulty in advising him. There is nothing occult in the mining law. I think, as a matter of fact, there is little difficulty in determining what the rights of these locators are. Take the statutes of the United States and the statutes of the state and carefully go over the acts which he is required to perform, find out if he has performed them. To those of us who live in a mining community, that is just an every day procedure. The lawyer to whom such a question comes once in awhile should not shy from it because there is nothing difficult about it. All he has to do is consult his statutes and determine whether or not the locator has properly performed his duties. It is a strange thing how these locators hate to do that ten feet of work. Not long ago I had a law suit to try where I found that one of the claims which had been located

by a predecessor of my clients had not had sufficient work done upon it. The claim was located on the side of a rather steep hill. Remember that the law says the prospector must sink his shaft which will cut the vein ten feet below the lowest part of the rim thereof. Now, what this locator did was to excavate a cut in the hill about two feet deep extending down the hill from the point of discovery. When I asked him why he didn't sink a shaft ten feet in depth he called my attention to the fact that the elevation of the lower end of the cut vertically was ten feet in elevation lower than the upper end of the cut. In fact the cut was at no point more than two feet in depth and this was simply an attempt on his part to escape the physical labor of sinking a ten-foot shaft or cut. The fact was that the claim turned out to be a valuable one but it was necessary to abandon it because the locator had failed to observe the plain provision of the law.

Now, you know one never knows in advance whether a mining claim is going to be valuable or not. If it is good enough to locate, it is good enough to locate properly and the lawyer, if he is consulted, should insist that the locator or prospector or mining engineer should do it in the way that the law prescribes. Otherwise the locator is going to lose out if any controversy arises and, if it becomes valuable, one is almost certain to arise. Not only in the case of location work, but in the performance of annual labor which the Federal law requires, namely, $100.00 a year on each claim in order to hold it, the prospector or miner or locator is very apt to fudge a little. It is just remarkable he can seek to hold this ground which is valuable or may be valuable—and if it is not valuable he ought to abandon it—and yet fudge ten, or twenty or thirty feet on that $100.00 in work which is required by law to be performed each year.

But he fails to do the full and fair assessment. A few years roll by, the ground becomes valuable. Perhaps some neighboring claim has developed ore of value and a controversy arises. It may be that another prospector acquainted with the fact that there were defects in the original location or that the annual labor had not been properly performed, relocates the ground. Then the first locator who would have had a perfect title had he properly located the claim and performed his work, loses out. The location work could perhaps have been done for $25 or $35, but he fudges on it and when the controversy arises his title is in jeopardy because of his failure to comply with the law. It is our duty to advise our clients to conscientiously observe these modest requirements in perfecting the location and to do a full $100.00 worth of annual labor during the years when that is required. These questions involving surface rights are the ones which usually come to us in our practice. It is not often that we are called upon to investigate and advise concerning underground conflicts. It is these simple surface conflicts with which we meet most generally in our practice and it is important that the law be carefully studied and its requirements be carefully complied with. No great mine was made in a day and where you find a great mine you are bound almost certainly to find underground conflicts.

The great ore deposits in this country are found in relatively small areas. In these areas the surface of the earth has been subjected to tremendous earth movements and tremendous mineralizing influences perhaps extending over millions of years. The result is that you usually do not have simply a narrow fissure vein with a simple deposition of pure ore, you have, instead, veins of different ages and faults and fractures which may have come during a period when mineralizing solutions were passing through these rocks and through the fractures. These in turn, may be complicated by later fractures. The result is we do not have one simple vein, but in almost every great mining district, we have veins of different ages. There is where extra-lateral controversies arise. The average lawyer in a life time does not have a case involving these underground rights presented to him, but if he does he has a more difficult task. There is considerable case law built up around the mining statute but upon any given question of law there are relatively few cases. We have had about as many in the Coeur d'Alene mining district as in any district and I suppose those cases do not exceed twenty or thirty in number, so the lawyer seeking to ascertain what the underground rights are of a given claim has not many cases to examine.

But the point I want to make is that if a mining claim is located in a good mining district, it is important that the pre-requisite of location be carefully ascertained and complied with by the locator because ultimately these underground rights, if the claim becomes valuable, may be determined by the old original location and its position on the earth.

It is very important that, within a reasonable time after the location is made, a surveyor should go out and see that the end lines are parallel.

Assuming that you have a vein which extends lengthwise of the claim and that it dips in a given direction, you have the right extra-laterally to that portion of the vein which is found between planes extending downward through your end lines and those planes continued in their own direction. If those end lines diverge in the right direction of the dip instead of being parallel you have no right to pass beyond your vertical boundaries in the direction of the dip. So it is important that the locator should have parallel end lines.

Even surveyors do not always have the lines parallel. It is remarkable that so many cases of apex rights present questions of non-parallel end lines. Frequently the vein crosses what are located as the side lines instead of the end lines, and those side lines then in law become end lines, so it is important that they should be parallel. As I pointed out a moment ago, if they are not parallel but diverge in the direction of the dip the claim has no extralateral right; if they converge in the direction of the dip the claim is not denied extralateral rights but has less than it would have if the lines were parallel. A little care in the early days in making the location will give you a claim which, if it ever does amount to anything, will have the right which the statute intended it to have.

Another thing with which lawyers should be familiar is, the importance of maintaining the monuments at the corners of the mining claims. The large mining companies recognize the importance of maintaining their monuments, and I venture to say most of them, each year, have the ground gone over, and the corners maintained. Today they are erecting iron monuments and marking them so that they can be tied into more than one point and they are carefully maintained. But there are so many who have mining claims, even those which are patented, where posts have fallen down and rotted away, been burned off in some little forest fire or otherwise destroyed. When it becomes necessary to define the claim on the surface, it is almost impossible. Even if it is a patented claim you will find difficulty in locating the corners. Perhaps in the patent survey the corners were tied to trees and the trees have rotted, been cut off or burned off. Today, in the Coeur d'Alene District, I know of two of the very large mines adjoining one another and considerable trouble is experienced in ascertaining exactly the boundaries of their respective locations. Two or three forest fires through there have destroyed the monuments, patent notes tied into trees and the trees cannot be found, so it means they must get together and adjust it in some manner. But, if once a year, a miner under the counsel of his lawyer goes over the ground and sees to it his monuments are there, these difficulties will not arise. I think those are very important things which the average lawyer has to meet in connection with the location and position of mining claims. You can not be too careful when a client comes to you in going over those features and advise him about the acts that are necessary and then see to it they are done.

Not long ago a client came to me concerning some locations which he had owned for a long time and which I found needed some amendments. A supposedly competent man was engaged to go out and make the amended locations. After they were made we again reviewed the question and it was found that he had not complied with instructions. Sometimes it is because of indolence and again it is because the man employed to do the work has notions of his own. So I suggest that the lawyer's duty does not cease when he recommends an amendment or a change in the lines or additional work but that he should exercise care to follow up his advice and see to it that the necessary acts have been performed.

I hope the few observations which I have made and which are the result of long experience in the mining country, may be of assistance to some of you. Mining practice involves many interesting and important problems. I might illustrate to you some of the problems which at times arise.

One of the most interesting camps is Butte. I have called your attention to the fact that most large productive mining districts result from long ages and periods of mineralization. Such is true of Butte.

There the oldest veins course easterly and westerly. They are the great productive veins of the Butte district. The Anaconda vein, so-called, is one of them, the Rainbow is another. They were probably mineralized to a considerable extent before other veins were opened up in the district. During the period when mineral solutions from below were mineralizing these great east-west veins there were gradual or sudden earth movements which dislocated those veins and which resulted in the opening up of a series of northwest-southeast striking veins commonly known in that district as the "Blue" veins. These "Blue" veins were opened up during the period of mineralization and after they were opened they were mineralized and the great east-west veins which they had dislocated received additional mineralization. But nature didn't stop then. After these veins had been fully mineralized another earth movement took place which resulted in the opening of fractures having a general northeast and southwest direction. These fractures faulted both the original east-west veins and the north-west "Blue" veins. This faulting came after mineralization had ceased. The segments of the original east-west veins created by the north-west faults again have been divided by each of the northeast faults. There are cases where the east-west veins were displaced by the northwest veins and segments of them again brought into juxtaposition by the northeast faults. In the early days the practical miner, not appreciating fully these relations, followed from one segment through a segment of a "Blue" vein to another segment of the east-west vein without realizing the age relationships. With these complications it was only to be expected that underground conflicts might arise. In so many instances these underground rights were determined by the priority of the mining claims involved, because where the lines of two claims are so laid that each of them might cover an ore body the one that is first in time is first in right. So there again arises the importance of properly caring for the preliminary steps of location and recordation and the maintenance of monuments marking the ground. I have rarely had a case which did not in some aspect go back to the beginning and involve the questions of location to which I have directed your attention.

PRES. MORGAN: At this time we will listen to an address by Mr. J. Ward Arney of Coeur d'Alene. "Examination of Titles and Lawyers Problems."

MR. J. WARD ARNEY: It takes a ton of temerity to talk to Bar members on titles. Attorneys generally may recognize specialization in certain fields. Attorneys are willing to recognize that patent, mining, public utilities, irrigation and certain other types of practice should be referred to, or require consultation with, specialists in those lines. There is practically no attorney who will concede that his opinion as to titles is not equal to that of any other attorney.

As a matter of fact, this confidence is not confined to practicing attorneys. It is shared quite extensively by bankers, realtors and many of the justices of the local Courts of legally limited, but actually unlimited, jurisdictions. In consequence, one discussing title must realize that he is subject to challenge from practically every practicing attorney, and that viewpoints as to titles differ as radically as in most any phase of practice.

No one should assume to instruct the Bar of this State in title examination. First, because the opinion of one attorney will not be surrendered to another; and, secondly, because we regrettably have no uniform standard of practice in respect of title examination.

The practice of law never has been, unquestionably never will be, and assuredly we hope never will become an altogether exact science. Professional and personal opinion and procedure in the practice of law necessarily must differ as do the inherent tendencies, practical experience and training, and the particular problem momentarily confronting the individual attorney. One would be indeed an idealist who would expect completely effective standardization in title examination. Recognition of this impossibility, however, does not necessarily preclude the hope that by discussion and consideration of the problems confronting title examiners in Idaho we may be able to accomplish a degree of uniformity and the adoption of certain programs which will not only aid examining attorneys, but, more important, aid our clientele and the business world at large.

