PROCEEDINGS

of the

IDAHO STATE BAR

VOLUME XXVIX, 1955

Twenty-Ninth Annual Meeting

SUN VALLEY, IDAHO

July 7, 8, 9, 1955

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Past Commissioners

WESTERN DIVISION

JOHN C. RICE, Caldwell, 1923-25.
FRANK MARTIN, Boise, 1925-27.
JESS HAWLEY, Boise, 1927-30.
WM. HEALY, Boise, 1930-33.
JOHN W. GRAHAM, Twin Falls 1933-36.
J. L. EBERLE, Boise, 1935-39.
C. W. THOMAS, Burley, 1939-42.
E. B. SMITH, Boise, 1942-48.
CLAUDE V. MARCUS, Boise, 1948-51.
T. M. ROBERTSON, Twin Falls, 1951-1954.

EASTERN DIVISION

N. D. JACKSON, St. Anthony, 1923-25.
A. L. MERRILL, Pocatello, 1925-28.
E. A. OWENS, Idaho Falls, 1928-34.
WALTER H. ANDERSON, Pocatello, 1934-40.
L. E. GLENNON, Pocatello, 1940-43.
PAUL T. PETERSON, Idaho Falls, 1943-46.
R. D. MERRILL, Pocatello, 1946-49.
RALPH LITTON, St. Anthony, 1949-52.
L. F. RACINE, Jr., Pocatello, 1952-55.

NORTHERN DIVISION

ROBERT D. LEEPER, Lewiston, 1923-26.
C. H. POTTS, Coeur d'Alene, 1926-29.
WARREN TRUITT, Moscow, 1929-32.
JAMES F. AILSHIE, Coeur d'Alene, 1932-35.
A. L. MORGAN, Moscow, 1935-38.
ABE GOFF, Moscow, 1938-41.
PAUL W. HYATT, Lewiston, 1941-44.
E. T. KNUDSON, Coeur d'Alene, 1944-47.
E. E. HUNT, Sandpoint, 1947-49.
ROBERT E. BROWN, Kellogg, 1949-53.

Present Commissioners and Officers

RUSSELL S. RANDALL, Lewiston, President
WILLIS E. SULLIVAN, Boise, Vice-President
GILBERT C. ST. CLAIR, Idaho Falls
PAUL B. ENNIS, Boise, Secretary

Local Bar Associations

Clearwater (2nd and 10th Judicial Districts)—Wynne M. Blake, President, Lewiston

Third Judicial District — Sam Kaufman, President, Boise.

Southern Idaho (5th and 6th Judicial Districts) — Jayson C. Holladay, President, Pocatello.

Seventh District — Harold Ryan, President, Weiser.

Eighth District — Watt Prather, President, Bonners Ferry.

Ninth District — Faber Tway, President, Idaho Falls.

Eleventh District (11th and 4th Judicial Districts) — Charles Scoggin, President, Fairfield.

Shoshone County — James Keane, President, Wallace.

PROCEEDINGS

1955 Annual Meeting

IDAHO STATE BAR

Sun Valley, Idaho

Thursday, July 7, 1955

PRESIDENT RACINE: Gentlemen, I don't think we have all of those registered here at this time, but we should get started.

This is the 29th Session of the Idaho Bar Association. We have Rev. Wilson from Hailey to give the invocation.

REV. WILSON: Almighty God, imbue us with a sense of Your presence today. We are grateful for every endowment of mind and soul, and for all that has gone into our country and this our State of Idaho. We pray for Divine guidance. We pray that you will endow these who gather here with the sense of the fitness of their conference. Be the mind for their mind, and guide and counsel them even beyond their counsel so that all may be well. May this conference redound to the good of all and to the glory of God, for we ask it through Jesus Christ, our Lord and Master. Amen.

PRESIDENT RACINE: Thank you very much, Reverend Wilson. I do want to thank Joe McFadden of Hailey for arranging for Reverend Wilson to have him give us the invocation.

At this time I believe it is in order that we appoint the Resolutions Committee, as follows: Bert Larson, Chairman; Sherman Bellwood, William Gigray, Hon. Preston Thatcher, Hugh Maguire, Faber Tway, William Tuson, Ray McNichols, and Elbert Stellmon.

Mr. Ennis, the seeretary, will help you in any way with any documents or statistics or papers that he can assist you with, and so far as stenographic services are concerned, Mr. Ennis' secretary is here and can assist you in that regard. It will be up to you to get the meeting of your committee under way, and we will appoint Mr. Bert Larson as chairman of that committee.

The Canvassing Committee, so far as the election of the new commissioner, will be as follows: Charles Scoggin; A. A. Merrill; and Wayne McGregor.

The program at the 29th Session is under the chairmanship of Mr. Russell S. Randall, vice-president of the Association. I think Mr. Randall has a few announcements at this time that may be of interest to you.

MR. RUSSELL RANDALL: Mr. President and Gentlemen of the Bar, and Guests. I would like to announce that the registration desk in the main lobby of the Lodge will be open after this session so that if anyone is here who has not yet registered, we would like to have you do that after the session. I have also been asked to announce that there will be a meeting of the Reception and Distinguished Guest Committee in the Ram immediately after this session. Bob Brown and his wife are co-chairmen of that, so if anyone who has been designated as a member of that committee is present, please go to the Ram immediately after this session.

I have also been asked to announce that at the beginning of each session throughout this convention there will be door prizes given in the form of law books. This will be worked in this manner—you have on your registration card your name and a number, which number will be used for the purpose of drawing to see who is the winner of these prizes. You must wear your name plate so we can verify that you have the proper number, and you must be present at each

session in order to win. I would like to tell you the door prizes we are going to have. Bender-Moss is contributing two sets of Cowdery's Forms; Bobbs-Merrill one set of "Modern Trials" by Melvin M. Belli; West Publishing Company is giving West's "United States Supreme Court Digest"; and two copies of "The Lawyer from Antiquity to Modern Times"; Bancroft-Whitney is donating three copies of Harno "Legal Education in the United States"; and Commerce Clearing-House is donating two volumes, "Loose-Leaf Service on Income and Estate Taxes."

At 3:00 p.m. this afternoon there will be a reception and style show for the ladies. At 6:30 this evening there will be the smorgasbord at the Lodge, which on the program is set at 7:00 o'clock, but it has been set ahead to 6:30 on account of the weather. Tomorrow there will be a ladies' luncheon at 12:15. At 6:30 there will be the usual trip to Trail Creek. The social hour starts at 6:30. The barbecue will be at 7:00, and busses will leave from the main Lodge in order to take you out there.

On Saturday there will be the ice show at 9:30 in the evening, and the annual golf tournament will be held at Saturday afternoon as will the trap shoot, and those who wish to register with the golf tournament should do so with John Gunn, and those who wish to register for the trap shoot should register with George R. Kneeland.

I think we have arranged a pleasant program for you, and I hope all of you have a very nice time.

PRESIDENT RACINE: Thank you, Russ. The barbecue tomorrow evening is at 7:30 rather than at 7:00. I might put in a plug for the shooters. This annual trap shoot hasn't amounted to much for some years. We have only had about five out there, and among the five there hasn't been much of a contest. Now if anyone thinks they would like to try to shoot, we would appreciate it if you would get in touch with George, because I am sure you will have some fun out of it even if you can't hit the pigeon. I realize that most of you desire to play golf a little more than you desire to shoot, but a method has been set up by Mr. Kneeland this time whereby we are going to assure almost everyone that comes out to shoot some sort of a prize, and I think you might find it a little fun.

At this time it is usual for the secretary to make his annual report, and Mr. Ennis has gathered a good many statistics as to the activities over this past year, and other information also that I am sure you will find of interest. Mr. Paul Ennis, the secretary. (Applause)

SECRETARY ENNIS: Mr. Chairman and members of the Idaho State Bar: My annual report is traditionally and neeessarily comprised of so many statistical matters that I find it difficult to make it sound either interesting or in any sense inspiring. I will therefore give my report without trying to entertain you.

The books of aceount maintained in my offiee, and which are regularly audited by the State Auditor, reflect the following with respect to financial condition:

EXPENDITURES—June 1, 1954, to June 1, 1955:

Personal Service	$ 3,117.00
Travel Expense	3,909.01
Other Miscellaneous Expense*	3,307.45
Refunds	60.00
Capital Outlay	285.40
Social Security Fund	56.48
	$10,735.34

RECEIPTS—June 1, 1954, to June 1, 1955	$15,493.00
Balance June 1, 1954	14,684.36
	30,177.36
Less Expense	10,735.34
Balance, June 1, 1955	$19,442.02**

*Printing, Publications, Supplies and Other Miscellaneous Expense.
**This balance checks with the State Auditor's records.

Compared with the period June 1, 1953, to June 1, 1954, our expenditures are approximately $200 less for the year ending June 1, 1955.

The status of the Bar Trust Fund, a special fund not controlled by the State by reason of the fact that receipts are collected from sources unrelated to official funds, is as follows:

Assets:

Accounts Receivable:

	6/1/54	6/1/55
State of Idaho	$ 57.44	$ 168.98
Washington State Bar	102.41	
West Coast Airlines, Inc.		6.08
	159.84	175.06
Cash	.10	.10
Deposit in First National Bank	1,728.89	1,817.69
	1,888.84	1,992.85
Gain	104.01	
	$ 1,992.85	$ 1,992.85

Gain:

Unexpended Bar Registration Fee—1954 Meeting	$ 135.81

Expenses:

District Bar Presidents Meeting	$ 31.80
	$ 104.01

With respect to membership in the Idaho State Bar, membership by Division is divided as follows:

	1954	1955	Increase
Northern Division	137	134	2.2%*
Western Division	323	316	2.2%*
Eastern Division	145	146	.6%
Military Service	12	10	1.2%*
Out of State Membership	29	28	.6%*
Total	646	634	1.9%*

*Decrease

By Local Bar Association the distribution of membership, which is the basis for determining voting power of each local Bar under Rule 185 at this meeting, is:

Shosbone County Bar Association	24
Clearwater Bar Association	62
Third District Bar Association	165
Southern Idaho Bar Association	92
Seventh District Bar Association	61
Eighth District Bar Association	48
Ninth District Bar Association	54
Elcventh (And Fourth) District Bar Association	90
	596
Military Service	10
Out of State	28
	634

Since the last annual meeting of the Bar, the following deaths have been reported:

William S. Fowler, Santa Monica, California
James Ellinger, Sandpoint, Idaho
Albert L. Morgan, Moscow, Idaho
Burton L. Frencb, Hamilton, Ohio
Cbarles Stout, Glenns Ferry
Darwin W. Thomas, Boise, Idaho
Earl E. Garrity, Nampa, Idaho
Therrett Towles, Spokane, Washington
Oliver C. Wilson, Coeur d'Alene, Idaho
Monroe G. Whitney, Coeur d'Alene, Idaho
H. G. Harris, St. Anthony, Idaho
Charles H. Richeson, Boise, Idaho
Morton C. Taylor, Seattle, Washington
D. Worth Clark, Los Angeles, California

With respect to admission to the Bar, two examinations were administered during the past year, one in September, 1954, and the other in April, 1955. In the first examination there were a total of twenty-three applicants, twenty of wbom passed, three of whom failed. In the April examination, nine took it, three passed and six failed. Of tbe thirty-two applieants, twenty-three or 71.9% successfully passed the examination.

Nine complaints were considered by the Commission during the past year. One matter resulted in recommendatory order of the Board to the Supreme Court for six months suspension from practice, which order was confirmed by the Court. Another suspension of six months as recommended by the Board is on appeal to the Supreme Court and pending at this time. Five complaints were dismissed, and in the other two, private reprimand was voluntarily accepted by the attorneys concerned.

PRESIDENT RACINE: Thank you, Paul. At this point the president is supposed to make an address, but I haven't worked particularly hard on it because Paul told me he was working on his report all morning, and I felt that it would include about everything that I could say, so I haven't spent a great deal of time on the matter. There has been a lot of things your Commission has done this past year, but I don't think you would be particularly interested in our detailing wbat a fine commission you have bad this past year and what a fine job we have done for you! I will eontent myself with the knowledge that you appreciate every-

thing we have done for you, and that you feel fortunate in having such a fine representative group of lawyers on your Bar Commission this last year! (Laughter)

Seriously now, I do feel that the work of groups such as the Idaho Bar Association has a lot to do with what is done in our country, and in our form of government. I was recently in San Francisco at a judicial conference meeting as a representative of the Bar, and while there was informed that there are some four or five conventions meeting in San Francisco every week of the year, and it occurred to me that possibly a great deal that is accomplished in this country is accomplished through these groups of people, whatever organization they belong to, whether it be beet growers or medical societies, or bar associations. They come from various localities in the nation, exchange ideas, and they discuss matters which are of assistance to their particular organization and to the community as a whole.

I think that's true of our Idaho Bar Association. We have many representative groups of industry and activity throughout this state. The practice of the lawyers in Northern Idaho varies considerably from the practice in other parts of the state, and the fact that we can get together and renew acquaintanceships and discuss some of our individual problems is a wonderful thing—particularly when we can do it at such a place as Sun Valley.

I think that many states surrounding us envy us greatly our meeting place. I know we have a speaker here today from Utah, and he mentioned this morning that Utah has no place comparable to Sun Valley where their groups, such as their bar association and medical associations, can meet, so I want to express my personal appreciation to the management of Sun Valley, and to the Bar Association as a whole for arranging through the years for us to meet here.

Shortly following the last annual meeting the Bar met with the Supreme Court of the state. We met with regard to Resolution X, which in part did authorize the Commission to proceed with some study and some work looking toward a revision of the Rules of Civil Procedure. The Court discussed the matter with us, and we also met with the Code Commission at the same time as we met with the Supreme Court, and as a result of those meetings, finally in April of this year we did obtain authority both from the Supreme Court of the state and from the Code Commission for the expenditure of moneys directed toward study and a draft of revised rules of civil procedure. That work is now going on.