It is not exaggeration to state that in no other field of the practice of law are attorneys so rightfully subject to adverse criticism, within and without the Bar membership, as in title examination. Conflict of opinion among examining attorneys has resulted in the Bar and the laity seriously doubting not only the ability of the Bar, but its integrity. The Bar and its clientele not only wants, but has a right to expect, more harmony in the opinions of examining attorneys. In the past and presently, title opinions have been, and are, so unreasonably conflicting that it is dangerous to the Bar and dangerous to business.

Candidly (and we have fortunately developed the spirit of frankness in dealing with our shortcomings, recognizing that therein alone lies the possibility of cure), Idaho title examiners, particularly in the last few years, have been motivated as much by fear as by intelligence. We are practicing in a period when title examination opinions are quicksands; when we can find no solid footing; and where we are desperately fearful of being engulfed.

Fear enters and dictates too overwhelmingly, because the examining attorney, although he may conclude that a given title is marketable, fears, from experience, that some other attorney, more technical in opinion, may come to a contrary conclusion. This is not censor to the examining attorney; it reflects upon the failure of the Bar to devise a program or adopt certain standardizations which will largely take the individual title examiner off the "hot seat."

As candidly as we admit that fear is a too predominating influence, we may concede, first, that not every member of the Bar is, in fact,

qualified to examine titles, even though his ability may be transcendent in many other, or all other, features of the practice. Inability to concentrate, inadequacy of experience, and lack of ability to distinguish between actual and marketable title precludes a certain small percentage of the Bar from title examination competency. Candor, like charity, should begin at home. Our local Bar, rightfully rated as strong a Bar, man for man, as any Bar in the State of Idaho, has in its membership fine, competent attorneys in every field of the practice, excepting in patent, title and a few other phases of the law. The opinions of some of these members would be unquestioned in every field but titles. That condition obtains throughout the Bar of the State. We recognize specialization in certain practitioners in given lines, but we will not concede that the opinion of any other attorney is better than our individual opinion on a question of titles.

The rest of the rank and file of the practitioners are competent title examiners to variant degrees. We can fairly say that they apply intelligence and training to title examination, but we must as readily concede that even the best of these examiners are constantly prodded by the prongs of fear; and until we minimize or "Scotch" that element of fear as a predominating influence in title examination, we are justly subject to the suspicion and criticism of the laity and fellow members of our Bar.

It may be facetious, but it is a fact, that most of us would rather challenge the purity of a man's wife than question the marketability of his title. It is a plain fact that no careful, honest and intelligent examiner of title can make a red cent out of the examination of an important piece of title if he has to conclude that the title is not marketable. Once that opinion is expressed, it must be explained to the prospective purchaser or mortgagee at about the same length of time and exertion as was consumed in title examination. Then generally follows a fruitless, embarrassing and hostile conference between the owner of the title, probably bringing in a real estate or loan agent, and possibly another attorney. What can be expected from a heated, red-faced conference? Nothing, except a waste of time and the incurrence of enmities, with the necessary loss of confidence by the laity in the ability and integrity of the members of the Bar. The client of the examining attorney must perforce accept the opinion of the latter. The transaction is either abandoned or the owner, his attorney and agent reluctantly and angrily bow to the opinion of the examining attorney.

That may be as it should be if the title is unquestionably unmarketable, according to the better standards of examination, but too frequently fear has played too strong a part in the opinion of the examining attorney.

The problem of the examining attorney is not only to arrive at his own opinion, and probably resolve some doubt in favor of marketability, but it is the fear that, due to lack of standardization and

agreement among attorneys, that the title will be later rejected by some other examiner.

Actually, many of us have come to the position where, although we sincerely feel that a title is marketable, we not only point out every possible defect, but we honestly tell our clients and those interested in the title that while we feel that the title may be marketable, except in certain recognized particulars, we have to reject the title solely by reason of fear of its later examination.

Admittedly, the first thing that should be universally excluded by all attorneys in examining title is the actual title. We get into more trouble and imperil our clients more by letting actual title play any part in rejection or approval than from any other element of title examination. An attorney has no right to go beyond the covers of the abstract in passing upon title. If he does, and indulges presumptions and brings into play his knowledge of local conditions and facts, and thus bases his opinion upon actual title, rather than marketable title, he is definitely imperilling his client and his own reputation when that title is subsequently laid before an examiner who considers only the record marketable title. That subsequent examiner will either be a foreign one, unacquainted with local conditions, or a local examiner who is aware of the points of view adopted by foreign examiners. The "Hornbook" example of this fault is the attorney who passes a title where descriptions are dependent upon local landmarks, even though they be arterial highways, rail, or other utility rights-of-way, or perpetual landmarks, not of record.

The Bar of this State, as the first step toward uniformity, should agree on refusing to recognize actual title as an element in abstract examination, and we should all commence and conclude our title examinations with the prime thought in mind that no consideration is to be given to actual title; and the opinion thereon should expressly exclude actual title.

The next indicated step is for this Bar to appoint a competent committee, preferably resident accessibly to Boise, to draft and present to the Legislature certain necessary and desirable amendments to our statute laws. It needs no discussion or argument to convince every attorney who has had more than trifling experience with title examination that conflict in statutes and disagreement as to statutory construction is one of the chief perils in the course of running toward more uniformity in examination. Necessarily, that committee should contact practically, if not every, attorney of the State for suggestions as to the statutes needing reconciliation, enlargement and restriction. With that consensus and experience at hand, the committee would be able to intelligently draft and recommend statutory amendment.

Let us take, for example, the unreasonable conflict in statute and construction between sales in guardianship and decedents' estates.

Since the 1929 amendment (1929 Laws 659) of C. S. §7604 et. seq. (cf. §15-701 et. seq.), petition for sale in the estate of a decedent is

not requisite. The statutes governing sales from guardianship estates (§15-1828 et. seq.) do not specifically require petition as a predicate to sale.

The legislature, in amending C. S. §7604, and in the succeeding chapter (1929 Laws 660), amending C. S. §7881 (now §15-1834), adopted, in the guardianship sales procedure, the practice obtaining in sales from the estates of decedents. Despite the fact that the prior guardianship statute (§7881) specifically mentioned petitions for sales, as did its companion decedent estate section (§7604), and the amendments eliminated from both sections all reference to petitions for sales, there still persists opinion that petition may be requisite in guardianship sales (vide also §15-1819, an amendment of §7860 by 1929 Laws 660).

Again, if the sale is not made for cash out of a guardianship estate, payment must be made within 3 years from sale date (§15-1836); while, sensibly, in the estates of decedents (§15-720), there is no such restriction. In neither instance, however, may sales be made upon contract unsecured by mortgage or deed of trust.

Confusion in interpretation of the private sale statute of real estate (§15-718) has been costly. The statute derived from California verbatim prescribes publication "— — for two weeks successively next before the day on or after which the sale is to be made — —." The California Court, in Helman vs. Merz, 44 P. 1079, and People vs. Reclamation District, 50 P. 1068, held that the identical California statute required 3 publications, and that "successively next" is to be literally interpreted to mean that the publication must be completed on the day next before the sale is held. Adopting these decisions as decisive (and they have been reared against the marketability of title), it will be seen that the statute is not only a pitfall, but that attorneys can honestly differ over the interpretation of the statute, either in conducting or examining the proceedings.

Consider again the provisions as to notice of certain proceedings in probate matters. In the statute governing publication of notice to creditors (§15-601 et.seq.) it is specifically provided:

> "Such notice must be published as often as the Judge or Clerk shall direct, but not less than once a week for 4 weeks";

and,

> "The Court or Judge may also direct additional notice by publication or posting." (§15-601).

In the provisions affecting final settlement and distribution:

> "— — notice must be given by posting or publication, as the Court may direct, and for such time as may be ordered." (§15-1116).

Those statutes expressly contemplate prior entry of orders for notice to creditors and for final settlement and distribution. In many other particulars, such as §15-1115, regarding intermediate accountings

and in the sale and conveyancing procedures (§15-701 et.seq.), the statutes specifically direct the character and length of notice. As a result of these unnecessary distinctions between noticing, attorneys conducting and examining proceedings are led into conflict and confusion.

Again, under 1937 Laws 192, joint administration of intestate estates of husband and wife is permissible, but there is no extension of that right to include probate of testate estates.

These are only a few of the examples which might be multiplied to demonstrate not only the advisability, but the necessity, for drastic overhauling of the statutory provisions respecting the estates of decedents and guardians; bring the practice unquestionably in line; distinctly specifying by statute the character of notices; abandoning archaic procedure; and minimizing, if not avoiding, confusion as to terms and construction.

The next step toward uniformity should result from a more careful attention on our parts in conducting and handling matters involving titles.

One constant source of irritation is the resultant of the failure of attorneys (and unskilled conveyancers) to accurately describe martial status of bachelors and spinsters. There is too frequently employed such terms as "single" or "unmarried"; terms which are not distinctive and therefore are dangerous. Admittedly, it is difficult to procure the signature of a maiden lady of advanced age concurrently with describing her as a spinster; but that difficulty can be surmounted by such a term as "never having been married."

Increasing difficulty will be experienced in the neglect to comply with our statutes (§14-418 et.seq.) in respect of the notice to be given the State Auditor and possibly the Attorney-General, Prosecuting Attorney and County Treasurer to either negative or make payment under the inheritance and transfer tax provisions. Although adopted in 1929 in its present form, there is all too prevalent a practice of ignoring the positive statutory mandate of forwarding a certified copy of the inventory and appraisement to the State Auditor; and no attention is paid generally to any notice to the Attorney-General, County Treasurer or Prosecuting Attorney, who have the statutory right to interpose objection to the inventory and appraisement, and thus protect the rights of the State to the tax exaction. While compliance with these requirements is not necessarily jurisdictional, titles cannot safely be termed marketable unless predicated upon statutory compliance; and experience in adjoining States, where such statutes have been extant for a greater period of time, is developing a high degree of question as to the payment of, or exemption from, inheritance and transfer tax provisions.

This necessity for inheritance and transfer tax compliance attaches in the administration of subsequently discovered property (§15-1332); and it is the increasingly adopted opinion, seemingly having logical

base, that compliance with inheritance and transfer tax requirements is necessary in the so-styled short form probates (§§15-1401; 15-1701; 14-114).