We employed an editor from the Bobbs-Merrill Company, as well as a local attorney, Mr. E. H. Casterlin of Pocatello, to collaborate with the editor from the Bobbs-Merrill Company. Just recently we received a letter from the editor who is doing this work of Bobbs-Merrill Company, stating that his draft would he in shape for presentation to Mr. Casterlin about the last of this month. The plan is that ouce Mr. Casterlin and the editor, Mr. Furlou, have worked the matter out, which should be within the next several weeks, we will attempt to distribute copies of the draft, which incidentally is annotated and contains the civil rules of Idaho as they now exist, along with the proposed changes, as well as experiences from some other states and decisions where they are of any assistance. That draft will be distributed to the various bar associations with sufficient copies so the individual lawyers can discuss and review the matter, and study it. It is the hope that from that work and from the studies that will go on as a result of the draft itself being furnished to the lawyers and to the local associations, we can come up with something that will improve the administration of justice. Just what that will be will, of course, be up the lawyers of Idaho, but I think all of us

recognize that we can work constantly toward the improvement of the administration of justice, and that if the Rules of Civil Procedure in Idaho warrant change and warrant revision, we should he the first to recognize it.

Certainly we have ample authority behind us for such a change. It bas been accomplished in a number of states either in whole or part patterned after the Federal Rules. What does come from it will depend upon the interest of the lawyers and their desire to attempt to improve the administration of justice.

That is one of the major activities of the Commission during this past year. I think the very fact that a draft is being made with comment of an editorial nature and with annotations is a step in the right direction. We have on the agenda today a discussion by Mr. Arthur Nielson of Salt Lake City insofar as the experience in Utah in connection with the change of their Rules of Civil Procedure. That may assist some of you in your thinking on this matter when it comes to examining the draft which we hope to present to you.

In addition to that particular work, as Mr. Ennis mentioned, there was a meeting of the local bar association presidents this spring in Boise. Incidentally, that was where some of the money from the increased dues was expended. The local bar presidents were called into Boise, and their expenses were paid to Boise, for the purpose of attempting to interest them in local work of a bar association nature in their communities. There was a series of reports. There was a discussion as to the work of standing committees, and as Mr. Ennis informed you, Justice Taylor was there and several of the other justices of the Supreme Court were likewise present. All in all, we felt that that was a worthwhile experience, not only for the Commission, but for the local bar presidents, and that it would show results insofar as that activity on the local level, and I believe it has, although not much time has passed since that meeting.

We have appointed standing committees insofar as professional ethics and grievances, uniform minimum fee schedules, unauthorized practice, public relations, continuing legal education, and lawyer referral and legal aid. Those committees were appointed this spring. The appropriation from the increased dues has only recently been available, and there has not been funds to call those committees into meetings at some central location in the state until very recently. However, there has been work done by the committees, and there will be reports from the committee chairmen later on in this meeting. I think the fact those standing committees will continue from year to year, with perhaps some change in personnel, will reflect in the future as to the activities of this Association.

In addition to that particular work this last year, there has been work on rules as to admissions, rules of discipline, and there has been some improvement in the examining procedure of new applicants. The questions formerly ran to some fifty, and we cut them down to thirty questions during the three-day period, and we have attempted, with the approval of the Supreme Court, to examine on general fields of the law rather than some special fields of the law. The questions are of multiple-issue type. There has been a little greater effort to select the questions on a little more careful basis, and they have been reviewed by professors and by practicing lawyers, by other states, and most of the questions in recent examinations have been selected from sources which other states have tested and thought to be valuable and proper questions on an examination.

There was a junket of the secretary and commission to North Idaho in May. The commission and secretary met with all of the bar associations in North Idaho, and it was felt there was some good came from the meeting of the commission

with the individual lawyers in that area. At least we were so informed, and I don't know whether it was just complimentary or whether they meant it, but it seems that a continuance of that procedure of getting around to the local associations, talking to them and explaining to them the activities of the State Bar, would be of benefit to them in the future.

All of those activities have in some measure been made possible by the increased dues. Perhaps the increased dues is not the most popular of things, particularly in view of Mr. Ennis' report where we have saved some $5,000, apparently, and increased the fund which we have on hand by over $5,000. However, the activity of bar associations throughout the country and the expense of those activities is increasing, and I think it well that we do maintain a reasonably solid fund in the Idaho Bar Association in the future.

We also met with the law school this last May, and we have discussed with the Dean of the law school and representatives of the Supreme Court the procedures as to the examination in order to attempt not to be unfair to the applicants, regardless of what the applicant thinks of the examination. There has been an attempt to coordinate the examination after cooperative consultations with the dean of the law school and representatives of the Snpreme Court. I think that has been worthwhile.

Generally, that pretty well covers the major activities of the Commission. I hope that you have been reading the Bar Bulletin that has come out, and we have attempted to keep you pretty well informed of the activities of the Bar in that Bulletin. All in all, it has been a very wonderful experience for me. I have thoroughly enjoyed the work, although at times it can be somewhat inconvenient from the standpoint of time. Nevertheless, I would recommend to any of you who have not had the experience an interest in Bar work.

I should mention that I feel gratified at the complete cooperation we have had from all members of the Bar that we have called on for work. We have had occasion to call upon some members, and they have given freely of their time, made reports and investigations of various kinds, all of which took a good deal of their time, and we certainly extend our appreciation and thanks for that effort.

Thank you very much. (Applause)

Mr. Hyatt of Lewiston has been asked to introdnce our next speaker on the program, so Mr. Hyatt, would you bring forth the speaker? (Applause)

MR. PAUL W. HYATT: Mr. President, and Ladies and Gentlemen of the Convention. In this day and age it is a real pleasure to see a young man, especially a young lawyer, devote himself to a career of public service, and it has been my good fortune to watch this young man come up in that carecr, starting in as assistant attorney general, then as attorney general, and then to be governor of our state. We have too few of us in this day and age who are willing to make the sacrifice that has to be made in order to give up the work as a lawyer and get into public service. Maybe the day will come again when more of us can do that.

I think it is also an honor to our profession that we have one of our members as the chief executive of this state.

Now, I am not going to introduce him, because you all know him, so at this time, Ladies and Gentlemen, I am very happy to present to you the Governor of the State of Idaho. (Applause)

GOVERNOR ROBERT E. SMYLIE: Judge Hyatt, Mr. President, Ladies and

Gentlemen of the Bar Association, and our Distinguished Guests: First, I think I should thank you sincerely for the very distinguished honor that you do me by inviting me to speak to you this afternoon. Second, I think I should confess that the problem of what to say to a group of lawyers when you are one yourself presented to me problems of the first importance; problems that were reasonably difficult of solution. One of the first things that my best and oldest friend in the practice told me about making speeches at Bar conventions was that you didn't make any business there, and he advised that he always conducted himself in such a manner that he was never afflicted with that responsibility.

When Paul Ennis asked me if I could visit with you for awhile this afternoon, I said I should be very happy to do so. Then he called back in a little bit to inquire as to what I was going to talk about. He asked the title of the speech. We talked for five or six minutes over the phone and I remembered that once some six or seven years ago I made a speech to the Oregon State Bar Convention at Gearhart, and the title of that speech was "The Lawyer and Public Office." It seemed to me, because people clapped loudly and said nice things about it afterward, that it must have been good. I thought maybe I could find a copy of it and so I told Paul to put that down on the program. Unfortunately, after much searching of the files—and if you don't think you get yourself in a jam by moving even so short a distance as across the hall—we couldn't find the text. So I was fresh out of a speech about lawyers in public office.

I wondered what I would do about that, since the program was printed and in the mail, and one day at lunch I encountered a gentleman who is a member of this Association, an old friend and classmate of mine who strayed from grace and is now the Democratic Chairman, our mutual friend and associate, George Greenfield. George and I have vied over the years, in many fields. We were in the class of '38 in the College of Idaho. If my memory is right, our first political sword crossing was the campaign to elect Bill Young as president of the Association Students of the College of Idaho. I talked to George about what I ought to say here and he said he thought I had come to a bad place to get some advice. I said I didn't know why I shouldn't solicit some more from him; I had had plenty of advice and had used very little of it. (Laughter)

He recalled an old story that is somewhat illustrative of our combative friendship. I think we have seldom found ourselves on the same side of any question. He recalled the story about the two lads who had gone to some college in the East, and after college one of them had gone one way and the other had joined the navy. The fellow that went the right way ended up being a bishop in the church. Some twenty years later the fellow that joined the navy was waiting in Grand Central station in New York City, and the bishop, grown somewhat rotund with honors and reverence and dignity walked in and saw the admiral waiting at the train gate. Remembering their old feud he tapped the admiral on the shoulder and said, "Tell me, conductor, when is the next train to Poughkeepsie?" The admiral turned around, looked the bishop up and down; noted it was his old friendly enemy, and he said, "Oh, at one o'clock; but Madam, in your condition!" (Laughter)

So you see I got not many helpful suggestions from George, but we had a very pleasant lunch. Then last night, in the course of a pleasant dinner I discussed with Bob Brown what I might say here. Bob has been to a lot of Bar meetings and is a former president of this Association and I knew that I would value his advice greatly. We thought perhaps it might be helpful because we were all in the family, for us to discuss why so many of us come to this convention and a few of us attend these meetings. However, he said that might be viewed by some as

critical. I replied that almost any thing I said would be criticized. Tben he told me another story. This is probably a Shosbone County story. A man walked into a bar and said to the bartender, "Give me a Bourbon and water, and buy one for the house and buy one for yourself too. The bartender did, and presently brougbt the bill around. It was $18.00. The fellow didn't do anything about it. Pretty soon be said, "Bring me another drink, bartender, and buy one for the house and one for yourself too." The bartender did, and pretty soon came back with a bill for $36.00. The fellow said, "Wbat are you giving me that for? I don't have any money." "You mean to tell me you ordered all those drinks and you can't pay for them?" the bartender said. "Certainly I can't." So the bartender hit him over the head and threw him out the door. The bartender heard no more from him for two weeks or so, and then the fellow came back and said, "Give me a Bourbon and water, and buy one for the house." The bartender looked at him quizzically and said, "Don't I get a drink this time?" The fellow said, "Not a bit. You get mean when you drink." (Laughter)

So, I thougbt it wise not to criticize this group unduly, and thought that you might appreciate a brief report on the finaneial state of your state, because at about 31 minutes after noon last Sunday we had gotten an eighth of the way, or 12½% along the road of my stewardship as your Governor. I know that this is an unpartisan forum, and wben I have this kind of an opportunity I normally make a non-partisan Republican speech. I thought you migbt bear me a little bit while I run you througb some figures, perhaps a little bigger figures than the ones Paul Ennis used, but figures that will give you some idea of wbere we started, where we are, and then add a bit for a forecast for the future, in terms of our state's finanees.

I imagine that because you work with taxes and belp pay them, you would appreciate a fiseal balanee sheet. I am not going to try to spin out all of the zeros that run onto the end of a lot of figures I work with. I am going to breaк it to tenths of millions. I think you might like to know wbat, in this year of 1955, your government is going to cost you for the next two years, where the money will come from, and how it will be spent. It doesn't take long, but it is a capsule treatment of a suhject that too many of us know too little about.

On January 3rd I found the general fund 2 million dollars in the red. When I talk about the general fund I do not talk about all those instrumentalities and agencies of government that are supported hy speeial funds or special taxes, sueh as the Bar Commission, but about those that depend on the general reservoir of taxes for support. They constitute, with the exeeption of the highway fund, most of the major activities of your state government.

That general fund was 2 million dollars in the red largely because of the fact that the revenue estimates in 1953 had been cast in too optimistie a light. The economy had been moving in a downward cyele toward levels that were somewhat below the levels of forecast. Part of the fact that the 2 million dollar deficit was there was due to the fact quite a few old bills were pieked up in the 1953 legislature. A comparison of the appropriation pieture on the general fund for the last three legislatures will show you how that eame about. In '51 the appropriation was 41.6 million dollars. In 1953 that had risen to 49.4 million dollars, an increase of roughly 18.6%. In 1955 the legislature just ended appropriated from the general fund 49.5 million dollars, up a bare hundred thousand dollars, due to the fact that we were broke. It was an increase in this session of only .3%.

Now, remember that the 49.5 million dollars is exclusive of the single biggest

fiseal fund that the state operates, and that's the highway fund. That fund alone runs to something near 60 million dollars in the biennium coming up. Of course, that involves some Federal funds and some state funds. Actually, the total bill for government in the two years beginning July 1, seven days ago, will be somewbere just in excess of 131.2 million dollars for all purposes. In other words, this business over which I preside for you spends somewbere in excess of 5 million dollars a month.

The special funds, budgetarily, don't need much attention, simply because the intake into those funds is regulated by taxes imposed for the support of specifie enterprises. For that reason they are statutorily or constitutionally in balance at all times.

The spending of the general fund, as I pointed out, supports all of your educational functions, your public welfare functions, your public health functions, and the rest of the general operations of state government, including your courts, my office, the attorney general's office, and that sort of thing, should interest you most. The biggest share of that 49.4 million dollars, slightly in excess of 28 million, goes for education. 13.8 million of it goes for the public welfare services, the maintenance of your bospitals at Orofino, Blackfoot, Gooding, the Nampa school for defective children, the Department of Public Assistance. 1.9 million dollars of that 49.5 million goes for Public Health, and the rest of your general government, exclusive of those three items, costs you only 5.8 million dollars for the two years. In other words, all of your general government for 24 months will use just about what we spend for all purposes, highways and everything included, in one month.

The budget as I presented it to the legislature showed a 10 million dollar deficit based on an anticipated expenditure very close to that which was finally approved by the legislature. There were estimated resources of about 39.5 million dollars. We thought that by the time June 30th had rolled around, by the exercise of stringent and selective economies that the 2 million dollar deficit in the general fund could be turned into a $400,000 surplus. Actually, that left us with 40 million dollars, and a demand of 49.5 million dollars. So that 9½ million dollars had to be found someplace or many of the services, such as public assistance or public schools support, would have to have heen discontinued.

As you know, taxes were inereased to meet that deficit. Here is where the money came from.

The 15% tax dividend which was voted in the '53 legislature in order to dissipate the last 4 million dollars of accumulated surplus, was restored. That will produce additional revenue in the amount of ahout 3.1 million dollars. You are paying a penny more on each package of cigarettes that you smoke, which will produce a million dollars in the next 24 months. The withholding tax which was imposed, has, on the basis of present statistics, encouraged quite a number of our citizens to get right with Caesar, if not with God, before it gets too late. They have filed returns for the last three years, together with accumulated penalty, and it has heen a rather remarkahle source of revenue. Based on our best estimates, that will produce an added $1,300,000 in the next two years. The surcharge on liquor sold in the state monopoly of 7½% of the purchase price on the effective date of the statute will produce $1,700,000 in revenue. The 7½% surcharge which was placed on the income tax structure will produce 1½ million, and miscellaneous increases in fees and charges will produce another $600,000. The fact that the liquor tax and the cigarette tax went into effect almost immediately with their passage made an advance in revenue that will bring sufficient added money to close the gap of the 9½ million dollars. For the first time since 1942 your state budget is actually in halance betwcen revenues and expenditures.

There were, of course increases in the higbway fund that were accomplisbed in main part by an inerease in your automobile lieense fee, and in certain compensating increases in fees eharged for commercial use of the higbway by those that earry traffie over them for hire. I think some of the results of those increases are beginning to be apparent already in the advanced construction program.

Those of you who bave followed these figures closely enough to know, will realize that there were some long-shot caleulations involved. For that reason you might like to know exaetly wbere we think we will come out.

Actually, the calculations on whicb the budget was based now appear, as of this date, with 24 months still to run, to have been just a wee bit pessimistic. The liquor tax, which was imposed on March 17th, was widely held as about to produce a downturn in revenue for the liquor monopoly. It bas worked in the opposite direction, and the revenue from the tax has been running at about 106% of our estimate. The cigarette tax, which once again was cried down as a business-destroying device, has been producing at about 104% of estimates. We will have substantially more revenue there than we anticipated. The income tax, which we anticipated in 1954 would be below 1953 levels, is running even, and perbaps by the time all the returns are in for the year ending June 30th, will produee a little more than in 1953. I think probably a good reason for that, or a good bit of the reason, is what I referred to earlier. Those of us who had not been paying our bills are aware of the fact that the withholding tax is going to eatch up with us, so there bas been a tendeney to accumulate what amounts to a windfall profit; taxes that actually were due and owing two and three years back, but which were not collected by reason of lack of machinery.

As to the balance of $400,000 in the general fund on June 30th, the figures are not in; but I was advised as I left the office that by the 10th of July we would have final figures, and the free balance in the general fund, the cash balanee less outstanding orders and commitments, will run closer to 1 million dollars than $400,000. I think that current trends back the estimate I made to the legislature, suggesting that they face the issue of balancing the budget and getting this house in order, and that they will mean that when next the legislature meets our finances would be in much better shape than they were at the start of the last session.

One thing that I believe is deserving of comment can be illustrated by a story about a legislator from Shosbone County who was chairman of the revenue and taxation committee. It has been many a year since the revenue and taxation committee in Idaho has had much work to do, and the gentleman from Shoshone stated it this way: He said that in 1953 he was ranking member of that committee and that he had gained somewhere in the neighborhood of 11½ pounds on the steak diet, but tbat this year, because he was too busy to attend the dinners, he had lost 7½ pounds.

One other thing that I think you might be interested in is an estimate of how we as a profession behave in attending these publie affairs. I think the Idaho Bar Association is distinctly deserving of commendation by reason of the aetive and very adequate part that it takes in the affairs of our state government, and for that matter, of our local and national governments as well. At the risk of treading on some toes, however, I would like to say that individually, as lawyers, we shrink some of our responsibility, primarily our responsibility as lawyers to local government. Loeal government is, I think, and most of you will agree with me, the most important of all of our levels of government in the United States. Actually it is the eradle of our liberty. It is where our liberty was born, and if neglected too long, it could be the grave of our freedom. Lawyers, because we are lawyers, and be-

eause we have special talents and special information, owe a special duty to the maintenanee and the preservation of these free agencies of government that have made Ameriea great, and that now constitute the beacon lights of our leadership in the free world.

I might ask you how long it has been since you paid any real heed to a meeting of your city council. How long has it been since you read, even with minor interest, solely from the standpoint of a citizen, the proceedings of your board of county eommissioners or attended a budget meeting of the eounty government or the school board.

People say "We are just going to have to do something about these school taxes." However, don't be optimistic and feel that a revolution is brewing about the school expenses, because they had an election in Nampa not so very long ago to levy the traditional five mills. Nampa is a pretty good-sized town and its school district is, in geographical area, almost twice the size of the town. There were 68 people voted in that election! Five mills on the assessed valuation of that school district is a substantial sum of money. You can see that no interest was paid to this election. How many lawyers voted in that 68? The clerk of the school board didn't believe any had. But who cries more about the cost of government?

I leave it with you as a thought, because I think that lawyers, more than any others, deserve to accept the responsibility of seeing that these free institutions of government continue, that they are served adequately by citizens informed and interested in matters of interest at the local level, that unless we start paying more heed to them, our freedom and our free institutions of local government will die and fade away. They will wither and atrophy .

Freedom at the local level is not something that you can let George do. As lawyers, we need to attend to it ourselves. Too many of us, as lawyers, have grown intent in the pursuit of the interests of our clients and perhaps a little imbued with the freedom that comes with private practice and we have a tendency to think that public life is for someone else. I should like to say, as a tribute to those lawyers among us who adorn our Bench, that I think every one of them would tell you that their service in the public interest is a riehly rewarding experience. I can say that myself. It's a lot of fun. It's a lot of hard work. It involves, in many instances, sacrifices of personal freedom that are sometimes distasteful. On the other hand, there is a rieh sense of happiness to know you have actively assisted in the preservation of some of the things that make the law a great profession, of the freedoms that were vouehsafed to us by the great barristers and solicitors of England and the old colonial days, the lawyers that helped to write our constitutional liberties into the basic document by which we govern ourselves here in the United States; to know that you have been of some service to those ideals.

The next time someone asks you to join a civie committee, to perform a task for local government, aceept, and believe me when I say that the experience will he richly rewarding.

I would like to close these remarks by saying what I have said many times before of the 33rd Legislature of Idaho, whieh adjourned in March, and of my distinguished associates in this state government, that when the rest of this road is traveled and the whole story is told, it will be written as it is most eloquently in the Gospel according to St. Luke, that we have been faithful first in those things that were least, and we were faithful also in much.

Thank you. (Applause)

PRESIDENT RACINE: Thank you very much, Governor Smylie. I believe that the Governor is not only a lawyer, but an accountant. The figures quoted display a great knowledge of the accounting field. So long as the Governor used a portion of any suggestions from a Democratic state chairman, I don't think we need worry about that being a political speech.

On our agenda next we do have a speaker on this matter of rules, on which I touched in this short report I gave you, and which I am sure is of interest to you. Mr. Willis Sullivan, the Commissioner from the Western Division, will introduce the next speaker.

MR. WILLIS SULLIVAN: Five years ago Utah had just put into effect a revised rules of civil procedure, and at this convention, in 1950, we had the pleasure of hearing a distinguished attorney from Salt Lake City speak to us on the problems Utah had in putting their rules into effect. Mr. Arthur H. Nielsen is now in private practice in Salt Lake. He was for several years assistant attorney general, and he is the attorney who was appointed by the Supreme Court of Utah as the counsel to the committee that revised the rules. Now, it was not the intent of your Commission to at this convention get into an extended discussion of individual rules that might be proposed. We felt that would more properly await the time of the revised draft of the proposed rules which will be distributed to you. As your president pointed out, the study is well under way, and we felt it would be of interest to hear some of the advantages that Utah has realized from the revised rules in the light of their five years' experience.

It is with great pleasure that I present to you Mr. Arthur H. Nielsen of Salt Lake City. (Applause)

MR. ARTHUR H. NIELSEN: By way of introduction, I would like to say that Mrs. Nielsen, who accompanied me here five years ago and enjoyed your hospitality, wanted me to mention to you that she was sorry she couldn't come this time. It seems as through it has not been that long since I was here. I have seen many people I have known by reason of that association and by other contacts I have had since, including one or two young lawyers who have been students of mine at the University of Utah.

What Mr. Ennis said in this little story be told about the minister is so peculiarly applicable to me that I couldn't help mentioning it, and I hope you will pardon me in using the analogy, but I have wondered ever since I was here five years ago, if something I said here prevented you people from considering the Federal Rules both salutory and desirable.

I have been asked to write an article which will be published soon in the Federal Rules Decisions, and some of the remarks I will give today will he contained in it. There have been some very interesting articles published on the effect of the Federal Rules in the various states where they have been adoptd. May I give, for your information, the following references, which you don't need to jot down, because you can read them in your proceedings when they are printed.

In 15 Federal Rules Decisions at page 155 the Honorable Alexander Holtzoff has an article on "A Judge Looks at the Rules after Fifteen Years of Use," relating particularly to the Federal Rules of Civil Procedure. The following states have had articles written about their procedures by various illustrious members, and they appear in 16 Federal Rules Decisions. One with respect to New Jersey is found on page 39. The New Rules in Arizona, page 183. How Colorado Conforms State to Federal Civil Procedure, at page 291. Recent Civil Procedure Reforms in Kentucky,

397. The New Mexico Rules of Civil Procedure for the District Courts, found on 489.

In each of those articules the author has to a great extent eulogized the effects that the Rules have had on the standardization of practice and procedure in their respective states. Standardization, of coursc, can't be so perfect that there aren't between state and Federal practice within one state, and the little unique matters of practice and procedure between the states.

I call to your attention an incident that occurred in Utah which illustrates that certain peculiarities of practice will never be taken away by the Rules of Civil Procedure. I was associated with one of your illustrious members, Mr. Jess Hawley, in the trial of a law suit in Salt Lake City sometime ago, (he is a gentlemen, as you know, of the fincst caliber and one who has the proper court decorum). When he got through with the examination of a witness on direct examination hc turned to opposing counsel and said, "You may inquire," and the atorney looked at him blankly, and said, "Huh, I may what?" Down in Utah we don't say, "You may inquire," but we say, "Your witness," or "Cross-examination," and after court was over that day, the attorney came up to me and said, 'You know, thats a smart trick. We always act as though we were turning the witness over to the other person and make it sound rough, and now I think I will use that expression from now on." So one lawyer in our state, when he finishes his direct examination, turns to the opposing side, and says, "You may inquire," and he is always getting comment by someone down there, saying, "What do you mean by that?"

That's just a little illustration of how the Rules of Civil Proceduce won't changc our conduct and tacties in the courts, but the Rules of Civil Procedure will make somc changes in your state, and I do bope that you do adopt them because all experience has shown that they have, to a great extent, taken away this blindfold from the lady who stands with the scales balanced equally in her hands, and who for many ycars has bcen criticized for having been actually blindfolded in the administeration of justice. I think these Rules of Civil Procedure, as they are intended to do, aid mueh and are material in effecting justice bctween the parties, sometimes irrespective of the quality of eounsel which a party may have.

Particularly thcy give an advantage to counsel who are well prepared and who desire to preparc themsclves on the case.

If I may alludc to our own Rules and the experience wc have had with them there, I would like to state that in a general way, insofar as the proeedural statutes of our state are concerned, there has becn very little if any changc that I would know that has taken place since their original adoption. I haven't traeed back your rules of proccdure as to how you happened to adopt them, but wc took our procedural law from thc old Fiold Code that many of you older lawyers might have rcad and know about, that started back in 1850 in the State of Ncw York. This code was later adopted by California, and came on to us about the time of our statehood in 1896. Certainly civilization and society had developed and advanced far more than our procedure would indicate, by 1950 when we adopted the Revisod Rules of Procedure and followed the Federal practice. But it wouldn't have appeared so if you bad scen the way some of us practiced in court. Some of the older lawyers thought that a law suit was a battle of wits rathcr than an attempt on the part of the court and counsel to arrive at justicc.

Technical methods of pleading, originally adopted in New York, had bcen carried on into our own practice, and I know that for the most part attorneys in their office developed a set of forms which they used. Sometimes they never re-

ferred to the facts of the case, but merely told thir secretary to draft the pleadings in respect to this particular type of action mucb as lawyers did in the Sixteenth Century in respect to their common law pleadings. The secretary would get out the form and fill in the facts in the blank spaces, and that would be the pleading upon which the other side would have to make some attempt to determine wbat the proof was going to be.

I allude particularly to aetions involving personal injuries. I know one very famous lawyer who always pleaded that the defendant drove and operated his automobile in a careless, negligent, and reckless manner, as follows. a. That he failed to yield the right-of-way. b. That he drove too fast for existing conditions. c. That he failed to exercise and use reasonable care under the circumstances. d. That be failed to keep his automobile under proper control. Once in awhile he had an e. and an f., if he failed to sound his born or if be failed to stop for a stop sign. It was never, until the time of the trial, that you were ever able to determine what this man was going to rely upon in terms of that pleading. As one jurist put it, "We attempted to conform the facts according to the pleadings." Under the proposed rules you may have before you, aud under the rules that are in effect in Utah under the Federal Rules, it is more of an attempt to conform the pleadings to what the facts are.

In other words, the pleadings should be stated, under Rule 8, as a simple, concise statement of what the facts are, without redundancy, and insofar as possible, in separate paragraphs.