While it is true that, under our devolution statute, there is expressed legislative fiat that no administration of the estate of the wife shall be necessary if she dies intestate (§14-113), an attorney passing a title in that instance as marketable would be unwarrantedly indulging presumptions and examining actual, rather than marketable, title.

Too frequently titles are being approved as marketable, where such titles have passed through corporate ownership, without any showing of corporate compliance during entire tenure of title. Attorneys generally recognize that non-complying foreign corporations cannot enforce a contract by Court action (§29-504), but seem to overlook that such a corporation cannot take or hold title, and that any pretended deed or conveyance of real estate is null and void (§29-505). They seem to further overlook, as respects domestic corporations, that such a corporation, failing to file annual statement and pay the annual license fee, becomes practically and automatically delinquent and defunct, and that the directors (§29-611) become trustees. A transitory remedy of limited application was enacted at the last session (1937 Laws 88 et.seq.), but that remedy expired three months after February 27th, 1937. It is true that a certificate may be obtained from the Secretary of State, showing the dates between which a given corporation was in compliance, and that that certificate, when recorded and included in the abstract, if covering the entire tenure of title, will render that phase marketable. It is regrettable, however, that too frequently is this ignored, resulting in later declaration of non-marketability of title and consequent reflection back upon the prior attorney, and hence upon the Bar generally. There seems to be no good reason why the provisions of 1937 Laws 88 et.seq. should not be extended or like remedial legislation adopted.

There are some questions upon which a general Bar agreement is of first magnitude. For example, recently the point has been raised, and it has statutory sanction, that in instances where service has been made upon a defendant by publication, a decree in quieting title or any other proceeding is not conclusive until the expiration of a year (§5-905). It will be noted that, as respects sale of real estate from guardianship proceedings, recapture action may be filed, at any time within 3 years after the guardianship has been terminated or within 3 years after the removal of any disability (§15-1854). In consequence of the pronouncement of that general doubting attitude, prospective purchasers and mortgagees become skeptical. We know that such purchasers or mortgagees are generally either "Casper Milquetoasts" or "Bet A Million Gates," and there are more of the former than the latter. The policy of eliminating such statutory provisions by amendment is debatable; but the policy of injecting that doubt as to marketability of title should not be debatable. In that same section of the statute, respecting the power to permit amendments and vacate defaults, any party personally served may move against any order or judgment

within 6 months after the term adjournment. Necessarily the predicate for a defendant, served either personally or by publication, moving against a judgment within six months of term expiration or one year of decree entry relates to the actual facts, and not the record disclosures. Questioning a title on this score strikes moderate opinion as hyper-technical.

We have a related question reared by Gwinn vs. Melvin, 7 I. 202; 72 P. 961, wherein it is held that the Statute of Limitations applies to probate proceedings. Literal following of this opinion would mean invalidating titles where probate proceedings had been commenced more than 4 years after the death of the decedent; and means that after 4 years we cannot resort to a regular probate proceeding to clear a title. It is then indicated that we should follow one of the short form proceedings (§15-1401), (or §15-1701) or, on the other hand, that we should quiet title. Many attorneys are reluctant to rely upon any of the short forms of probate. Other attorneys question the efficacy of a quieting title suit in lieu of probate, even preferring the shorter forms of probate to quieting title suits; holding the regular or short forms to be exclusive.

Defects in the original platting of an area or in the description of the boundaries thereof is a source of constant conflict of opinion. Attorneys generally consider that if property has been conveyed with respect of the plat, the title, from that standpoint, is marketable, despite irregularities in platting or description. Admittedly, that is more of an actual title than a record title consideration, excepting that the record title discloses that the plat has been the basis of dealing with the particular and all included areas. The minority views plat defects as subsisting.

In a discussion on this subject, Idaho attorneys must be guided by the definition of a marketable title, as pronounced by the Supreme Court of this State, namely, that a title is marketable if free from apparent, as well as actual, defects. (Bell vs. Stadler, 31 I. 568; 174 P. 129). See also 57 A. L. R. 1253; (Boyd vs. Boley, 15 I. 584; 139 P. 139); (Roberts vs. Harrill, 42 I. 555; 247 P. 451); Marshall vs. Gilster, 34 I. 420; 201 P. 711); (Scofield vs. Spencer, 43 I. 243; 253 P. 833).

That is probably as succinct and comprehensive a definition as could be expressed, and there is no thought of challenging its merit.

The application of this definition to a given title is the problem of the individual title examiner and the problem of the Idaho State Bar. Presently, we largely have dissimilar views as to what is "an apparent defect," and we are being roundly and justly scored and embarrassed by our divergence of opinions. It is useless to criticize some examiners as too lax and others as too technical. It is useless to point out distinction between foreign and domestic examiners. We cannot expect the laity to bring us relief. The Bar must take the responsibility for cure.

The recommendations apparently indicated are:

(1). That title examiners rigidly adhere to the distinction between actual and record marketable title. An actual title may be better than a marketable one, but we are engaged to examine record titles. Failure to discriminate between the two is causative of confusion and distrust, and certainly removes title examination from the field of the professional man. Confusion of actual and record title in an opinion renders that opinion dangerous to its author and recipient. Each of us, in our examination duties, by careful adherence, can be relieved from that danger.

(2). That a title committee of the Bar be named to inquire as to, and effect, desired and necessary amendments to the statutes. Consensus can be obtained from at least the major portion of the Bar, assimilated, and amendment effected. We may as well face the facts. The Bar of Idaho is under more damning suspicion and criticism because of lack of uniformity in title examination than from any other one source. A portion of the blame properly belongs upon that impersonal creature, the legislature. A part is justly due some radically technical foreign examiners. The overwhelming weight of it, however, rests squarely upon the shoulders of the members of the Idaho State Bar for not having taken steps years ago to eliminate statutory conflicts and supply necessary additions, all by amendment of the statutes. True, we did not write all of these conflicting statutes, but we have suffered them to remain and to be extended, and, in doing so, have suffered adverse criticism. If we did nothing more than obtain a modern, harmonious code of probate procedure, it would be a long step in the right direction.

(3). That same title committee, in collecting and analyzing the data, would be in an advantageous position, through the experience of its labors and the contacts with attorneys generally on title matters, to formulate and recommend to the Bar a schedule of tests which could be applied uniformly throughout the State, or at least uniformly within the confines of each district Bar association, for application to title examination. With or without statutory amendment, is there any reason why attorneys in this State should not agree that petitions for sales of real estate from guardianship proceedings shall not be deemed necessary? Is there any reason why we should not resolve doubt as to the effectiveness of the shorter forms of probate? Is there any reason why we should not agree that a copy of the inventory and appraisement should or should not be served upon the Attorney-General, County Treasurer and Prosecuting Attorney, or that a mere notice of the filing of the inventory and appraisement should or should not be served upon those latter officials? Can we not agree that defects in preparing, filing and describing property in a plat will be waived after the lapse of a definitely stated and sufficiently long period?

These are only a few of the many constantly recurring problems, which, instead of being settled or attempt made to settle in each

individual abstract examination, could be definitely settled, insofar as the attorneys in Idaho are concerned, by stipulation and Bar Association adoption.

If we can agree on minimum fee schedules, we can certainly agree on the minutae and detail as to these waspy, irritating and discrediting points.

Reference to the minimum fee schedule suggests the advisability of materially raising the minimum fees for examination of titles. Real estate and loan agencies, through which the vast majority of these titles pass, base their commissions upon the amount involved. Sale and mortgage commissions run from two and one-half to five per cent. Admittedly, the examination of a title to a property of nominal value may exact more ability and entail more services than one respecting a more valuable property. The responsibility assumed by the examining attorney in connection with the sale or mortgage upon a valuable property is, however, far greater than that incident to a small purchase price or loan. In consequence, there seems to be no reason why minimum fees for examination of titles should not be predicated, as are real estate and loan commissions, upon the amount involved. Our present system is almost universally based upon the number of pages or instruments appearing in the abstract, which certainly has no relation to either the services performed or the responsibility involved. It would appear that the amount involved is a better criterion, and that the percentage should not be less than one per cent, with a concurrent minimum limitation that in no event should the fee be less than the present prescribed minima.

(4). That in the interests of the practitioners of law and their supporting clients, the business world, we definitely advocate an early enactment permitting domestic title insurance companies to operate in Idaho. Our experience in the short time in which this was permissible established that it (1) facilitated business; (2) eliminated the friction resulting from abstracts and consequently disputes thereon; and (3) was ultimately more profitable to the legal and business worlds.

It will be said that title insurance will deprive the profession generally of possible fees and centralize the examination of titles in a few. Concede that to be true. The ultimate effect upon the practice will be beneficial. In the first place, it is a truism that ordinarily no careful examining attorney, unless he be immured from possible contacts with the owner of the property and the attorney or real estate agent of the owner, can make a nickel from examining any title and rejecting it as not marketable. The attorney makes a charge for his services in examining the title. He earns this—every nickel. He finds the title not marketable, and points out the defects in writing. Then results a time, nerve and patience exhausting series of colloquies with the other interested parties. Regardless of the patience and good temper of the examining attorney during these conferences, ill will is engendered, which creeps into further business connection and, at times, on to the witness stand and into the jury room.

It is said that title insurance may reduce quieting title suits and probate proceedings. That may be seriously questioned, for title companies are not going to unduly incur contingent liabilities.

Assume it to be true that title insurance would reduce both general abstract examination and general Court work. No one can successfully assert that title insurance will not benefit business generally. While we are professional men, as practitioners of the law, we are nevertheless indelibly identified with, and dependent upon, the success, and not the distress, of business. We succeed as our clients prosper. We are paid when, and only when, our clients can pay, except in certain fields where, for our clients, we have to get money from the other side, a condition which does not obtain in title examination. If title insurance will facilitate and benefit business, we must necessarily benefit, as practitioners. Once the title is cleared or insured, there are contracts to be drawn, conveyancing to be done, and constructive services to be performed.

Title insurance is not urged from any selfish standpoint. Others will unquestionably get this business. It is primarily urged as one of the chief measures to be employed to relieve the Bar of its unenviable position in the business world of today. It is equally urged as a good general business policy, of benefit to both the commercial and the professional worlds.

Presently title insurance is excluded because such companies are construed to be insurance companies, within the meaning of our Code, and the requisite deposits are prohibitive to tile insurance companies.