I appreciate that perbaps wben the Field Code was adopted that was the way they intended it should be pleaded, but we tend to become quite stercotyped in our babits and in our customs. For this reason it would be very salutory in my opinion to change the rules of procedure to some extent once in awhile just to get us out of that stereotyped practice, and perhaps to avoid using too many forms.

As I bave stated before, the fault was not with the people or with society, but the fault was with the attorney, wbo in his zeal to protect the interests of his client, felt that the law suit was a battle of wits wbere the person using the greatest ingenious tricks and devices was able to prevail, so in his zeal to protect the interests of his client, the attorney sometimes prevented the other party from winning, not upon the merits of the case or upon his ability and capacity properly and efficiently to present the facts, but upon a technicality that might be involved in the course of the proceedings.

One of those technicalities that I had experience with was a technicality encountered in taking of an appeal. Formally the taking of an appeal not only required the filing of the notice of appeal, but it also required the posting of a bond, a little $350 bond, if I remember correctly, which the court had beld and whieh the statute seemed to indicate was a jurisdictional matter, so that if some young lawyer read one phase of the statute and failed to turn to another ehapter informing him about bonds and undertakings, he found his case dismissed and his client out of eourt merely because he hadn't properly reviewed all of the matters with respect to the filing of this Bond in the taking of the appeal.

Under the present Rules of Civil Procedure the only jurisdictional matter that is involved is the filing of the actual notice of appeal. All other matters are within the discretion of the court, as to whether the appeal will or will not he dismissed. The court has within its power the authority to impose penalties or forgive a dereliction of duty. As an illustration, an incident occurred in our Supreme Court where an attorney filed his notice of appeal and failed to file the designation of

the record, or the points upon which he intended to rely, and also failed to file his cost bond. Time dragged on, until opposing counsel finally , in desperation filed a motion to dismiss. The supreme court, in denying the motion to dismiss, imposed a penalty of a hundred dollars that the defaulting attorney had to pay to the other attorney for his expenses in appearing in court and filing his motion to dismiss. I am sure it was a lesson to counsel that he won't forget, and at the same time it didn't prevent his client from having his day in court.

Before the adoption of the Federal Rules of Procedure in the Federal Courts, there was a duel form of practice known as the Equity Practice as distinguished from the Civil Practice. Many of you attorneys know much more about that porcedure than I do. Neither of these methods was similar to the type of practice used in the state courts, so an attorney was required to keep before him the technical rules and requirements of three different forms of procedure. There again justice was often thwarted by the failure of the attorney, or his inability properly to pursue his client's cause as required by the procedure in the particular court in which action was brought.

I know of many young attorneys recently admitted to practice, and for that matter, many older attorneys also, who were required, out of necessity, because they were ignorant of the Federal procedure, to hire attorney experts in that field to help them in their cases in Federal Court. One of the prime reasons for the adoption of the Federal Rules of Civil Procedure was to unify the practice in the Federal courts under one system, and to allow an action to be brougbt, whether it was an equitable or a legal matter, by the same rules and requirements or a legal matter, by the same rules and requirements of pleading and practice.

One of the principle duties of the committee which the Supreme Court of Utah appointed to study and recommend rules of procedure for our courts in the state, was to unify the practice and procedure between the state courts and the Federal courts, so that an attorney, knowing the rules and the practice and procedural methods of one, could with safety be able to practice in the other court, although of course there would be some differences of a minor nature.

Other important purposes of the rules was to simplify matters of pleading before the court, do away with technical objections and matters designed to delay the hearing of a cause upon the merits, and invoking further rules whereby one party would be able to ascertain the true facts surrounding the adverse party's claim or defense. Thus when a matter was actually heard by the court, counsel for the respective parties would have before them all of the available facts in order properly to evaluate their client's cause, and determine first whether a settlement ought to be made, and if not, how those facts should be presented so as to most efficiently bring out the points which the attorneys needed for the protection of their client's interests.

As a result, it has been my experience that a court under the Rules of Civil Procedure knows much more about the full facts, and can do more substantial justice between the parties, because its decision is based on a full disclosure of the facts rather than upon what one or either of the parties might feel obligated to diselose for his own client's interests, not for the interests of justice.

In my opinion, these Rules of Civil Procedure, if adopted by your state, would not take from any lawyer the tools of his trade or his profession, nor from any client his rights, either guaranteed by the Constitution of the United States or by the Constitution of Idaho, but would require both attorney and client to deal fairly with the court and with the opposing counsel and with the other party in order

that substantial justice might be done expeditiously, efficiently, and fairly, without prejudice to either side.

The Rules of Civil Procedure are divided into eleven different categories. The application and scope of the Rules are generally covered by the first and last of these categories. (I might add further that to a great extent many of these rules follow much of the state practice and procedure as it has been modernized under the Field Code of New York). Rule 1 provides that all actions, whether equitable or legal in nature, except special statutory proceedings, would be governed by these particular rules, so there would be only one form of practice.

In our own state, the rules do not extend or limit jurisdiction or venue, and I am sure that it would not be the intention of anyone in the formation of rules to attempt to extend or limit jurisdiction or venue because they would perhaps be substantial matters that might not be within the province of the court to determine by its rule-making power. However, the fact that the rules do not effect venue should not necessitate a deletion of the grounds for a motion to dismiss for lack of venue because such a motion, as contained in Rule 12 of the Rules, should be made, and if granted by the court, should require the party to bring his action in the proper court, or to acquire jurisdiction of the other party.

Insofar as the other categories of the Rules are concerned, I would like to allude to them in general as they are in our state, and perhaps you can see the similarity between your practice and ours, and call attention, if I may, to some of the experiences that have occurred in the five years that they have been in effect. As a prelude to that discussion, I may state this, that in recent years I have not heard any adverse comment or criticism to the application of the Rules, in our state. There may be those who in a joking manner referred to them originally as being rules which protected the plaintiff, if he were a defendant's lawyer, or if he were for the plaintiff, said they protected the defendant. I am sure that there are attorneys in our state who in the beginning felt if they were defense counsel that plaintiff's counsel got an advantage, and if they were plaintiff's counsel, that the defendant got the advantage. But the overall concept of the Rules and the counterbalancing measures that are contained within them are such that, in my opinion, if there was one advantage given to one party in one instance, it was offset or counterbalanced by an equal opportunity on the part of the other party to obtain information or to receive facts which would justify the rules being applied.

One of the first differences between our state practice and that of the Federal Rules was in the matter of determination of time within which a matter would have to be answered or an appearance would have to be made, and whether or not the filing or the serving of papers by an attorney was the important thing and determined when the time would commence to run. It was always a requirement of our statutory procedure that the responsive pleading or motion, whatever it might be, had to be filed in the court by the end of the particular day in which the party had the right to make his appearance. Under the Rules of Civil Procedure the service of the pleading or paper upon the adverse party has been the determining factor. Thus, when we speak of answering a complaint ,the answer must be served upon the adverse party within the time allowed. Rule 5 further provides that it may thereafter be filed with the court within a reasonable time. In other words, it calls attention to the fact that attorneys living in different communities and having the court in a third community might very well communicate between themselves and pass their pleadings or papers between themselves before they are actually filed, as long as the service is made between the parties within the time limits, and the fact that it is delayed one or two days before it is filed with the court does not render the service ineffective.

That has resulted in attorneys dealing with each other on a much more friendly basis. Instead of being very technical about taking a paper down and delivering it at the attorney's offiee, and turning it over to the court, it is common practiee that all papers be served by mail unless there is some particular reason for taking it in person. The rules provide that the service by mail is permitted, even though the parties or the counsel reside in the same community. By the same token, the service is complete when the paper is deposited in the mail, so it has prevented some technical and ambitious counsel from running down the morning after the 20th day and taking a default in a case because it might very well be that while he was down at the courthouse taking a default, the mailman would be delivering the answer or the responsive pleading to his office which was mailed the night before. Therefore counsel waits until the mail comes, and even if he doesn't receive it in the mail, and knows who the opposing counsel is, he might call him up and remind him that his time is passed and that he ought to get his paper in.

Some may say that this gives more license to attorneys to be dilatory. I know we all have a reputation for being dilatory, but on the other hand, I think it has done just the opposite. Whereas before an attorney waited until the last day to file his responsive pleading or paper, he now gets it in three or four days early because it is a lot easier to get his responsive pleading in early than to run the risk of having some eager-beaver counsel go down and get a default and then having a difficult and expensive time in having it set aside. Although he may be technically right, he still has to get the default set aside, so it has encouraged the attorneys in our state to file their pleadings and papers a few days in advance of the deadline in order that the counsel on the other side may know what is going on.

I refer to a case which has been decided by our Federal courts as to the service of pleadings being the important thing, and that the filing two or three days later does not affect its validity. Blank v. Bitker, from the 7th Circuit, 135 Fed. (2) 962.

Likewise in the computation of time there has been a slight change made by the Rules. If the time for computation is seven days or less, Sundays and holidays are not included, even though they may not be the concluding day. In other words if a Sunday or holiday falls in the middle of the time, they are not counted. It is only when the time involved exceeds seven days that Sundays and holidays are actually included within the computation. There is a good reason for that, too, because the Federal Rules, insofar as our state practice are concerned, did cut down to some extent the time within which certain action should be taken, and therefore the leaving out of Sundays and holidays was a salutory thing in preventing attorneys from having too short a time in which to take action.

I point that out to you as being a difference in procedure between what we had formerly and what is now the proeedure in our state, which as I said, has resulted, in improving the practiee with attorneys.

Another difference which has beeome effeetive in our procedure is as to the dismissal of actions. Under our former statutory procedure when an action was dismissed, unless it was otherwise stated by the court, or unless it was after a trial, it was without prejudice to the commeneement of another action on the same grounds. Now the rules of procedure provide that unless, it is a voluntary dismissal before the matter has proceeded far enough for an answer, if an action is dismissed, it is upon the merits and with prejudice unless the court should otherwise specify in the order. This again puts the responsibility on the attorney to follow through to see the action is dismissed without prejudice if it is intended to com-

menee an action again. That is eovered by Rule 41(a) and (b) of the Rules of Procedure.

While the Rules themselves designate what pleadings are permitted, and only provide for the eomplaint, the answer, a counter-claim and a reply to a counter-claim, or a cross-complaint, a third-party complaint and a third-party answer, where such are permitted, nevertheless the same provisions apply with respect to motions and orders as I have above discribed as to pleadings. Motions and orders are governed by the same rules and have the same provisions with respect to filing and signing by the attorney as do the actual Rules with respect to pleadings.

I point this out to you for the reason that no longer is it necessary in our state for pleadings to be verified except where specifically required by statute. Formerly, for example, pleadings in a divorce matter were required to be verified, but the Rules of Civil Procedure did away with that, so that at this time it is not necessary for the client to sign a pleading in a divorce matter.

Signature of the attorney is a certification by him that he has properly investigated the matter, has contacted his client, discussed the matter with her or with him, and has set forth in the pleading to the best of his ability the facts upon which he believes his client is entitled to recover, or to defend in a particular case. That being so, and the attorney being presumed to bc reputable and practicing within the ethics of the profession, such certification is sufficient. Rule 11 goes on to say that if the attorney files a pleading in violation of the Rules, he may be subjeet to appropriate disciplinary aetion, and also, if he should without merit file some pleading or paper for the purpose of délay or stalling or without eause or justification, the court may proceed with tbe cause as though the pleading or paper was not actually served. That has done a lot to bring attorneys up short in our state, and to do away with a lot of dilatory practice fornerly possible by use of a demurrer.

I don't know how the demurrer has been used up here, but I know in our state it was a device used for gaining additional time in which to plead to the merits of the case. We had a general and a special demurrer, and if we couldn't get by with a general demurrer, we filed a special demurrer, and we even went to the extent of specially demurring in a personal injury action if plaintiff didn't specify which bones of the arm or leg had been broken, or which side of the automobile the car had collided with, or some other trivial matter which could be just as easily ascertained if you called up the attorney and asked him. Anyway, we formerly filed that special demurrer, then we would go down to court and spend a half a day to argue it. If we were defense lawyers, it was very lucrative because we got paid for a half-day's appearance in court, hut the plaintiff's lawyer didn't get anything, and it made him just that much harder to deal with when it came time to settle because he figured up his time and he wanted to be paid for it, one way or the other. Then the court used up its time listening to the matter, and finally overruled the demurrer and gave the other party ten or fifteen days to answer, if he hadn't by then thought of another reason for getting additional time.

The Rules have done away with that, and along with it have put in the hands of the court the weapon or device by which an attorney is deterred from filing frivolous motions. While we don't have demurrers we do have motions to dismiss. A motion to dismiss can be made for failure to state a claim upon which relief can be granted, which in effect is the same as the old general demurrer.

I can give you an illustration of what happened in the district court, and I only recite my own experiences because they illustrate the point. I was in court one

day because an attorney had filed a motion to dismiss. I had filed a complaint in a personal injury case to which a motion to dismiss had been made. Before going down to court I called up counsel and asked him if he was merely filing it for delay purposes or if he had some point he desired to present to the court. We argued the motion, and in my opinion he did have some merit, although I thought it was rather stretched, but when we got through it, the court said that the motion would be overruled. Thinking in advance that I would probably have to give him notice of the fact that the motion was overruled, I got up and asked the court if the court would dispense with notice of the court's ruling in order that I wouldn't have to go through that formality. The court apparently misunderstood me, and had in his mind the fact that this motion had been rather frivolously filed, and thought I had asked for some relief, under Rule 10 of the Rules of Civil Procedure. He said, "Yes, Mr. Nielsen, I think it's about time that we taught some of these attorneys a lesson. The motion will be overruled and the defendant will not be given any time in which to answer." I said, "Wait a minute, Your Honor, that isn't what I wanted." He said, "I don't know if that's what you wanted or not; that's what you have got." The attorney on the other side said, "Well, Your Honor, how am I going to get my answer in?" The court said, "You'd better have it down here within an hour." The attorney rushed out and got his answer and sent it down.

That doesn't happen very often, but it does indicate a power that the court has over counsel if they attempt to play horse with the court or with other counsel in a delaying manner.

Particularly is that important in our own County of Salt Lake because in the last five years the number of cases filed have increased tremendously. Although there are the same number of judges trying cases as there were back in about 1900, the number of cases has more than quadrupled. I think the court might even be up-to-date if the judges worked harder. Nevertheless, they are turning out a greater volume of work, and are doing it because under the Rules of Procedure there has been much of the time of the court that formerly was wasted in deciding the dilatory matters that is now saved.

It has always been the aim of our judicial process to have the parties state their claim in a simply, concise, direct statement, showing the claim or defense. However, as I pointed out earlier, it has not been the practice of attorneys to do that. Judge Holtzoff, in his article that I referred to, has given us a very good definition of what he thinks justice ought to be, and I would like to read it to you. He states that "Justice has been defined by philosophers as 'Giving every man his due'." To translate this thesis into concrete thought, the purpose of administration of justice is to assure to every individual the substantive rights accorded to him by law. This objective, however, cannot be successfully attained unless and until an efficient machinery is established for this purpose. Consequently, judicial procedure as well as judicial administration becomes exceedingly important. Procedure, to be sure, is not an end in itself. It is merely the means by which justice is achieved. Without an effective machinery for their enforcement, however, substantive rights become but dross. For this reason, pleading and practice are vital, although it must be borne in mind that they are only tools and instruments by which the function is performed. In the absence of a simple, effective, and expeditious procedure, justice cannot be properly dispensed without friction or delay."

Our own court, in a case of Bunting Tractor and Equipment Company v.

Emmett D. Ford, found at 272 P. (2d) 191, made this comment with respect to the rules of procedure:

"The general philosophy of the new Rules of Civil Procedure is that liberality should be indulged 'to secure the just, speedy, and inexpensive determination of every action.' In construing and applying these rules it should be the purpose of the courts to afford litigants every reasonable opportunity to be heard on the merits of their cases."

In addition to the differences of the state and Federal procedures that I have given you, there are a number of others that have been brought to the attention of our court by opinions rendered on appeal interpreting what the new rules provide for. For example, under Rule 8, as to what constitutes a general statement of a cause, to the effect that it must he in simple, concise, and direct language, our supreme court in the case of Burr v. Child, 265 P. (2d) 383, held that a statement with respect to filing an action did not need to be as detailed and involved as it did under the former procedure, although the court said that there was nothing wrong with pleading in detail if you wanted to do so. The court stated that formerly the pre-trial functions of notice-giving, issue-formulation and fact revelation were performed inadequately by the pleadings. Under the Rules the task of the pleading is that of only general notice given. The deficiencies which the defendant claimed were in the complaint, the court said could properly be found by the discovery procedures and by the use of other devices, and that whereas therebefore the old procedure had permitted an attorney to plead anything that be wanted to, the purpose of the new rules was for him to plead specifically the ultimate facts that he intended to rely upon. He didn't have to plead evidentiary facts nor did he have to worry about whether he was pleading legal conclusions in connection with the ultimate facts, whereas under the former procedure if he pleaded a legal conclusion, that would be objectionable upon demurrer. Such allegations may be thrown in along with all the rest of the statements he might make without any fear of having his pleading stricken or the case dismissed.

Further, in the ease of Wilson v. Oldroyd, 267 Pac. (2d) 759, the complaint was one against a party for alienation of affections. The court said that a pleading which contained the following allegations: (a) the fact of marriage; (b) the defendant had wilfully and intentionally (c) alienated the wife's affection (d) resulting in the loss of comfort, society and consortium of the wife (e) to the damage of the plaintiff and to his right to recover not only general damage but punitive damages, was in general, a sufficient charge under the Rules, and that the ultimate facts were all that was necessary; that it was not necessary to plead either the evidentiary facts or to plead the details of the facts which the plaintiff relied upon.

I call your attention also to an exception to this Rule of pleading simple and general language. Rule 9, sets out certain matters which do require specific pleading, among them being the matter of pleading fraud. There it says that the facts constituting the fraud must he set out in detail. While as a general rule it is only necessary to plead ultimate facts, in connection with these particular matters, such as fraud and other matters that are detailed in Rule 9, it is necessary to plead the specific facts.

Our court, in the case of Davis Stoek Company v. Hill, 268 P. (2d) 988, stated that there was not sufficient facts alleged and therefore dismissed the complaint, or upheld the court in dismissing the complaint, for failure to state a claim upon which relief could be granted.

Thus rules 8 and 9, just like all the rest of the rules, have to be read in

correlation and in conjunction, one with the other. It has been helpful in our state that we no longer have to plead the speeific charges of cruelty or the specific charges for the grounds for a divoree action, because we may plead the ultimate facts that the plaintiff was treated in a cruel and inhuman manner causing her great mental and physical distress, or whatever the cause of the divorce might be. The defendant is at least allowed the dignity of not having it spread across the public record what those aets constituted. It has made some difference upon the ability of counsel to settle divorce matters without having to go to trial, where the defendant was saved the embarrassment of having stated in the record, on the pleadings, what he had actually done that eaused his wife great mental and physical distress and anguish.

To the same effect is the requirement of pleading with respect to statutes and ordinances. Where we formerly had to set out the ordinances in detail, the rule now provides that you may now do so hy reference to the particular volume or citation where the ordinance or statute appears. Even though it is a statute of another state, you may plead it by pleading the proper official volume of that state where that statute appears. This again has helped in making it possible for counsel to plead in simple language, without great verbosity and detail.

Another rule that is even of more significance to us is Rule 16, relating to pretrial procedure. In our state, we even had the court adopt this rule some months—almost a year—before the adoption of the regular rules, to see how a pretrial conference would affect the procedure in the court and bring about, in some instances, a settlement of the case or a simplification of the issues,. It was found to he so valuable that just the use of that one rule helped convince the attorneys of our state that the rules were very salutary.

I would like to call attention to some of the things that happened under the pretrial procedures before I elose my discussion. In connection with the pretrial procedure, Rule 16 provides that a pretrial for the purpose of simplification of the issues, of allowing amendments where amendments are necessary, of admission of facts or documents, or limitation of the number of witnesses, or any other matter that might be helpful in the trial of a case.

In connection with that, the simplification of the issues, is of couse very important, particularly if a person doesn't know and doesn't have an opportunity to prepare all of the various points that might possibly be raised in a case. He can have them narrowed at the time of the pretrial conference. He may also make amendments if at that time it appears that his investigation and his preparation of the case has disclosed that he has a different theory or an alternative theory or an additional ground of claim as long as it doesn't prejudice the other side.

The admission of facts and the admission of documents I think has been the most important factor in making the pretrial conference valuable and workable. I recall to mind a case that I had involving an action by a certified public accountant against a large firm for fees which he claimed he was entitled to by reason of his services. I had to prepare and have ready for evidence the entire accounting books and records of the accountant for a period of three years. If they had been introduced at the time of the trial, it would have taken just alone, to identify them and have them properly marked and introduced in evidence, at least two days of trial, but by presenting them at the pretrial conference and bringing them in in a truck load, which I virtually did. I told the court I wanted them marked, and the clerk spent all during the two-hour recess at noon marking them. I hrought them in—some 102 in number. After they were marked, I said I want to offer them in evidence, and the court said to opposing counsel, "Do you have any

objeetion?" Opposing eounsel said, "We haven't even had a ehanee to see them, Your Honor." His Honor said, "They are here, and will be here for the next month." (This pretrial was about six weeks before the trial.) "You will have an opportunity for one month to examine them, and if at the end of that time you have filed no objections with the court they will be admitted." At the end of the month they had no objection, so at the trial we again brought them in in a wheelbarrow before the jury, and admitted them without any further formality.

Among other things, the admission of little insignificant details which yet are important in the trial of a cause can be obtained at the pretrial conference. It was always a smart trick in the matter of an automobile accident case where the plaintiff alleged title or ownership of a car for defendant to deny it, and require plaintiff to go up to the capitol and obtain a person to come down with the record of the title to testify. Now all that is done is at the pretrial to call upon the other side to admit that fact, and he either admis it or advises the court if he has a ground for refusing so to do. If at the time of the trial it appears to the court that his objection is without merit, he will be required to pay all of the cost and expenses incident to the bringing in of that evidence, independently and irrespective of the outcome of the case.

I had a very interesting case one time that involved a matter of an interstate communication on the telephone, in which my client, who was a produce dealer and had been selling produce down on our market in Salt Lake, lived in Pocatello. He had had some conversations on the telephone with respect to the sale of the produce, with the defendant who lived in Salt Lake City. At the time of taking the defendant's deposition he denied that he had ever had any contact with the plaintiff and had never received any telephone communication from him. I obtained a record from the telephone company in Pocatello of the fact that the telephone calls had been made, and by whom and to whom they had been made, all of which appeared on the basis of the telephone record and report. At the time of the pretrial conference I again asked the court or asked opposing counsel if he had any objection to admitting the telephone record as an exhibit as proof of the fact that the telephone calls had been made, not, of course, with respect to what the conversations were. Of course, the defendant's lawyer objected, and the court made the order, that if defendant objected I would be required to bring the proper official from Pocatello with the proper record and have it properly identified, and have the proper foundation laid before it would be admitted. The court then admonished counsel that if it turned out that his objection was without merit, he would have to pay the expense of it, and I assure you it only took him 48 hours to verify that fact that the telephone information was correct, and he stipulated to the admission of the exhibit.

It is possible sometimes where a doctor is very busy for counsel down in Salt Lake to agree that a doctor shall file or give a written report, and in lieu of having the doctor come in and testify, counsel will stipulate that his report might be read in evidence as his testimony. Of course counsel in such case both have an opportunity to help in the formation of that report.

Likewise the expenses of repairing an automobile, and of expenses as to which there is really no objection, but which are sometimes very difficult in the course of a trial of a law suit to prove, are stipulated to at the pretrial. Thus the pretrial, in my opinion, affords counsel the opportunity to determine between themselves individually the merits of their respective causes, and frequently bring about a settlement of the case.

I have some statistics which I have had prepared indicating what the effect,

not only of this pretrial conference, but of these other rules have had upon the matter of the trial of cases in our courts. Where before the rules it was normally taking from three to four days to try a law suit before a jury, the time of a trial of a jury case, and I am just taking the overall trial because there are fluctuations, has been reduced to slightly less than two days. In most cases a jury trial is conducted in one day, although there are times that it takes more than two days. I am sure that Mr. Racine can mention the time when he was down there for fifty days trying a law suit.

Considering all jury cases it takes slightly less than two days now in the Third District Court, whereas it formerly took four days.

Also, there are more settlements and dismissals before trial. On an average there were 41 cases dismissed per month in the Third District in 1948, and 41 in 1949. That number jumped up a third more in 1952 and '53 to some 60 or 65—greater than the proportion of inerease in filing cases, by reason of the fact that counsel have been able to get together and settle their cases without the necessity of going to trial, where it has been possible for both sides to know all of the facts with reference to the other person's cause. It has resulted in reducing the time within which an action can be brought to issue and presented for trial, and of course, all of this saving is a saving not only to counsel and to the clients, but also to the state. In our state the public pays the costs of the jury, which is a very large amount of money.

I can tell you an amusing story of what can happen in a pretrial conference. We were discussing the settlement of a case, in the judge's chambers, at a pretrial conference, and it finally developed that between counsel we were only $75 apart. The judge pointed out to us that to call the jury, even if we only went half a day, would cost the state some $175, and he couldn't see any sense in two lawyers costing the State of Utah $175 expense just to vindicate their stubhorness in refusing to settle, pointing out to us that it would cost either one of our clients more than that to have to go to court. So we went out and talked to our clients, and finally his client came down $25 and my client came up $25. We went back in and we were only $25 apart. The judge says, "Now, you fellows flip for that. I am not going to sit here and have a law suit for $25." So when we went to flip for it, he suddenly decided that that wasn't the proper way to administer justice. He advised us to leave the room, but to settle it before we came back, which we did; and we didn't flip for it. We just split the difference again. That's what happens in a pretrial conference.

I may make this observation also: Mueh depends on the court and upon the attorneys as to how these rules are actually applied. I know in many states they have not had the same degree of success that we have had because they do not have as effective a pretrial procedure. On the other hand, there are eertain areas of our state that do not have pretrial procedures, and in those areas I have heard lawyers complain that they have not felt the benefits of the rules as they should have, because you must actually use these rules as an integrated whole. If you fail to take advantage of them and to see them in their light as an entire integrated whole, you do not appreciate their full value.

The rule with respect to pretrial procedure is by itself of great value, but when you apply it in connection with the discovery methods and procedures that are available, used by both plaintiff and defendant in the preparation of their case, the pretrial was just another adjunct of this procedure for effectuating justice.

It is a little bit like the story where the attorney had taken his client into

court to get a divorce, and it happened that the husband was not represented by counsel, but he was there in the courtroom to hear the decision of the court after the facts had been given. The court started to say in effect that he granted judgment for the plaintiff, and he would give her $100 a month alimony, $150 a month support money for the three children, and $100 for attorney fees, and certain cash benefits. The defendant got up and said, "Gee, Your Honor, you are generous. I would be willing to contribute a dollar or two myself."

That's the way it is. The judge can't do it all. It takes help from the attorneys in the case. It takes some cooperation from the entire bar association.

In conclusion, I might say again that it has been a pleasure for me to be here. I appreciate the fact that you gentlemen probably have a procedure up here that is far better than ours was under our statutory procedure. At least, it seems that it has been much more desirable to some of you who desire to retain it. We were glad to get rid of ours. Certainly the younger lawyers down there found it very hard to practice before the Rules were adopted.

I appreciate that you are interested in these rules of procedure. I hope what I have stated may be of some benefit to you, in appreciating their value, and when the proper time comes, of evaluating the different rules.