There appears to be every good reason why the Bar should favor, rather than oppose, title insurance as a progressive, promoting business factor. It need displace no abstract company business, for grant of the right to engage in the business could be limited to abstract companies. The requisite deposits to guarantee fulfillment of the indemnity clauses of the contract could be graduated in ratio to the community or the extent of undertaken risks and the deposits increased or diminished as these ratio factors change. The inclusion of the quite customary "grandfather clause," giving preference to existing abstract companies and the requirement that title insurance should be written by, or in connection with, an Idaho abstract company, would prevent monopoly of the field by foreign companies, unless absorbing the local abstract company.

The business world wants title insurance. The abstract companies cannot be harmed by it. The Bar ultimately, and it is thought presently, will derive definite benefit.

It is not thought that these suggestions are in anywise all inclusive or will meet or merit universal approval. Certain it is that disagreement as to title examination has seriously discredited the Bar. Just as certainly it is our problem to remove, if possible, but at least to minimize, that discredit. Concerted and careful consideration should

be given every suggestion, regardless of the source from which it emanates, to solve the problem confronting the title examiner, which is the problem of the entire Bar, for we must recognize that presently we are justly subject to adverse criticism, and that we, and we alone, must cure or alleviate that condition.

PRES. MORGAN: What is the desire of the meeting with reference to the suggestions made in this paper? It seems that the matter was not passed on by the Local Bars Section. Do you desire to pass it by or to send it back to the Locals for certain work, or do you desire a committee be appointed?

MR. MARCUS WARE: I move a committee be appointed by the President to investigate and make recommendations at our next State Bar meeting and that the President of each Local Bar Association in the State be requested to appoint a committee within his Bar Association to report on conditions peculiar to his section to that committee.

(Thereupon the motion was duly seconded.)

PRES. MORGAN: All in favor of the motion signify by saying "aye."

(Motion carried.)

PRES. MORGAN: The next order of business is the question of abolishing the Industrial Accident Board. In that connection we will listen to an address by Mr. Bistline of Pocatello on the subject.

MR. BISTLINE: Members of the Bar, the topic that has been assigned to me is not whether or not the Industrial Accident Board shall be abolished but where the man injured can get best, immediate and speedy relief.

The proper approach to this subject would appear to be to take a look into the history of relief for the injured worker.

At common law the injured worker could recover compensation only for injuries resulting from the employer's negligence. Statistics show that only about 30 per cent of the injuries fall into this category, thus leaving 70 per cent without remedy. Of this remaining 70 per cent about 40 per cent result from accident due neither to the fault of the employee nor employer, and 30 per cent result from the fault of the employee.

As industrial centers grew these injured workmen became a serious problem. All too frequently they became public charges. It was by reason of this situation that a demand grew for some means of providing compensation for injured workers. Study of the situation led to the conclusion that industry being the cause of the injuries that it should bear the burden of caring for the injured, and that the best method of putting this responsibility upon industry was by legislation

requiring the payment of compensation to the injured workman, and, at least theoretically, including the cost thereof in the cost of the article manufactured or sold.

European industrial centers were the most seriously confronted with this problem, and we therefore find that European nations adopted legislation for relief of injured workmen long before any of the states in this country. Germany led the way in 1884, and practically all of the countries of Europe, and the provinces of Canada and Australia had Workmen's Compensation laws ten years or more before the first attempt was made in the United States. The first attempt in this country was the Federal Act of 1908, which was very limited in its scope, being limited to workmen engaged in federal government construction work.

Massachusetts was the first state to take action, and that action was taken in 1903, but consisted only of the appointment of a commission to investigate the feasibility of the proposition. It, and nine other states, passed workmen's compensation laws in 1911, and now all but five have them. Idaho's law was passed in 1917.

In view of the fact that our inquiry is into the question as to where the injured worker can best obtain real and speedy relief, it is perhaps advisable to next examine our existing system in Idaho, and make comparison with other existing systems.

Idaho has what is known as the commission or board form—the commission being known as the Industrial Accident Board and consisting of three members. The board acts in the dual capacity of administering the law and of passing upon certain matters in a judicial capacity. In its administrative capacity it is required to receive notices of injuries and claims, keep records, handle the details of the claims, see that employers carry insurance and set disputed cases for hearing as well as the other usual things attendant thereto.

In its judicial capacity it passes upon all settlements or agreements between the parties in uncontested cases; in contested cases it hears the disputes, and after the award has been made is given power to modify. It also approves physicians' and attorneys' fees.

This form, that is, the Idaho form, is the usual board or commission form and by far the larger number of states have it, although the number of commissioners vary from one to five.

The other form is known as the court form. Under it the parties settle the terms of the compensation unless an agreement cannot be reached, in which event they refer the claim directly to the court or to an arbitration committee selected by the court, the parties or both.

In many of the states having the court form the administration of the law is intrusted to other state officers or departments. For example in Tennessee the duties of administration are divided between the Insurance Commissioner, Bureau of Workshop and Factory Inspection, and the courts. In Wyoming the administration is placed upon

the state Treasurer and the cases are tried before the courts with a jury. Texas has a dual procedure which permits submission of a claim for compensation to either the Industrial Accident Board or the courts.

Under the Board of Commission form provision is generally made for appeal to the courts.

Thus if we were to proceed upon the hypothesis that speedier and better relief could be obtained by the court system in passing upon disputed claims in the first instance, we would still be faced with the problem of placing the administrative work elsewhere, which would mean, either establishing a new department or placing the work upon some other department or departments.

Comparing the court form and the board form as to speed I believe that a look into the record will convince the most skeptical that the board procedure takes first place, and particularly now in our own state, since appeal can be taken directly to the Supreme Court from the Industrial Accident Board.

In Idaho the average length of time elapsing in contested cases from the date of filing the claim to the date of hearing by the Board during the past five years has been 48 days, and the average length of time between the date of hearing and the rendering of the decision by the board during the same period has been 19 days, making a total of 67 days average time, or a little over two months. By the 1937 Amendment appeal to the Supreme Court must be taken within 30 days, and the law requires the board to file the transcript in the Supreme Court within 10 days and that the Supreme Court set the matter for hearing within 60 days after receipt of the record on appeal .(Somewhat streamlined I would say, and is indeed refreshing compared to the usual court procedure.)

However, it is not only contested cases that we are concerned with; there is the matter of the uncontested cases, and after all they constitute over 90 per cent of the cases, and that together with other administrative work required of the board constitute at least 98 per cent of the work done by the Board under the present set-up. That leaves about 2 per cent of the work which is devoted to the matter of hearing and disposing of disputed cases.

Undoubtedly there may be some complaint as to the speed with which undisputed cases are handled, so I shall give you some figures on them.

The record shows that during the year 1936 the average number of days between date of disability and date of first payment of compensation was 33.63; that among the different classes of insurers the record for that year was as follows:

Casualty Companies	32.29 days
Self Insurers	27.14 days
State Insurance Fund	35.95 days

That was the best record of any year during the past ten years. However, the maximum length of time between date of disability and date of first payment of compensation for the different classes of insurers is as follows:

Casualty Companies	42.92 in 1932
Self Insurers	40.36 in 1933
State Insurance Fund	49.13 in 1932
Average	46.30 in 1933

It is the duty of the board to expedite payments in these cases, and certainly difficulty of administration in that respect would be encountered if it were attempted to place this in the hands of the clerks of the courts in 44 different counties.

In view of the fact that the old procedure of appeal to the District Court has been done away with in favor of the direct appeal to the Supreme Court, we might pass over that, but I do not believe that we could get a fair picture of the court situation if I failed to give you some statistics on the time consumed while that procedure was in effect.

Looking at the record for the past ten years we find that in 1927 the average number of days between date of appeal and date of decision in the district court was 238.40 and in the Supreme Court it was 443.14. In 1930 these averages were 110 for the District Courts and 177.30 for the Supreme Court.

Then in 1931 the Legislature passed Sec. 43-1408 I.C.A., requiring that all appeals of matters arising under the Workmen's Compensation Act should be disposed of before any civil causes were to be considered. The courts at first took this mandate of the legislature rather seriously and in 1932 made an all-time record for speed—the district courts disposing of such matters in average time of 86.5 days and the Supreme Court in 131. After that the courts returned to former speed and in 1934 the average for District Courts was 113.6 and the Supreme Court 200.6.

It was on account of this poor record that the amendment permitting direct appeal to the Supreme Court was conceived.

From the records of the past but one conclusion is inevitable in the matter of speed and that is that everything favors the Board rather than the courts. There may be certain places in our present set-up where speed can be injected, and if any of you have any ideas on that, I believe they would be gladly welcomed by the Board or the Legislature.

Up to this point I have been discussing the matter of speed, but my topic is a dual one, and the other part of it has to do with adequacy of relief. Therefore we will now take up that phase of it.

From an examination of the records of the courts it would appear that the courts have been more liberal in their construction of the Workmen's Compensation Law in favor of the injured worker than the Board has. That is, of course, the reason why the law provided in the first instance that the right of appeal to the courts should lie, for no doubt the Legislature in passing the bill realized that the personnel of the Board probably would not be infallible, hence provided that the matter should be finally determined by the courts. And as the courts have been making decisions interpreting the law, the law is becoming fastly settled. However, it may be that the scope of the act as it now exists is not sufficiently broad to cover all cases that should be covered. In reply to a questionnaire I submitted to a member of the Industrial Accident Board on that point I received the following reply:

> "So far as I am concerned, I want every person who is entitled to receive payment of compensation for his injuries to receive it promptly, and I think he ought to get the benefit of reasonable doubts that may arise. However, I do not want any false claims allowed. It seems to me that during recent years the Idaho Courts have ordered compensation paid in many cases which a few years ago would have been disallowed. I believe the tendency would be to go farther in that direction if the Industrial Accident Board were abolished. Perhaps the Workmen's Compensation Law should be amended so as to include under its benefits some cases that are not now provided for. It has been my effort to construe the law as it appears on the statute books and not as I personally would like to see it written."

Thus in that respect, that is as to adequacy of relief—the place where it could be improved is with the Legislature by broadening the scope of the law to apply to cases not now provided for. Placing the hearing of disputed claims in the courts in the first instance would not improve that situation as the Supreme Court has the final word as to what the law is in either case.