There are a number of things I could have talked about, but if you have any questions, with the permission of your president, Mr. Racine, I will attempt to explain or give you any information I have. Thank you. (Applause)

PRESIDENT RACINE: Are there any questions to Mr. Nielsen regarding any points in the rules? If there are, we will have a few minutes on the program whereby we can go into some of those matters. (Silence)

PRESIDENT RACINE: I might ask what has been the reaction in the experience in Utah insofar as the rule adopted from the Federal rules as to the production of documents and other matters in the adverse party's possession?

MR. NIELSEN: I think, when our rules were first adopted, many attorneys felt that the provisions with respect to discovery would deprive litigants of some of their constitutional rights. For instance, Rule 35 authorizes the court to require a physical examination of a party, when the mental or physical condition of such party is in controversy. Prior to that time our Supreme Court had held that the court could not require a party to submit to a physical examination. After the adoption of the Federal Rules, it was challenged in the Federal Courts in the case of Sibbach vs. Wilson and Company. As finally decided by the Supreme Court in 312 U. S. 1, it was determined that a party was not deprived of any substantive right by the requirement that he submit to an physical examination. Now, attorneys in our State arrange for a physical examination between themselves without even the necessity of filing a motion with the court. As a defense attorney, all I am usually required to do is to call up the plaintiff's lawyer and tell him I want Doctor so and so to examine his client, and ask him when would be a convenient time. We thereupon fix the time and place for the examination, and the other attorney usually requests that he get a copy of the Doctor's report. I in turn tell the Doctor to send the attorney a copy of the report which he submits to me, and that is all that is required to obtain a physical examination, in most cases.

We have had one rather famous case decided by the Supreme Court in the matter of discovery. That case is Mower vs. McCarthy, (1952) reported in 245 Pac. 2d. 244. In that case the Railroad Company had made a detailed investigation of a railroad accident in which plaintiff's decedent was killed. During the pendency

of the case in the Lower Court, the plaintiff sought an Order directing the Company to produce and permit the plaintiff to inspect and copy a transcript of the testimony of the witnesses taken while investigating the accident. The Trial Court granted the motion and directed the Railroad Company to furnish the information. The defendant applied to the Supreme Court for an Interlocutory Appeal, which was granted.

Rules 26, 30 and 34 were particularly discussed by the court with the final determination that the order of the Trial Court be affirmed and the Railroad Company be required to produce the information sought. The court pointed out that the Rules should be construed liberally to secure a just, speedy and inexpensive determination of an action. (See Rule 1 (a)).

The court went on to discuss the case of Hickman vs. Taylor, decided by the Supreme Court of the United States in 1947, wherein the court determined that the work product of an attorney could not be required to be produced, as it was privileged. While the Supreme Court of the United States has reached this conclusion as to the Federal Rules, the Rules in our State specifically cover the matter by stating that the court shall not order the production or inspection of any writing which "reflects an attorney's mental impressions, conclusions, opinions, or legal theories." Our Rule 30 (b) also provides that the court shall not order the production nor inspection of material prepared by a party, or his attorney or agent in anticipation of litigation, or in preparation for trial, unless satisfied that denial of such production or inspection will unfairly prejudice the party seeking the same. It was under this latter provision that our Supreme Court, in the Mower case, held that the defendant Railroad Company should be required to produce the testimony of the witnesses who were scattered throughout the country.

As a result of this case, attorneys have been far more cooperative in disclosing information in their possession, than was the practice before the adoption of the rules. I, personally, do not believe that the time will ever come when an attorney will have to disclose his own personal views of his client's cause; but the rules do make it possible for both sides to obtain possession of all the facts, which, as I view it, is an entirely appropriate thing. The process of justice should be ably enforced; and the rich should not be permitted to prevent the poor from securing justice any more than the poor should require the rich to share their wealth merely upon a social basis.

PRESIDENT RACINE: Are there any other questions of Mr. Nielsen? Thank you very much, Mr. Nielsen. We appreciated your talk exceedingly. (Applause)

We have Mr. William Galloway to make a report of the standing committee on uniform fee schedules. Mr. Galloway. (Applause)

SPEECH OF WILLIAM F. GALLOWAY

MR. WM. F. GALLOWAY: Mr. President, and Members of the Board, Members of the Bar, and Guests: It might be appropriate to start this by relating the same way a similar discussion was started, or at least a paper was submitted at the start of it, at the Michigan Bar. This gentleman of the Michigan Bar stated that to talk about minimum fee schedules reminded him of the light in which sex was held in the old Victorian society. They knew it was there, used to advantage, but it was never mentioned. Had that gentleman been in Idaho he would not have been able to make that statement as recently as two months ago. He has been in the Bar a great many years more than I have, but I think that all of you can certify that fees have been discussed in Idaho very much.

Sherm Bellwood, Ray Greene, and I have attempted to get discussions through the year, and they are certainly able to certify also that Idaho lawyers are willing to discuss them.

When we first tackled this job we decided it would be advisable to formulate a proposed minimum fee schedule which could be used as the basis of our work and contact with the local bar associations. Ray Greene handled the three northern associations, Sherm Bellwood the three in the other end of the state, leaving the two central associations to me. With this schedule we attempted to stimulate thought and activity and in some instances we were favored with a high degree of such. We have been guided by this local activity to a great extent, however, our main objective was not to try to get any sort of a final determination at the local bar association level.

At the same time we were carrying on this work with the local associations, we also attempted to study and survey the field of minimum fee schedules, generally. We have uncovered a lot of pros and cons concerning schedules but we will not attempt to go into them—we presume none of them will be overlooked during your discussion. We will bring to your attention certain things which appeared during our study and survey.

One of the most significant of these consists of what appears to be a positive trend during recent years toward the adoption of minimum fee schedules. We feel that in the past there has been a general coolness toward fee schedules. Our survey has indicated that there is not only increased interest in schedules (they having been under consideration in almost every state) but also that there is a definite trend toward their adoption. They have been adopted by 10 states, local associations of 18 other states and are under consideration in 7 more states. Where they have been adopted, strong enthusiasm for them appears to prevail.

The obvious question is why this trend. We do not have the complete story from all fee schedule areas, however, it appears that the financial situation of the members of the bar associations was the moving factor in causing adoption. In some states surveys were made which showed that the lawyer's financial situation was not good. For instance, in Minnesota they found that lawyers' income had increased only 133% since 1935, whereas, doctors' income had increased 312%. Nationally, lawyers' average income was $5,534.00 in 1929 and $5,224.00 in 1951. Doctors' average income in 1929 was $8,730.00 and in 1951 it had increased to $13,432.00.

Before going into the results of our Idaho survey, we wish to wholeheartedly thank the members of the Idaho State Bar Association for their assistance. We were gratified with your response, especially the completeness of your reports for recent years. We do not have adequate figures to make a safe 20-year comparison.

Our survey shows that the average Idaho lawyer's net law income for the last five years is $6,874.24. In 1950 it was $6,459.20 and in 1954 it was $7,292.59. The average Idaho doctor's net income for 1952 was $12,500.00. The median income of Idaho lawyers for 1954 was $5,957.50—one-half of our lawyers made less than this amount.

We chose to make a comparison with the doctors not only because that is the customary thing to do and because the training requirements and standing in the community are similar, but also because there is a historic difference in making charges for services. This difference, of course, consists of the doctors basic principle of charging for visits—this may well be borne in mind here.

There is much more that can be done in surveying and studying this field. This committee feels that the results shown to date warrant definite action at this time, however, we also recommend that a more complete and comprehensive survey be made next year in order to determine our exact situation in Idaho. We recommend that this survey follow the pattern of the Iowa survey and that a complete statistical analysis be made in order to verify our present figures and establish valid figures for a longer time in the past. The survey should also be broken down so as to afford accurate comparison at the local level.

We realize that fee schedules have two weaknesses, if you wish to call them that. One is that in actual practice, they are voluntary guides—the provision in our Canons of Ethics for punitive enforcement is rarely, if ever, used.

The other matter of concern is that it is impossible to formulate schedules with which everyone concurs. The schedule serves merely as a guide. It is not all inclusive. It should cover enough principal matters so that most others can be covered by analogy. The difficulty of agreeing on one certain figure for one service is shown by the variety of minimum fees set for adoption in the following schedules:

Idaho Fourth and Eleventh Districts	$ 50.00
Idaho Eighth District	25.00
Oregon	125.00
Utah	125.00
Washington	100.00
Indiana – Cities up to 10,000	35.00 to $ 75.00
Indiana – Cities up to 50,000	50.00 to 75.00
Indiana – Cities over 50,000	75.00 to 150.00

The minimum fee for adoption in our proposed schedule is $75.00 and it was based largely on local considerations.

We realize that our local associations may sharply differ on the question of whether any fee schedule should be adopted, however, we urge that this matter be considered with an open mind so that uniformity can be obtained, if possible. Our recommendation is not going to involve action which would be binding on any local association. As compared to our great American industrial centers, our entire state can almost be classified as rural or suburban. We certainly do not have a different enough situation in any section to require a separate and distinct financial approach. We do not feel that uniformity over the state is necessary, however, we think it is to he desired.

We do not contend that our proposed schedule is the ideal one. It has served its purpose as a subject for discussion and we can say that as far as we have been able to ascertain, there have been no radical changes suggested. We have received two good suggestions which we will go into later, if you wish. One was from Justice Anderson that we establish a minimum probate fee and change the initial 7% to 5%. The other was from Z. Reed Millar that a modified fee be established for probating the community property estate of a deceased wife.

To get back to the doctor's visit charge, we feel that there is a great deal to be done by lawyers in this regard. Although time is our stock-in-trade, we bave been historically negligent with respect to it. We also wisb to lay stress on the hourly charge rate. We favor the Oregon system and believe that it is sensihle in that it is calculated to give the lawyer the proper annual income.

Before we make our recommendation, we wish to thank you for this opportunity to serve. We also wish to commend this year's administration for inaugurating

semi-annual meetings of the commission, local presidents and committeemen. We feel that this is the healthiest thing that has happened to the bar in Idaho since it became integrated. These meetings will do more to make it an integrated bar in practice than anything has ever done in the past.

We recommend that the proposed minimum fee scheduled be adopted by the Idaho State Bar Association in convention assembled as an advisory schedule.

We recommend that the local bar associations be urged to adopt this schedule, as it may be amended, as an advisory schedule, or otherwise, as each local association may desire.

We recommend further study and research along the line mentioned above.

Respectfully submitted,

WM. F. GALLOWAY
Committee on Uniform Minimum Fee Schedule,
Sherman J. Bellwood
Raymond T. Greene
Wm. F. Galloway, *Chairman*

PRESIDENT RACINE: Mr. Ennis advises that there are additional copies of the fee schedule which Mr. Galloway just referred to, and they are available here. I take it that the Resolutions Committee will be asked to consider the recommendations of Mr. Galloway made as chairman of the Minimum Fee Committee.

I do want to remind you there are door prizes. There are these law books donated by some of the publishing companies, which will be given away as a door prize tomorrow morning, and each morning and afternoon session during the remainder of the meeting. It will be required that the individual whose name is called have his tag on and be wearing it to show and be present when his name is called. There are some nice books here, as I am sure you can see.

I want to remind you also that the smorgasbord on the lodge terrace this evening will be at 6:30 rather than 7:00.

MR. MERRILL: Will there be a time appointed for a hearing on the fee schedule before the Resolutions Committee?

PRESIDENT RACINE: Yes, there is no time at the moment, Mr. Merrill, on the program, but tomorrow afternoon there will be some additional time, and no doubt we can make arrangements and can announce it tomorrow morning as to that matter.

Any other problems or suggestions? If not, we will be recessed until 9:30 tomorrow morning.

(Recess at 4:40 p.m.)

Friday morning, July 8, 1955

PRESIDENT RACINE: We have a set of Cowdery's Forms for the prize this morning, and we will draw the lucky number at this time. No. 63, Bill Tuscon. (Applause)

We have asked Russell Randall to introduce the speaker for this morning. Mr. Randall.

MR. RUSSELL S. RANDALL: Mr. President, Members of the Bar, and Guests: Some years ago the Idaho Bar started centering its program around the

institute type of program. For the last several years we bave bad a speaker on the subject of taxation. When we were working up our program for this year we thought we would venture into a new field that would be just as instructive and possibly more interesting than those we have had. We thought an institute speaker on the subject of medical and legal problems would be exeeedingly interesting and instructive. We contacted the Ameriean Law Institute, and immediately we got a reply that the outstanding authority in the United States on this subjeet was Mr. Isidore Halpern of the Brooklyn Bar. We contacted Mr. Halpern. He very graciously aceepted our invitation, and we have him here this morning as our principal institute speaker on the subject of medical-legal problems.

Mr. Halpern is a graduate of the New York University Law Scbool. He is a Fellow of the Ameriean College of Trial Lawyers. He is a Fellow of the National College of Trial Lawyers. He bas been engaged in the active practice of law for the last 30 years or more, in Brooklyn. He has represented both the plaintiff and the defense, although he tells me at the present time he is engaged primarily representing plaintiffs in the trial of law suits. It is a great deal of pleasure for me to present to you this morning Mr. Isidore Halpern of the Brooklyn Bar, wbo is going to speak to us on medico-legal problems. Mr. Halpern. (Applause)

MR. ISIDORE HALPERN: Mr. President, my Colleagues at the Bar: I am extremely happy that I got the introduction that I did, and that my integrity has been vouched for. The story I am about to tell you would be extremely difficult to believe unless you took for granted that I was a man of great honesty; and if despite the introduction you doubt me, there isn't a person in this audience, male or female, or any resident of Idaho who would doubt the word of Joe Schloop, the theatrical agent. He tells me that into his offiee one day there came a man, with a dog on one leash, and a cat on an other. When Joe saw him, he said, "Oh, no. No, no, it can't be, not another animal act." Much to his surprise, these words greeted his ears: "I am an bonest man. All I want for this act is $500."