There is another point that I believe should be called to the attention of the Bar in the matter of adequacy of relief—a situation, which sometimes results in no relief whatever. The I. A. B. has referred to it in its Tenth report, and my attention was also called to it in answer to my questionnaire to the board and that is this: The failure of certain employers to carry insurance. I quote from the report of the Board:

> "One important matter to which, we believe the Legislature should give much consideration is the failure of some employers to carry compensation coverage for their employees. Such employers are usually those who employ only a few workmen and for only a limited time. These small employers are usually execution proof. While there are ample provisions under the law to prosecute an employer for failure to carry compensa-

tion coverage and to compel him to either cease having employees or to carry compensation coverage, when such failure is known, the failure is usually not known until after a workman has been injured and the matter has been brought to the attention of the Industrial Accident Board. To then invoke the penal provisions of the statute does not help the injured workman and if an award is made the injured workman usually is unable to realize on it, because all of the property owned by the employer is usually exempt from execution. The advisability of so amending the exemption statutes of the State that no property of a non-insured employer is exempt from execution on a judgment rendered on an award made under the Workmen's Compensation Law is suggested as one method of inducing all employers to comply with the law requiring compensation coverage."

There is another matter which I believe deserves the consideration of this body, and that is the provision of the Workmen's Compensation Law with respect to the liability of Third persons. Sec. 43-1004 I. C. A. provides that when an injury for which compensation is payable under the act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto the injured employee may at his option, either claim compensation under the act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person; provided, that if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employers expenses and costs of action.

In some instances an employee may receive injuries which would entitle him to compensation greatly in excess of that provided by the Workmen's Compensation Law, yet if he elects to proceed in that manner he would under this provision be barred from compensation. Under the law as it is it can be argued that he is not barred, which is correct, that his insurer or employer may bring the suit and pay the overplus to the injured worker. It seems to me that the Federal procedure under the United States Employees Compensation Commission would be better, which procedure is that the injured employee may bring the suit with the consent of the commission and all rights of subrogation fully protected.

As long as the employer and insurer are protected in their rights of subrogation I can see no objection to this. I might state that a bill was introduced in the last legislature on this matter, but it met with some objection as to the matter of protection of the employer and insurer through subrogation that the same was held up and not brought to a vote—it is still in the judiciary committee—pending further investigation to see if a bill could not be worked out that would overcome the objections, and I believe that with the help of this august body that it can be done. I will take the responsibility for having introduced that bill and I will also take the responsibility for it not coming to a vote.

I have covered all the matters that have been brought to my attention that would point toward better and speedier relief for injured workers, and I shall therefor state my conclusions, which are:

First: That the Industrial Accident Board better be left as it is, but procedure speeded up if possible.

Second: That careful study be made by those familiar with the workings of the act to ascertain whether or not the scope of the act should be broadened by legislative enactment to cover cases apparently not now covered.

Third: That legislative action be taken clamping down on employers who do not carry insurance in line with the recommendation of the Board in its 10th annual report, and that the board be provided with ample funds to employ field men to investigate and report and prosecute cases of non-insurance.

Fourth: That Section 43-1004 be amended to provide that injured workmen may sue third parties for injuries resulting from negligence of said third parties without having to elect between that and compensation, provided, however, that the insurer and employer be protected in their rights of subrogation.

And Fifth: That if trial of disputed cases is moved to the courts that the administration of the act be left with the I. A. B.

I thank you.

PRES. MORGAN: Mr. Nelson, I think you are scheduled to discuss this matter.

MR. NELSON: Mr. Chairman and Gentleman of the Bar Association: As Mr. Bistline in his address has indicated, the subject assigned to him for his address and to us for discussion is a dual subject, to-wit: "Where can the injured workmen best get real and speedy relief," and "Abolishing the Industrial Accident Board."

Mr. Bistline has, by the figures quoted, shown that the Industrial Accident Board has much more speedily handled compensation claims than the courts of this state. I will not go into that phase of the question, and, before discussing the subject specifically, may I remind you that since about 1911 the federal government and our different state governments have, in legislative matters, been drifting more and more to bureaus, boards and commissions and have been gradually encroaching upon the jurisdiction of the courts of the federal and state governments.

This tendency in legislation has great dangers to our form of government. So often in the bureaus, boards, and commissions are combined the powers of all three of our legislative, judicial, and executive powers of government, which should forever be kept separate. The result of this legislation is abdication by the legislatures of the federal and state governments of their duties and powers and bestowal upon the bureaus, through their rule making powers, the right to legislate indirectly if not directly. I am satisfied that the Bar Association of this and other states should lend their energetic efforts to stem this growth of bureaucratic and commission form of government.

I call to your attention this report of the committee of the National Bar Association of July 25th of this year on administrative agencies and tribunals. This report is to be discussed at the meeting of the American Bar Association in Cleveland.

If this were a campaign against the bureaucratic form of government, I would be heartily in favor of such a campaign but when we pick out the Industrial Accident Board to abolish it, I think we are picking out the commission which has more justification than any other administrative commission. There is more justification for quasi-judicial powers in the Workmen's Compensation Law, it occurs to me, than any other of the laws.

This Bar Association, again, has waited too long to try to abolish the Industrial Accident Board unless it makes a general campaign against all boards and commissions for having encroached upon the jurisdiction of the courts. If the Bar Association had desired to abolish our Industrial Accident Board it should have taken action prior to the adoption of the constitutional amendment adopted by the voters at the last general election whereby it was provided that direct appeal should be taken in compensation claims from the Industrial Accident Board directly to the Supreme Court. The opportunity has passed to abolish the Industrial Accident Board unless, as I say, you make a general campaign against all boards. I am sure that any action presented to the legislature to abolish the Industrial Accident Board and leave the other boards would be greatly resented by the members of the legislature and the voters of this state.

The Board's record in the administration of compensation cases compares very favorably to that of our District Courts. Most boards and departments have become increasingly expensive but the Industrial Accident board has been quite an exception to this rule. For the first biennium under the compensation law the legislature appropriated $41,000 and during that biennium the Board had filed with it 9537 claims. The Board had at that time five employees. For the biennium ending December 31, 1936, the legislature appropriated for the Board $44,000 or only $3,775 more than for the first biennium of the Board's history and during this latter biennium the Board had filed with it 19,297 claims or more than twice as many claims as during the first biennium. The Board had on its regular staff only six employees as compared with five during the first biennium.

May I call to your attention that less than 2 per cent of the claims filed with the Board are contested claims so a small percentage of

claims would reach the courts even if we could provide that contested cases should be heard by the courts in the first instance. If my information is correct, since 1924 when the first workmen's compensation case was decided by our Supreme Court, our Supreme Court has decided approximately 100 compensation cases. Of these 100 cases 29 per cent of them were cases in which the decision of the Industrial Accident Board for the plaintiff was finally affirmed by the Supreme Court. In 12 per cent of these cases the Board's decision for the claimant was finally reversed by the Supreme Court. Thirty per cent of the cases were cases in which the Board's decision for the defendant was finally affirmed by the Supreme Court and in 21 per cent of the cases the Board's decision for the defendant was finally reversed by the Supreme Court and in about 8 per cent of the cases the decision of the Board for the plaintiff or defendant was modified. If these figures are correct as published, it would seem that the Supreme Court has granted additional relief over the decision of the Board in about 9 per cent of the cases. Covering this period in which the Supreme Court has decided approximately 100 industrial cases the Board has acted upon approximately 130,000 industrial claims.

It, therefore, seems to me that the law is being very well administered at the present time by the Industrial Accident Board and since the Bar Association has permitted this law to remain uncontested on the statutes for 20 years and has, without opposition, permitted the voters of the state to adopt a constitutional amendment providing for direct appeal from the Board to the Supreme Court, it would now be futile to advocate the abolishment of the Industrial Accident Board and the handling of industrial contested cases by the District Courts of this state.

MR. E. B. SMITH: Mr. President, the subject has been so thoroughly discussed by my predecessor I will try to confine my remarks to a little different angle. I think that the statistics which have been submitted are entirely true in every respect and for that reason it is not necessary for me to touch upon them.

I have made an attempt to analyze what caused this controversy as to the Industrial Accident Board; why the question should now be again before you a second year as to the abolition of the Board. You all are aware of the constitutional provisions concerning the departments of Government; the executive, legislative and judicial. You are also aware of the fact that there are certain courses provided by the Constitution. In 1917 when the law was passed it provided that appeal from the Board should be on questions of law alone and I think the controversy is because of that placing of quasi-judicial power in an administrative Board. That question was presented to the Supreme Court a number of times as to the alleged constitutionality of the Workmen's Compensation law in that regard and every time it was decided in favor of the constitutionality of the law. Then in 1937 the constitutional amendment was presented to limit appeals to questions

of law, and it is now a part of the Constitution. In other words, there isn't any more controversy about it unless you can amend the constitution. These appeals now are from the Industrial Accident Board direct to the Supreme Court, they are limited in scope and no award can be set aside unless the findings of fact are not based upon substantial competent evidence or the findings of fact by the Board do not, as a matter of law, support the order for award. As a practical matter we can present almost any question to the Supreme Court that we desire. There is never any case which is presented to the Industrial Accident Board where the issues are not very clearly cut as to the evidence. There is very very little conflict in the evidence as to the facts themselves.

Now, the question presented here for discussion is where can the workman get adequate and speedy relief. The question is "does he obtain adequate relief at the present time"? There is no controversy existing at the present time as to the amount of relief. Over the State of Idaho they are well satisfied. If the employee is satisfied—and I happen to know that they are, then the employer should be satisfied as to the amount of compensation.

Under the old practice we had to go to the District Court and then the Supreme Court. Many of the District Judges did not take time or they didn't have the inclination or they didn't like the compensation law. As a consequence they ruled as the Board decided the award and we got into the Supreme Court as quickly as we could. Now, under the Constitutional provision the time for appeals is limited to thirty days, and when that appeal is filed the Board has to get the file and the transcript into the Supreme Court in ten days. The Supreme Court is supposed to get it out of the way in sixty days after that. Consequently the present procedure is absolutely streamlined.

Now, as to the cost; the cost in taking an appeal is $15.00, $5.00 deposited with the Clerk of the Supreme Court and $10.00 with the Industrial Accident Board. That is all the cost. Under the old practice the filing fees were $17.50 and the transcript would run from $35.00 to $100.00. We seldom ever got away from costs under $75.00 to $85.00. The only recommendation that I would have under the present system would be a Constitutional amendment so that the appeals could be reviewed upon questions of fact. As Mr. Justice Morgan expressed in the recent case of Webb v. Gem State Oil, the testimony taken by the Industrial Accident Board should be regarded as a deposition and should be read by the Supreme Court and the Supreme Court allowed to arrive at its conclusion as to whether or not the award was made in conformance with the evidence. Whether the Supreme Court will do that in the future, I don't know. I am not in favor with doing away with the Industrial Accident Board at this late date. I have been very much in favor of it in the past, but it is too late now with this Constitutional amendment. If you do away with the Industrial Accident Board you have to find some Board to take

care of the tremendous mass of detail. They have numerous men on work that has to be done and it would be very disastrous, I believe, to disturb that.

MR. NELSON: If there are no other remarks, as I understand the procedure, these proposed resolutions have been submitted and are before us, I therefore move that resolution No. 7 be not passed.

MR. MARCUS WARE: Second the motion.

MR. SMITH: In view of the statistics that have been presented to this body, I believe that resolution does not state the truth. There isn't a second's delay at the present time. It is true there has been considerable litigation to the Supreme Court. I think twenty-seven cases to date from 1932 have been reversed by the Supreme Court, but nevertheless, they had the tendency to explain the law and to lay down the principals.

JUDGE WM. M. MORGAN: I don't believe the statistics presented here have presented the real controversy. About four or five years ago a concerted effort was made throughout the State of Idaho to poison the minds of labor against the courts. It was stated very generally through the state, particularly in quarters where organized labor prevailed, that the Industrial Accident Board was the poor man's court, a laboring man's court, a working man's court, and if it were not for the Industrial Accident Board the laboring man might well be expected to get the worst of it in the future if it passed to the hands of the court. I took occasion to keep some data with respect to the records made in the Supreme Court on Industrial Accident cases since I have been a member of the Court starting with January 1st, 1933. During five years, and about six months, the record shows where the laboring man had the worst of it, in the Industrial Accident Board or the Courts. I find, since January 1, 1933, there have been appealed to the District Courts and from the District Courts to the Supreme Court three cases in which the Board had awarded compensation to a laborer and the Court had reversed that order, and denied compensation; and in twenty-two or three cases, compensation had been denied by the Board and appealed to the Court, the Court allowed the laborer his compensation. And in one of the three cases, where it was denied by the Court, a new trial was ordered and he got his compensation. The question is not so much whether he gets his compensation speedily—it seems to me it is whether he gets it at all. Under our amended Constitution the Court's powers are pruned away until it may determine cases upon consideration of only questions of law. That Constitutional amendment has undoubtedly changed the divisions of power formerly divided between the executive, legislative and judicial branches. Our Constitution expressly prohibited one of these branches attempting to exercise the functions of another branch. Now we have a constitutional provision which expressly provides that the judicial powers have been vested in an administrative board to the extent that the courts are absolutely prohibited from functioning in their judicial capacity as to

fact finding. It is pretty badly scrambled. I don't know what the remedy would be.

MR. JESS HAWLEY: As I understand there is a motion that the resolution be rejected.

I would like to make an amendment that the Board of Commissioners appoint a committee of five to draft legislation providing for action by workmen or their representatives against third parties guilty of negligence with proper provisions for subrogation to the insurer or the employer. I don't like to have some of the gentlemen who are interested in the other side of this go before the legislature, as they surely will do, and say our Bar Association has gone on record against any change whatsoever in the law. This convention should see that there is provision made so that a workman or his representatives may sue directly a third party responsible for his death or injury.

(Voice): I second the amendment.

PRES. MORGAN: The question is on the amendment as offered by Mr. Hawley. All those in favor of the amendment will signify by saying "aye."

(Carried unanimously.)

PRES. MORGAN: The question is now on the motion as amended.

The "ayes" have it. You will observe in examining your programs certain matters which I am passing up here because they have been directly referred to the Commission by the Local Section. The next matter on the program will be an address on the "Illegal Practice of Law in Idaho" by Mr. Marcus J. Ware of Lewiston.

MR. MARCUS J. WARE: The purpose of a State Bar Association as I conceive it is three-fold. In the first place, its duty is to bring about the observance of rules of conduct by the members of the Bar and to properly discipline those who violate the ethics of the profession. In the second place, its duty is to suppress the unauthorized practice of law, and in the third place, its duty is to eliminate the control of and the parceling out of the law business by laymen. So far the bar of the State of Idaho has very largely concentrated its efforts in perfecting its own organization and perfecting the organization of Local Bar Associations throughout the state. Manifestly, before the Bar can perform adequately its purpose, it must effect a proper organization of its own members. In this respect we have been very largely successful, and at the present time we find the state and Local Bar organizations in a more unified condition with greater cohesion among their members than has ever existed before.

In addition to perfecting its organization the State Bar Commission is to be commended for the work that it has done in disciplining its own members who have seen fit, through ignorance or design, to violate their duty to their clients or to the court in their professional activities. Considering the limited funds that the commission has had at its disposal, real progress has been made in this direction.

However, in the matter of seeking to eliminate the unauthorized practice of the law by laymen, as an organization we have not even scratched the surface.

The lay activities to which I refer are those of law lists, collection agencies, independent adjusters and casualty insurance companies, together with those of other laymen such as banks, trust companies, notary publics, real estate agents, etc.

Time will not permit me to go into a discussion of law lists and collection agencies at this time, but I do wish to present to the Bar certain matters relative to the activities of real estate agents, adjusters and casualty insurance companies.

Before entering into a discussion of this subject, it will be necessary to refer briefly to the decisions of our Supreme Court relative to unauthorized law practice.

The earliest case on the subject is the case of **In re Contempt Proceedings of Eastern Idaho Loan & Trust Co., (1930), 49 Ida. 280,** known generally as the **Shattuck** case. In this case the Eastern Idaho Loan & Trust Co. advertised itself as being a specialist in the preparation of wills, declarations of trust and in the management of lands, securities and other properties comprising estates. The Trust Company charged and received a fee from the person served in each instance. The particular proceeding in this case was on a petition for an order to show cause why the Trust Company and Mr. Shattuck should not be punished for contempt of court. At this point it might be well to call attention to the position of the defendants. In the language of the supreme court, their contention was as follows: "Defendants contend that their specially advertised activities do and did not constitute practicing law; that they but do and did what hordes of reputable insurance men, realtors and bankers have been doing for years."

In deciding this case our Supreme Court held that a trust company holding itself out as qualified to draft wills and trust declarations was illegally representing itself as qualified to practice law. The following rule was then announced:

> "'A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it. * * * Though all directors and officers of the corporation be duly licensed members of the legal profession the practice of law by the corporation would be illegal nevertheless.' (People v. California Protective Corp., 76 Cal. Appl. 354, 244 Pac. 1089, 1091.)
>
> "'The right to practice law attaches to the individual and dies with him. It cannot be made the subject of business to be sheltered under the cloak of a corporation having marketable shares descendible under the laws of inheritance.' (State v. Merchants' Protective Corp., 105 Wash. 12, 177 Pac. 694, 696.)"

The next case before our Supreme Court was **In re Contempt Proceedings of E. C. S. Brainard (1934), 55 Ida. 153.** A former probate judge, for compensation, without being admitted to practice law and without being licensed, advised persons in probate matters and prepared and filed papers in connection therewith. He also prepared articles of incorporation for corporate organizers. This work was necessary to clear titles in loan transactions which he was handling. Mr. Brainard was held to have engaged in practice of law rendering him guilty of contempt of the Supreme Court, though he did not sign the papers and pleadings as attorney, and though he did not accept legal employment except from persons who had already enlisted his services in business matters connected with the loans. The court said:

> "The particular reason or necessity for having the legal work performed is not a justification to practice law without being admitted, nor does the fact that Brainard did not sign the papers and pleadings as an attorney alter the situation. The work and services which he rendered to his clients were that of an attorney engaged in the practice and constituted the practice of law, as much so as if he had signed all the pleadings and papers as an attorney."

The next case of particular importance to come before the Supreme Court was that of **Wayne vs. Murphey-Favre Company (1936), 56 Ida. 788.** In this case Murphey-Favre Company had entered into a contract with the County Commissioners of Shoshone County to act for the county as fiscal agent in refunding its bonds. The contract, among other things, provided that Murphey-Favre Company should obtain and employ in connection with such services the expert legal services of some bond attorney or attorneys specializing in municipal securities.

The sole question presented to the court was whether the agreement by Murphey-Favre Company, a corporation, to furnish legal services to the county constituted the practice of law. Following the Shattuck case, the court held that Murphey-Favre Company "was illegally practicing law * * * being a corporation * * * it cannot itself practice law, and it may not do indirectly what it cannot do directly."

The last case on this subject is that of **In re Mathews,** decided May 5, 1938, and reported in **79 Pac. (2d) 535.** Mr. Mathews was engaged in the insurance, abstract and real estate business at Soda Springs, Idaho. He was also a notary public and a public stenographer. It was his practice to fill out forms of deeds, mortgages, contracts, leases and bills of sale, and as a part of this service, checked the records, made references to his abstract books and plats for the descriptions of property, and thereafter took the acknowledgments of such persons, and for such services received compensation. In holding that these acts of Mr. Mathews did not constitute practice of law, Justice Budge, speaking for the Supreme Court, said:

> "In Re Matthews, (57 Ida. 75), this court used the following language with reference to what constitutes the practice of law: 'The practice of law as generally understood is the doing or performing services in a court of justice in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure. But in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.'
>
> "As I read the stipulation Matthews did not prepare instruments and contracts by which legal rights are secured as that term is used in the foregoing quotation, as to bring him within the rule therein announced. As disclosed by the authorities, the 'preparation of instruments and contracts by which legal rights are secured', involves something more than the mere filling in of blank forms and was not intended to include merely such acts."

The conclusion reached by the court in the Matthews case is supported by the following language employed by Justice Lee in the Shattuck case:

> "Such work as the mere clerical filling out of skeleton blanks or drawing instruments of generally recognized and stereotyped form effectuating the conveyance or incumbrance of property, such a simple deed or mortgage not involving the determination of the legal effect of special facts and conditions, is generally regarded as the legitimate right of any layman. It involves nothing more or less than the clerical operation of the now almost obsolete scrivener. But, where an instrument is to be shaped from a mass of facts and conditions, the legal effect of which must be carefully determined by a mind trained in the existing laws in order to insure a specific result and guard against others, more than the knowledge of the layman is required; and a charge for such service brings it definitely within the term, 'practice of the law.'