Theatrical agent Joe turned to him, and said, "It doesn't matter to me if you are a Judas. Why," he said, "I couldn't get you a job if you were as handsome as Paul Ennis. I couldn't get you a job if you were as good an actor as Harry Benoit claims he is a lawyer. Why," he said, "You have got as much chance of getting a job these days with a dog and a cat as that guy Halpern from New York has to lick Mr. Burke before a jury of farmers. Now, that should be clear enough to you. Five hundred dollars is all you want for the act! Why, I couldn't get $500 for an act if I could get Harry Truman to play the piano, Margaret Truman and Tom Dewey to sing, and Malenkov and McCarthy to do a tap dance. Out, out of the office."

Much to his surprise, the stranger looked at him and said, "This is not an animal act. All I want for it is $500. I am an honest man." "Not an animal act. Out, out, out of the officel" He said, "Won't you listen for just a minute. The dog plays the piano and the cat sings." "Out, lunatic." "I notice you have a piano in the corner, and instead of wasting your time and mine, why don't you give the dog a chance to play the piano." "Go ahead," he said, "have the dog play the piano."

The dog started toward tbe piano. His owner turned to Joe and said, "What do you want him to play?" Now, Joe Schloop was a man of great attainments, and he said, "Can the dog play the Chromatic Fantasy and Fugue by Bach."

(I pause briefly to tell you that I could have made it the St. Louis Blues, but this is just to show you the high cultural level of your lecturer.) (Laughter)

Sure enough, over to the piano went the dog, and rendered Bach's Chromatic Fantasy and Fugue hetter than Horowitz or Rubinstein could have played it. The cigar fell out of the mouth of the theatrical agent. "Three thousand for the act! Four thousand for the act! Five thousand for the act! It's one of the miracles of the world! It's remarkable! No one ever heard or saw anything like it!"

He said, "Just ealm yourself, my friend. I am an honest man. Five hundred is all I want for this act."

The agent turned to him and said, "The c-c-cat sings?" "Oh, sure, the cat sings. What do you want the cat to sing?" Joe said, "Maybe the cat ean sing some Sehubert or Schumann." "Oh," he said, "that's easy for the cat." Back to the piano went the dog, played Sehumann, played Schubert. The cat rendition was even better than the great Irma Berger could sing them. At that point the enthusiasm of Schloop knew no bounds. "Ten thousand for the act! Fifteen thousand for the act!" "No, my friend, I told you, I am an honest man. Five hundred is all I want."

"What do you mean, you are an honest man. I heard and I saw the dog play. I heard and I saw the cat sing."

"You see, my friend, the whole aet is a fake. The cat doesn't sing. The dog is a ventriloquist." (Laughter)

The reason I tell you this is that, like the cat, I am a ventriloquist, and the things I tell you today have been taught to me by thirty years of sometimes painful experienee in the courtrooms of New York.

I am aware of the fact that the problems of a trial lawyer differ in every jurisdiction. I am aware of the fact that if you had a jury composed of twelve faro dealers or twelve gamblers, your verdicts would be higher than if you had a jury composed of twelve people who make their living by tilling the soil. Despite that, however, to me it is absolutely true that there are certain problems that eonfront you that don't differ from one state of the Union to the other. It has always been amazing to me how you gentlemen handle an accident case whether you appear for the plaintiff or appear for the defendant, without the slightest eoncept of medicine.

When you go to purchase a suit of clothes, ranging anywhere in price from $50 to $75 or $100, you generally bring friend wife along or if you don't you bring some close crony along to feel the garment to see if the goods are durable before you contemplate a purchase of $50 or $75. Yet, on behalf of the plaintiff and on behalf of the defendant, forgive me the boldness of my language, you have the temerity to walk into the eourtroom without the slightest eoncept of medicine.

As ghastly as this may sound, both the trial and the settlement of an accident case is the purchase and sale of human pain and human suffering and human misery. How, on the one hand, ean you sell? How, on the other hand, can you buy, without knowing the nature and the value of the thing you are selling or of the thing you are buying?

All too frequently do you use the alibi, "Well, Helpern, you old city slicker, it's different down in your jurisdiction, but we are dealing with farmer juries, hard-working people, and that's why we can't get the verdicts that you fellows get baek in the city." To a certain extent that is unquestionably true. One cannot deny that a man who has to run a plow in a hot broiling sun, a man who has to wrest his living from the soil, is more conservative about paying out a dollar than some city salesman down in New York. But often this is a handy alibi, because of your own lack of knowledge.

You may say to me, and rightfully so, "We are painfully aware of our ignoranee, and we are not missing this beautiful sun, the pool, and the golf game we could have had to hear this little fellow from New York berate us for our ignorance. Is there anything we can do about it?" The answer is an unqualified "yes," there is something that every one of you can do.

I marvel at the fact that you gentlemen can draw complicated agreements, complicated trust estates, close complicated deals, and the problem of medicine seems to bother you. I tell you that it is a subject that lends itself particularly to the lawyer's brain.

Over a period of thirty years I have found of great value a basic library, and I am going to give it to you. I don't care if you specialize in tort work, or if the occasional accident case constitutes the extra bonanza in your practice—you shouldn't be without these books. Take your pencils and paper, and if you don't get anything else out of this lecture, believe me your attendance here has been worth while.

No. 1. Get yourself a Stedman's Medical Dictionary. That's the dictionary that the doctors use. These volumes are authoritative. A doctor who on the witness stands says they are not either does so deliberately or because of his own ignorance. Stedman's Medical Dictionary.

I am aware of the fact that as you read this dictionary one complicated term will be explained by another equally complicated term, and often you will be in despair, and in a state of eonfusion, but don't let that fact get you down, and I will tell you why. Those of you who have children who are studying foreign language know that the modern technique is to commence speaking the language immediately to the child, and as time goes on, and the child becomes accustomed to the foreign language, understanding follows. Similarly, within a few weeks you will find that these obscure terms will become familiar to you.

No. 2. A most remarkable book, a book that is used to teach anatomy in our colleges in New York, our medical schools, and I wouldn't be surprised if they are used in your medical schools. Cunningham's Anatomy, published by the Oxford University Press, New York, Ninth Edition. Here is a volume that has thousands of illustratious, illustrations of every part and portion of the human anatomy; illustrations pertaining to the skeleton, illustrations pertaining to the blood supply, the muscles, the tendons, the ligaments, and without doubt, one of the most remarkable indexes that I have ever encountered in any volume. You can't afford to be without it.

On the question of fractures. I recommend the following volumes: Key and Conwell, "Fractures, Sprains, and Dislocations," published by C. V. Mosby Company, of St. Louis. Another book I reeommend to you, Howorth, "Textbook of Orthopedics," published by William B. Saunders of Philadelphia. Another one, Watson-Jones, "Fractures and Joint Injuries," published by Williams and Wilkins of Baltimore.

If, beeause of your financial position, you can't afford to purchase the Key and Conwell, the Howorth, and the Watson-Jones, then I recommend to you that you purchase the Key and Conwell volume on fractures, sprains, and disloeations.

On the question of neurology or on the subjeet of neurology, that marvelous book by Israel Wechsler used in Columbia University and others of our colleges in New York, Israel Wechsler's "Clinical Neurology," published by William B. Saunders and Company.

A most remarkable book by Samuel Brock that the lawyer's library must have is

entitled, "Injuries of the Brain, Spinal Cord, and their Coverings," published by Williams and Wilkins of Baltimore.

On the question of psychiatry, of eourse I needn't reeommend a volume, beeause you are all psyehiatrists. You use inferiority, superiority, mother-fixation. You throw those terms around, as if you knew what the stuff is all about. You are all eommon-sense, down-to-earth eitizens, and those psyehiatrists are erazy.

Sure, they are crazy, until they have to sweep your Aunt Beckie off the chandelier. (Laughter)

As a matter of fact, one cannot reeommend a volume in psychiatry, because there are such a vast number of ignoramuses writing on the subject, sueh as that filthy, disgusting, degenerate Sigmnnd Freud. I will tell you more about him later, and maybe change some of your notions about this awful, horrible, ghastly man. But if you want to do some reading on the subjeet, the only book that I have been ahle to find that will give you at least some slight understanding is a book by Strecker, called, "Basic Psychiatry," publisbed by Random House.

Those of you who are interested in the eye and in diseases of the eye, and trauma of the eye, the greatest published work is a book by Sir Duke Elder on the eye. He was knigbted for writing the book. It's a ponderous tome, a remarkable tome, well worth your spending the twenty-five dollars that it will eost you if you have an eye ease.

If you want something a little smaller that is also authoritative, get a book by Wurdeman, or another equally good book on the eye and diseases on the eye, by a gentleman by the name of May.

Where do you get those books? Ask your book dealer. Ask your doetor. Go into any medieal book store. Wbat's the cost of these? Believe me, I haven't tabulated them. If you were to buy all these volumes, the expenditure would be $150 or $200. Deprive yourself of that poker game. Deprive yourself of that extra suit. Deprive yourself of those extra little luxuries that you really don't need, and buy these volumes, because they will pay you terrific dividends.

Do I say that after you read these volumes you are going to become a physician? But of eourse not! At least you will have some understanding of your injury, and you will be in a position to discuss the question of your injury more intelligently with your pbysician. You will be in a position to eonduet a direct or a cross-examination more intelligently.

To me, basic in every ease, is one thing, and I have often thought that I might be ahle to make out a prima facie case in malpractice against a lawyer who failed to do this. I wish I could write it on this wall so everyone could read and never forget; that is, get your hospital record. *Get your hospital record!!!* I tell you, you have no right to bandle an accident case, even to discuss adjustment—you have no right to walk into a courtroom, unless you have a hospital record.

When I say hospital record, they sometimes send you, as they do in New York, in answer to a request for a hospital record, an excerpt, a summary, of a hospital record, and that, I assure you, my colleagues, is entirely inadequate. When I say "get the hospital record," I include nurses notes, drug sheets, temperature cbarts, everything, including the dust on the hospital record.

Practically, what's the importance of the hospital record? Let me give you a slight illustration whicb I have seen occur in the courtroom time and time again. On behalf of the defendant, I bave wrecked many a plaintiff's case with it. The

situation should never have occurred, if the lawyer had observed the first principle of getting a hospital record, verbatim, in an accident case. It takes no great genius to do it; and this is what it's like:

Fellow comes into your office—and by the way, may I say this to some of you who are a little confused, the English I speak is called Brooklynees, if you detect something strange in my accent. For those of you interested in semantics, "moider" is Brooklynees.

A man comes into your office, and he says, "Counsel, I want to tell you. I was in a hospital for one week, and oh, was I sick! By the way, Counsel, what are you suing for, fifty thousand? Believe me, if I was to get all that fifty thousand for myself, it wouldn't be enough." He starts to describe to you his suffering. His suffering is worse than the fellow in the lowest circle of Dante's Inferno. Now, he isn't lying. Memory is a peculiar thing. He isn't lying. He really thinks he has been through all that suffering and agony. Now he says, insofar as sleeping is concerned, when you ask him the question, "Sleep? Couldn't sleep at all. Why, Counsel, if I got *one hour* in the week I was doing good." "How about your eating?" "Food disgusted me." And you believe him! You haven't gotten the hospital record.

You go in a court, and he wails like a banshee, or he wails like a keena—I bet you Irishmen don't know what a keena is—keena, paid people who used to cry when the corpse went to the cemetery in Ireland—keena, the paid mourner. Your client takes the stand and starts to wail, and up gets the kindly gentleman for the defendant, and you become worried, because he is so benign, so sweet. You know, that Brother Burke treatment. (Laughter)

"Now," he says, "my friend, I think you told us on direct that you did not sleep for an hour. That true?" "Yes." "And as far as eating is concerned, that was out of the question?" He proceeds to make it a little worse than you made it, and your heart starts to drop a little. 'What's this bird got up his sleeve?" Then he produces the hospital record, and here's the notation, in the nurses notes. "First day, ate his whole lunch and asked for second helping." "Second day, tried to goose beautiful blond nurse who passed by his bed." Brother, you've been had. (Laughter)

All you needed was the hospital record. To avoid this your adversary gets up and he is indignant and tells the jury, what a perjurer your client is, and be it farmer jury or the city slickers in Brooklyn—(and by the way, this country lawyer stuff, when I deal with a country lawyer, I hold onto my watch very carefully—I know this gag, "just a country lawyer.") There you are, and you lose your case because you didn't get a copy of your hospital record. If you have your hospital record, you turn to your man in the office, and you say, "Now, look my friend, I know you had this suffering. However, the nurses notes say that you slept well, and we don't want to get into a tangle with the hospital, do we? We don't want to call the nurse a liar. That wouldn't look quite right. So I suggest to you, my friend, that you testify just as these notations in the hospital record."

More important than that, I have sometimes seen in the nurses notes, history of ticks, involuntary movements that indicated either petit mal or grand mal, both conditions of epilepsy that doctor's hadn't observed at the time that they visited their patient.

So I plead with you, whatever you do, remember, whether your man has had emergency treatment at the hospital, whether your man has been there just a day, a week, a month, a year, you must insist on getting *every single page* and *every single line* of that hospital record.

Later on in this talk of mine you will see how important the hospital record becomes. What greater test of pain and suffering than the drug sheet? What greater test as to the presence of pain or the absence of pain, than the drug sheet? I know that in New York, and I wouldn't be a bit surprised—I would be willing to wager—in Idaho there is a sheet on the hospital record showing the drugs that were administered to your plaintiff. Absence of drugs, good argument of no pain. As a matter of faet, jurors look at this hospital record. I understand you are allowed to put them in evidence, as we are. In those jurisdictions where you are not, produce the man who gave these drugs or prescribed them.