The foregoing decisions which I have called to your attention constitute practically all of the cases on the subject of the unlawful practice of law in this state. It is to be noted that the court in all of these cases was particularly lenient with the offender, being more interested in indicating what constitutes unlawful law practice than in penalizing the particular defendant. The Supreme Court was no doubt of the opinion that the publicity of these decisions would go a long way toward correcting the abuses referred to therein. However, I do not believe that these cases have received the publicity which they warrant. Furthermore, there are inherent difficulties in connection with the rules laid down in these cases which make them ineffective.

Let me illustrate. Prior to the recent recession, when there was an upward swing in building homes and real estate transactions were numerous, very little of the business resulting therefrom passed through the offices of attorneys in my section of the state. It is true that the attorneys ordinarily examined the abstracts, but the preparation of

notes, mortgages, escrow contracts, deeds and the like was very largely in the hands of real estate men. I do not know how they managed it in other sections of the state, but they avoided the effect of the Shattuck and Brainard decisions by making no charge for their services. You will remember that in the Shattuck and Brainard cases the defendants received compensation for their particular services. It is the practice of many of the real estate men in our section of the state to include these services in preparing papers as a part of their commission in handling sales of property. Furthermore, under the Shattuck and Matthews cases, the real estate agent, while using printed forms, can well argue that he is not practicing law. Furthermore, can he not also argue that in merely copying some previous contract, deed or other instrument, changing the dates, names of the parties, etc., to agree with the particular transaction, he is merely functioning as a scrivener and not rendering legal services?

The effect of all this is that the business of conveyancing is largely in the hands of the members of the real estate fraternity. The effect of this is disastrous as far as the public is concerned. I have seen escrow contracts prepared by real estate men providing "that this contract shall be construed favorably to the parties hereto and against their heirs, legal representatives, successors and assigns." I have been informed of the existence of a contract wherein every element required, including the date of the monthly payments, the interest rate and the amount of the monthly payment were all specified, but nowhere in the contract was the amount of the purchase price or the date of termination of the payments indicated. I have also had clients bring to my office contracts admittedly prepared by real estate agents which contracts were so utterly confusing and unintelligible as to their terms, conditions and purposes, that it was absolutely impossible to determine therefrom what the rights or intentions of the parties were.

Regardless of whether the actions of real estate men in this field are to be considered as the practice of law or merely the function of a scrivener, I submit that the rights of the public are not being fully protected until the Bar of this State endeavors to curtail and eliminate this practice.

To this end I suggest the following: First, that the bar of this state should by proper publicity in newspapers throughout the state, call to the attention of the public what is and what is not law practice. Also it might be well, over the signature of the Local Bar Associations in newspapers published within their respective counties at occasional intervals, to call the attention of the public through advertising to the advisability of consulting a lawyer in the matter of preparing contracts, wills, deeds, etc., for their own protection and to avoid controversy. Second, that the State Bar Commission working through the State Association of Real Estate Agents, if there be one, on the one hand and committees of the Local Bar Associations working with representatives of the real estate men in their respective counties on the other hand, should endeavor to work out this matter and restore

this business to the attorneys to whom it should belong. In this connection it should be borne in mind that the real estate men are not entirely to blame for the situation which exists. It seems to me that they are entitled to know what the fees would be for the preparation of papers in ordinary transactions to the end that their clients may have some idea as to the expense involved in connection with the sale or purchase, as the case may be. The adoption of fee schedules throughout the state will no doubt tend to correct this matter. And assuming that the fees fixed are reasonable, I see no reason why the real estate men should not cooperate with the members of the Bar in properly drawing the line between their respective fields and functions. Third, if the real estate men are unwilling to cooperate, may I leave this suggestion with you. The real estate men are generally insurance men as well. They expect the lawyers to refer to them their business in the matter of attachment bonds, appeal bonds, etc. If they continue to invade our field, why should we continue to give them our bond business? Why should the lawyers not organize their own bonding company?

Another great field in which the practice of law is involved is that connected with the adjustment of casualty claims and the extent to which the activities of lay adjusters employed by casualty insurance companies constitutes unlawful practice of law. So far this subject has had practically no consideration in the State of Idaho.

However, there are now pending in the State of Missouri proceedings in which this whole question is being gone into. The organized Bar of that state, under the able leadership of Mr. Boyle G. Clark of Columbia, Missouri, General Chairman of Bar Committees of Missouri, has embarked upon a broad and comprehensive program for the elimination of unauthorized practice of law. In the short time allotted to me I cannot go into this subject extensively. However, a Missouri case in which judgment was entered January 14, 1938, now pending in the appellate courts and involving the adjustment of insurance claims should be of interest to the Bar of this state. The facts, as gleaned from the judgment and opinion of the court, are as follows:

The action was instituted by Liberty Mutual Insurance Company, American Mutual Liability Insurance Company, Lumberman's Mutual Casualty Company, Hardware Mutual Casualty Company, Employer's Mutual Liability Insurance Company, all corporations, and certain other plaintiffs who were their respective Missouri claims managers, vs. Boyle G. Clark, General Chairman of Bar Committees of the State of Missouri and certain other persons who were members of the advisory committee, as defendants, seeking a declaratory judgment declaring the law as to certain acts of the plaintiffs. The defendants answered and by way of cross-bill sought to enjoin the plaintiffs from certain acts admitted in the petition and other acts set out in the cross-bill.

The plaintiff companies are all licensed by the State of Missouri and are actively engaged in the writing of various lines of casualty

insurance and in the settling and adjusting or defending, as the case may be, of claims against their respective sureties. Said companies have each set up and maintain their own claims departments for the purpose of adjusting claims against their sureties and said claims departments have in the past settled claims against their sureties and are now continuously so engaged. The claims departments are run, operated and controlled by the various individual plaintiffs who are laymen and are not licensed to practice law in Missouri. The claims departments are under the management and control of these lay managers, except as to control exercised by the home office, although said departments usually have in their employ a licensed attorney.

These claims departments do all things necessary in the settling and adjustment of claims and set up reserves for each claim which reserves they increase or decrease at various times during the progress of the adjustment or settlement. These claims departments by their lay adjusters have in the past appeared before the Workmen's Compensation Commission at conferences which are meetings before a representative of the commission at which are present the insured employee and the employer of the insured for the purpose of discussing the facts and reaching an agreement as to the compensation, if any, to be paid. These claims departments determine whether or not a particular insurance contract covers a particular casualty.

The managers and employees of the claims departments are paid, as consideration for their services, a regular salary and are constantly employed by the companies in the departments. The claims departments, through its employees, determine the liability of the insured, and the limit of the amount of damages, negotiate with claimant, or his attorney, for settlement, procure releases by written instruments, investigate and discover facts and evidence thereof, ascertain who are witnesses and take statements of witnesses, make recommendations to the company and express opinions to claimant as to legal liability, or give the opinion of some lawyer while negotiating settlement. The company undertakes to defend the insured, whether claim or suit is for less or more than the coverage.

The court in its findings distinguishes between what it considers the practice of law and what it considers not to be the practice of law in the adjustment of casualty insurance claims. In this respect the opinion of the court itself is of interest. The findings are as follows:

> "The Court further finds that the following acts do not constitute 'law business' and the practice thereof is not 'the practice of law'; and the performance of such acts by casualty insurance companies through or by claims departments of such companies, controlled and operated by lay employees, or by lay employees of said companies, is not the unauthorized practice of law and is lawful and said lay employees, of said claims departments or companies, when doing such acts are not engaged in 'law business' and such acts are not unlawful, to-wit:

1 Detection, (a) discovering of witnesses and evidence; (b) taking photographs; (c) statements of witnesses; and acts of a like nature.

2 Appraisement of damage to physical property where liability is undisputed.

3 Procuring execution of prepared instruments, where the lay employee exercises no discretion in selection or preparation; and payment by delivery of check, draft or payment of money in discharge of claim.

4 Determination of or recommendation of amount to be set up as a reserve in various claims.

The Court further finds that the following acts constitute 'law business'; and the performance thereof is 'the practice of law'; and the performance of such acts by casualty insurance companies through or by the claims departments of such companies managed, controlled and operated by lay employees, even though one or more licensed attorneys are regularly employed in said departments, or by lay employees of said companies, is the unauthorized practice of law, and unlawful, and said lay employee of said claims departments, or companies, when doing such acts, are engaged in the unauthorized practice of law, to-wit:

First: Adjustment and settlement of claims against said companies' insured, and negotiations with claimants in respect thereto.

Second: Selection and preparation of releases, covenants not to sue and contracts or agreements for the settlement or compromise of claims against the companies' insured, and other like documents affecting secular rights.

Third: Advising said companies or their insured of their, or his, legal rights.

Fourth: Appearances before the Workmen's Compensation commission of Missouri, together with the presentation of legal rights of others therein, at formal or informal hearings before said Commission, or one of said Commission.

Fifth: Determination of whether or not said companies' particular insurance contract covers a particular casualty of the insured.

Sixth: Determination of legal liability and the extent and nature thereof, for the company or the insured, or both."

Pursuant to the foregoing findings the plaintiffs were enjoined and restrained from each of the acts constituting unauthorized practice of law as just stated.

Pending an appeal to the Supreme Court enforcement of the injunction has been suspended by agreement between the plaintiffs and the defendants.

That the Bar of the State of Idaho must sooner or later make a decision as to its attitude toward the lay adjustment and settlement of casualty claims is made clear from the recent case of **Bennett vs. Deaton, 68 Pac. (2d) 895,** decided May 17, 1937, wherein an adjuster represented to the claimants "that he had made a thorough investigation of all the facts before seeing respondents; that he had determined there was no liability; that he had adjusted on the average of 100 claims a month; that he had become familiar with the law of accidents and insurance in his eight years of adjustments and investigations; that Deaton (the insured) was not to blame for the accident and finally advised respondents they could accept the $375 or that they would get nothing." The trial court set aside a release and settlement predicated upon such representations and on trial to the jury a verdict for $10,375 was rendered and affirmed by the Supreme Court of the State of Idaho. Under the decisions of our court and under the rule laid down in the Missouri case last referred to it would seem that the representations made by the adjuster in the Deaton case would constitute unauthorized practice of the law in this state.

I am convinced that no profession can survive unless it maintains its standards of service and no profession can maintain its standards of service unless the performance of that service is confined to its members. There is no reason for the existence of a profession unless the duties performed by its members require particular training and the rendition of public service regardless of profit or individual gain.

It may be suggested that in endeavoring to preserve the law practice for lawyers the bar is attempting to achieve a monopoly. It should remember however that the profession of law is not and never has been a monopoly. Any person who is willing to undergo the training, who possesses the necessary intellectual and moral qualifications will find, and always has found, the doors of the profession open to him. There can be no monopoly where all are admitted to the enjoyment of the privileges thereof upon the same conditions and where admission is perpetually open to qualified applicants.

In conclusion, if the practice of law is returned in its entirety to lawyers the three things most demanded by the public of the Bar will be accomplished. First, the lawyers' economic security, endangered by competition with the unauthorized practitioner, will be restored. Then a large portion of the unprofessional conduct caused by economic pressure will be eliminated. Second ,procedural reforms demanded by the public will then have the attention of a Bar which, since the rise of the unauthorized practitioner, has not had time to quit the fight for existence long enough to give that subject the study and time that it deserves. Lastly, once professional conduct is freed of the menace of commercialization it will be further refined and improved by the members of the Bar acting by and through their Bar Association.

PRES. MORGAN: There are two matters which were passed upon by the Local Bars Section. They are proposed resolutions No. 1, 2 and 3. No. 1 and 2 were passed. No. 1, "Resolved that practice and procedure in Idaho Courts should be fixed and regulated by Rules of the Supreme Court, and that the Legislative Committee of the Idaho State Bar is hereby instructed to draft, and endeavor to secure enactment of all necessary legislation therefor."

This matter was up at Idaho Falls and discussed there quite extensively and Judge Ailshie at that time suggested that while the Court probably had power to proceed along that line without it, perhaps an act by the Legislature might keep us out of a lot of grief. In connection with that is No. 2: "Resolved that the Supreme Court be and hereby is respectfully requested to cause to be appointed a committee of members of the Idaho State Bar to aid and assist the Court in the preparation of Rules of Practice and Procedure in the Courts of Idaho."

This again, we submitted to the Local Organizations throughout the state and their delegates were sent here to vote upon the question. These two the Local Bars Section have recommended for adoption by this body. No. 3 reads: "Resolved that so far as practicable Rules of Practice and Procedure in the Courts of Idaho, which may be adopted by the Supreme Court should conform to the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States, pursuant to the Act of Congress June 19, 1934."

The Local organization, after discussion, reached the conclusion that the Supreme Court, together with the committee selected from the Idaho State Bar were amply able to handle the situation without any set instructions. I would be glad to entertain a motion to adopt the resolutions No. 1 and 2.

MR. JESS HAWLEY: I will make such a motion.

(Thereupon the motion was seconded.)

PRES. MORGAN: It has been moved and seconded that resolutions No. 1 and 2 be adopted. All in favor say "aye."

(Unanimously carried.)

PRES. MORGAN: Upon consideration of resolutions No. 9 and No. 10, the Local Bars Section deferred action.

MR. GOFF: So moved

(Thereupon the motion was seconded.)

PRES. MORGAN: Moved and seconded that resolutions No. 9 and 10 be deferred. All those in favor signify by saying "aye."

(Motion carried.)

PRES. MORGAN: At this time I will call for the report of the resolutions committee appointed at the beginning of this meeting.

MR. OWEN: The resolutions committee has nothing to report. We do suggest, however, that this annual meeting, at the conclusion of a very successful session, in appreciation of the splendid environment, the surroundings under which this meeting has been held and the reception accorded the members of the Idaho Bar and the entertainment given, extend to the City of Coeur d'Alene and the Local Bar Association in particular a rising vote of thanks.

(Carried.)

MR. JESS HAWLEY: Mr. President, it is only a matter of importance that should cause us to pause a moment. Isn't it important for us to suggest the admiration and gratitude that we have for the service of President Al Morgan? I feel that men, strong men, are needed by the Bar. I think that we have had some strong men in the past; the Bar could get along and have average success and be successful in fact, if it had no other dynamo than our permanent secretary. There are a few administrations where the peak of accomplishment goes high above that line and this administration is one.

The Morgans seem to have a rare combination of unlimited strength and tact. These have all been exercised by President Morgan. No man has been more sincere, has taken more to heart the immortal work and I think no man has done more for the profession in its several aspects than he has done.

This is not an attempt at tribute—I wish I could more adequately express the very sincere feeling that I have, and I believe you gentlemen have. Al Morgan will stand out as one of the very able Commissioners and Presidents that we have had in the Bar and it is my desire to try to give to you Mr. President, our expression as some compensation for the accomplishment of a hard and sometimes embarrassing job. I want you to know that you have been appreciated and that we members of the Bar really feel grateful, in a high degree, for your services as President for th past year, and for three years as Commissioner. Gentlemen, do you agree?

(Applause.)

PRES. MORGAN: Mr. Hawley and gentlemen, it would be hopeless for me ever to approach an expression to you of my gratitude. I have said in the past and I want to say it again that any success that may have attended the efforts of the Commission during the past, while I have been associated, is due entirely to the whole-hearted support we have had of a great many members of the Bar of this State.

Now, it gives me a great deal of pleasure, gentlemen, to introduce to you your new president, Mr. J. L. Eberle. I want to say this, I be-

speak for Mr. Eberle and the Commission the same whole-hearted support I have had in the past. Come on, Mr. Eberle, and tell us what you are going to do.

MR. J. L. EBERLE: I want first personally to thank the Local Bar and Mr. Potts, its president, and the officers, for their thoughtfulness and the consideration they have given all of us. I don't suppose it is necessary for me to say I had a good time. I think my actions have demonstrated that.

There is only one remark I am going to make before going home—to me this job is simply another job—like many that you have from time to time taken on; tasks and chores out of a sense of obligation without compensation. Many of our fellow lawyers have even chuckled about it. Many of them attend to their law work and refer to these tasks and chores as horse feathers and goat feathers and sometimes one wonders if they are right and one sometimes weakens. The person who accepts this job as Bar Commissioner can only do it out of a sense of obligation to the profession. One wonders whether there isn't a limit to what a person should feel obligated to do. In the performance of that obligation I almost weakened. After spending five or six days here under this slave driver, Al Morgan, working from eight o'clock in the morning until ten o'clock every night grading the examinations, and the grades are added up and I find that the sons of four of my best friends had failed, I said "Al, I wish I could qult" and I would have quit, but no man can work with Al Morgan, as I have worked with him now for two years, without appreciating the steadfastness of his purpose, his sincerity and the willingness and courage of the man and without appreciating the obligation he owes to our profession.

That is the only reason I am going on. It is a hard job to follow Al Morgan as you all know, but I am going to take enough time from my practice to do this job for one more year and the only thing I ask is that some of you and some of the other members who are not here who have been apathetic, give a helping hand occasionally; it will be less burdensome and I know a lot more pleasant.

PRES. MORGAN: A motion is in order that we adjourn.

(Thereupon such motion was made, seconded and carried.)

ATTENDANCE REGISTER

NAME—	ADDRESS
A. L. Morgan	Moscow
Walter H. Anderson	Pocatello
E. B. Smith	Boise
Sam S. Griffin	Boise
Wm. S. Hawkins	Coeur d'Alene
Charles S. Stout	Boise
W. C. Loofbourrow	American Falls
John A. Carver	Boise
F. M. Bistline	Pocatello
Karl Paine	Boise
Robert E. Brown	Kellogg
Spencer Nelson	Coeur d'Alene
Paul G. Eimers	Lewiston
L. G. Peterson	Moscow
W. J. Nixon	Bonners Ferry
Murray Estes	Moscow
Elbert A. Stellmon	Lewiston
P. J. Evans	Preston
Abe Goff	Moscow
S. H. Atchley	Driggs
A. K. Bowden	Sandpoint
W. B. McFarland	Coeur d'Alene
Robt. E. McFarland	Sandpoint
George J. McFadden	Plummer
Edward H. Berg	Coeur d'Alene
Chas. E. Horning	Wallace
F. C. Keane	Wallace
H. E. Worstell	Wallace
Kenneth K. Branson	Coeur d'Alene
George W. Beardmore	Sandpoint
Randall Wallis	Cascade
A. F. James	Gooding
Jess Hawley	Boise
E. V. Boughton	Coeur d'Alene
Donald Anderson	Caldwell
Frank F. Kibler	Nampa
Samuel F. Swayne	Orofino
Chas. F. Koelsch	Boise
Ezra R. Whitla	Coeur d'Alene
Wm. M. Morgan	Boise
C. H. Potts	Coeur d'Alene
Marcus J. Ware	Lewiston
Charles Stout	Glenns Ferry
C. G. A. Divelbiss	Spokane, Wash.
Franklin Pfirman	Wallace

Charles E. Winstead	Boise
W. F. McNaughton	Coeur d'Alene
Dana E. Brinck	Spokane, Wash.
Carey H. Nixon	Boise
J. Ward Arney	Coeur d'Alene
Ralph S. Nelson	Coeur d'Alene
Clayton V. Spear	Coeur d'Alene
H. H. Miller	Boise
E. A. Owen	Idaho Falls
Lawrence E. Huff	Moscow
Charles Poole	Rexburg
Donald A. Callahan	Wallace
Ed S. Elder	Sandpoint
W. A. Ricks	Rexburg
Jay M. Parrish	Spokane, Wash.
J. L. Eberle	Boise
Robert W. Peterson	Moscow
M. Casady Taylor	Orofino
Allen H. Asher	Sandpoint
W. L. Tuson	Kellogg
Chas. O. S. Scoggins	Fairfield
Pendleton Howard	Moscow
W. H. Davison	Boise
James Alfred Wayne	Wallace
James H. Hawley	Boise
Ben B. Johnson	Preston
Edward Babcock	Twin Falls
Geo. H. Scatterday	Caldwell
R. B. Scatterday	Caldwell
Roger G. Wearne	Coeur d'Alene
Paul W. Hyatt	Lewiston
Thomas A. Madden	Lewiston
Richard P. Dews	Nashville, Tenn.
Guy W. Wolfe	Moscow
John P. Gray	Coeur d'Alene
Welden Shimpke	Moscow
Hamer H. Budge	Boise
Robert I. Troxell	Caldwell
Weldon Schimke	Moscow
E. T. Knudson	Coeur d'Alene

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