After the hospital record is in evidence, I have often very effeetively pieked up my drug sheet and read, January 1, the day of the aceident, eight o'clock, eodeine; ten o'clock, morphine; twelve o'elock, morphine; two o'elock, codeine. The next day, codeine, morphine, codeine, morphine. The third day, codeine, morphine, codeine, morphine. Keep on reading it in a monotone, eodeine, morphine, codeine, morphine, maybe shaking my head a little *sadly*. (Laughter)

Then I drop my hospital record, and I say to my plaintiff, "Mr. Smith, will you please step up to the witness chair," and up parades the Mr. Smith who got all this codeine, morphine, codeine, morphine. Now, go ahead, eounsel for the defendant, and cross-examine this plaintiff who suffered all this acute pain!

Important? Very important. You can't be without it, for the defendant or for the plaintiff. You are doing your client a great injustice unless you stated it..

Interns, the lowest of the medical hierarchy. When do you call an intern? The only time I call an intern or did call an intern is when my practice consisted of that terrible, ghastly injury, called the sacroiliac sprain—that horrible injury that was the pal of my cradle days. I am really eonvinced the lawyers have made more money on that saeroiliac joint than the doctors. (Laughter)

When I was for the defendant, I honestly prayed for someone to come along and make the sacroiliac joint unconstitutional.

When your family doctor has seen your client for twenty or thirty visits, twenty or thirty treatments, and the complaints are not objective, the entire situation lacks objectivity. In those cases, I call the intern who has seen the plaintiff, given him emergency treatment, and made a diagnosis of sacroiliac sprain. I feel, in these nebulous claims, in these vaporous, gaseous cases, the testimony of the intern tends to give a certain validity to the subsequent testimony of the family doctor.

My heart goes out to this poor, overworked, maligned, gentleman, and you should use consideration in dealing with him. Let me give you a scene in the family doctor's office. Mrs. Murphy is on the operating table, and she is being examined for what is politely called "women's troubles," but for her three dollars she thinks she has the right to tell the doctor what a fool she was to marry Murphy, that she was the greatest beauty in County Cork, and what a mistake she made marrying Murphy. In the next room, Stanley Kirstowski is getting his sacroiliac baked. In the outer office sits Mrs. Ginsberg with three lovely children—species brats—busy making a sliding pond out of the outer office, while Mrs. Ginsberg beams fondly at them. Now, with all this going on, you call up and say, "Doctor, I need you in court in twenty minutes." (Laughter)

The difficulty in telling these stories is, one thing leads to another.

If you have troubles with judges, don't think we New York lawyers don't also. Take the judge in the case where you need the doctor in court in twenty minutes. I am sure you have no such judges in Idaho, and if you have, I don't care, because

I will never have to appear before them. There he is, sitting on the bench presiding in that case, we will call him the "learned justiee," Mr. Justiee Chowderhead. He wrote an opinion! He once wrote an opinion, and that's a miracle! It's the first opinion he ever wrote without a secretary. You want to know how come he wrote this opinion without his secretary? His secretary wasn't available, because he was in the hospital with a severe case of bookeitis. Don't look it up in those books that I referred to. You won't find it. Bookeitis is a disease you suffer when you don't pay off the bookie. Very simple! (Laughter)

The bookie was a believer in the ancient writs hallowed by Blackstone, and he got out a writ of socko, so after he got through with the secretary, he ended up in the hospital with a fracture here and a contusion there, and multiple lacerations in different portions of his body—but did that get Judge Chowderhead down? Oh, no, he rose to the occasion. After all, for fifteen years he had sat on that bench, and the lawyers had been calling him "the learned court," and he started to believe it. (Laughter)

Incidentally, the fact that they called Judge Chowderhead "the learned court" is a tribute to the great sense of humor that members of the Bar have.

Now, he wrote this opinion in the case of Something against What's-it, and after reading it he said to himself, "Now, I am not exactly a Holmes, but given half a chance, who knows?" It reached the stage that if you appeared before Judge Chowderhead on a real estate matter, criminal matter, contract matter, he would peer at you, take his glasses off, and look over them, and say, "Young man, have you ever read the Court's opinion in the case of Something against What's-it?" No such judges in Idaho. Oh, no!

"Ever read the Court's opinion in that case? Why, it got so that his colleagues thought they should put a bell on him, like a leper. They didn't want to go to lunch with him, because he interrupted their learned discussions. They wanted to talk about the learned opinions they had written in some of their cases! (Laughter)

All right. At 3:15 your mechanic stops testifying—in your sacroiliac and a dented fender case, and you figure, "I have enough time," because your adversary generally cross-examines on a dented fender for forty-five minutes, and by the time he gets through he leaves the jury with the impression that the entire car has been demolished—but he sits down in five minutes.

You see how these stories waste time, because one thing leads to another. Why does your adversary sit down in five minutes? Well, he has been with the Wreckum and Cheatum Casualty Company for twenty years, and they like him so much they gave him a desk in the outer office with all the stenographers and file clerks so the customers can see him when they come in. It's true they appreciate his services. They don't give him more money, but after twenty years they have given him a plaque that he can put on his desk bearing his name—and he has been told the night before that his cross-examinations have cost the company fortunes, and they have written out three questions he has to ask on cross-examination. They told him if he asks four they take back the plaque. (Laughter)

So, he sits down in five minutes—and you want an adjournment until the next morning, and the judge says, "No, you have your doctor here in twenty minutes." I will tell you why he says "No." That morning the higher court had reversed him in the case of Something v. What's-it! (Laughter)

They wrote an opinion, and they didn't say, "Bum, go back to law school to

learn how to read English." They put it in this language, "The lower court evidently did not have in mind the principles we enunciated in the case of Schmoe v. Schmoe. The learned court didn't have it in mind. Hell, he never read it. (Laughter)

Or, the court was ill-advised. You know the legal double-talk. You ask for an adjournment until the next morning, and fixing you with a baleful glare, he says, "Young man, you realize the money it costs to keep these courts open? You realize you are wasting the time of these twelve men on this jury, of this fine foreman and the other eleven citizens! Fine foreman. The night before a case of indecent exposure was dismissed against him because the female was too modest to appear! (Laughter)

Then all thought of winning the case leaves your mind. You just hope that these fine citizens on the jury don't hang you.

So, always arrange to see your family doctor, and have a convenient time for him. Work it out with your adversary. Ask your adversary how long he intends to be. Explain to him you're not trying to preclude him; or if he is a tough fellow, bring him up to your judge. Say, "I would like to know how long he is going to be. I don't want to preclude him, but I didn't want the doctor hanging around the courtroom for no good reason."

Now, maybe you are better than I am. Maybe you know more about the accident business than I do. I tell you I have never put a medical witness on the stand without talking to him first. I tell you it's suicide to do it. Certainly in a case where your injury is slight—and I tell you old-timers that my talk is aimed at the younger men, because those of you who have labored in the legal vineyard know the truth of what I say, and you know I am not over-emphasizing the things I say about the hospital records, the nurses notes, the drug sheet, and the conference with the family physician.

Doctors are the same all over. I have lectured in at least two-thirds of the states of the Union—colleges, before bar associations, demonstrations, met doctors—they are all the same. You don't know how happy the family physician is when you come in to him and instead of saying, "fracture of the leg,"—what a meaningless term that is— you say to him, "I understand your patient, my client, had a fracture of the tibia." You don't know how happy that makes him. Then once he sees that you know something about your subject, you would be surprised how ready to co-operate.

He doesn't want to look ridiculous on that witness stand. Time and time again they say to me, "Oh, Halpern, we are so glad you are in this case. I was cross-examined, and believe me, I wanted to explain these things, and I was told, 'Answer yes, answer no,' and the lawyer who examined me didn't know what to ask me."

Let me give you something that happens every day in the week and costs you money. You are unfair to yourselves, to your families, to your children, to your wives. More important, you are unfair to your client.

The man has a simple fracture. Simple fracture. Great term, simple fracture. What does that mean? You know that compound fractures mean to some people, more than one fracture. It means nothing of the sort. It means a fracture where a bone goes through the skin, or where the air communicates with the bone because the wound is open. These things caused many amputations before the days

of the antibiotics because infection set in and spread like wildfire. So there is the compound and the simple fracture.

We have a simple fracture. Your adversary gets up on cross-examination and says to your doctor, "Now, Doctor, there are many types of fracture, are there not?" "Yes." "Compound?" "Air gets to the bone. The bone is up through the skin or the muscle tissues, and the tendons are so torn that the air communicates with the bone." "Yes." "Well, the plaintiff didn't have that kind of a fraeture, did he?" "No." "Then there is the eomminuted fracture, one fracture but many little pieces." "That's true." "Then all this patient had was a simple fracture." At that point the doctor says, "ugh, ugh, ugh, I'd like—" "Answer yes or no." "That's right." Then you sit down and say nothing, and you lose thousands of dollars because, don't you see, simple doesn't mean easy! Simple doesn't mean a fraeture that isn't fraught with disability. Simple is just a medical term to differentiate this type of fracture from comminuted or compound.

How many times have I asked that question on cross? How many times has the lawyer failed on direct to explain it.

All right, Fraetures of the transverse proeess. Plaintiff's lawyer gets up and says, "I will prove to you that my client had a broken back." There is a great term, "a broken back." He is talking about a fracture of one of the transverse processes of the vertebrae. Two hooks on each vertebra. Dozens of them, dozens of them. Yet the defendant does nothing about it.

In a case I once saw, plaintiff claimed a disorganization of the entire structure of the foot. The cuboid with respect to the oscalsis, with respect to the cuneiforms, with respect to the navicular bones—these were all disorganized! No fractures. Had the lawyer for the defendant asked him, 'Are you describing a flat foot, Doctor?" he would has answered, "Yes." (Laughter)

The lawyer didn't ask this, and I don't make this up, that the verdict was $15,000.

As to this transverse process fracture, let us say as we do in New York, "Counsel for the defendant is hep." He's in a groove. He has read a book, and he gets up and says to the jury, "Why, ladies and gentlemen, this transverse process is nothing. It's just a little hook. That's all this man broke." Again you are in trouble, because you should know that although it's a fracture of the hook, the hook is important because there are attachments, muscles and ligaments and a lot of things attached to the hook, and as the hook breaks, these ligaments and moorings go with it—and that's a thing you should know!

Do I expect to teach you any medicine? No. But what I do expect is to arouse an intellectual curiosity so that you know how vital and how important these things are in representing the interests of your client. Read your medicine before you go to a doctor. Look at Cunningham's Anatomy. Look at these books on orthopedics. If still a little in doubt, get hold of a young doctor who is a friend of yours. Give him a chance to earn five or ten dollars. Have him go over these things before you even visit the family physician. Thus equipped, you are in a position to talk to the family physician.

No. 2. Let your family physician read the hospital record, if there is one. Often in these cases, a doctor takes the stand. The patient has been at the hospital for a few weeks. He has never read the record. Here is my cross-examination. I am not unique. It's an old dodge and an old gag that whoever has been around uses. It starts off with a smile: "Doctor, you know, of course, that this plaintiff was at the X Hospital?" "Yes." "And that's a fine hospital in our

community." "Oh, yes." "And we can be proud of that hospital." Oh, yes." "Now, while he was at that hospital he was under the treatment of Dr. X and Dr. Y, fine men, arent they?" "Oh, yes, fine men." Then he stops being nice, and he lets out a yell, and shakes the plaster on the roof, "Aren't you interested in knowing what these fine doctors had to say at this fine hospital about your patient?" "Bu-bu-but." "You never read the record, did you, and you get up on this stand and pass an opinion!"

As a matter of fact, the family doctor can treat the patient without reading the record. Why however subject yourself to this situation. Have him read the record.

No. 3. Have him read his anatomy, believe it or not. I have conducted my most successful cross-examinations on anatomy. It has taken me twenty minutes at night to do it. I will look through Cunningham's, and I will come across "These muscles, tendons, and ligaments attach to the sacroiliac joint." My friends often there are 20, 25, in number. Either for the plaintiff or the defendant, I will say on cross, "Now, Doctor, we are dealing here with a claim of sacroiliac injury." "Yes." "In order to make a diagnosis, you must know anatomy. You have to know the anatomy of the sacroiliac joint. Now, Doctor, you know that, don't you?" At this point he gets a little nervous. "Now, Doctor, will you tell me the muscles, tendons, and ligaments that attach to the sacroiliac joint?" It's as simple as that. After 20 minutes at home I come to that. I put a piece of paper in the book, and I'm in business.

Make your doctor read anatomy. How do you do that? Of course you don't tell him he is ignorant. You say to him, "Now Doctor, I couldn't pass my bar examination again if I tried, and that's true of pretty near all of us. We have forgotten it. Doctor, you have unquestionably forgotten your text book anatomy. Now, my adversary is one of those wise guys, and sure as shooting he is going to ask you for the names of the muscles and try to show you are not familiar with anatomy." Have him read it, so he is spared the embarrassment in cross-examination.

Every doctor an expert. Every doctor an expert. Every doctor an expert. Why do I repeat it? The greatest problem lawyers have is in orthopedic cases. I have a family physician. He is not an expert. He isn't. I have a head case, a concussion, and in this the family physician is not an expert. The family physician will say to you, when you come into his office, "I am not an expert."

You start this way: "Doctor, before you became a physician, you interned in a hospital, didn't you?" "Yes, I did, Counselor." "How long did you intern?" You find most of them had a year, at a minimum. "Doctor, in that year did you ride the ambulance, and how many skulls did you suture up?" "Oh, dozens of them." "When you say dozens, don't you mean dozens a month, when you were there for a year? Haven't you sutured up two or three hundred skulls?" "Well, yes, I guess that's right." "Well, Doctor, when the blow was severe enough to require suturing, these people had concussion, didn't they?" "Say, I guess they did." "Did you treat them, or did you call in an expert, a neurologist?' "No, I didn't call in a neurologist. I only called him in in the very bad cases." "In your private practice, Doctor, since you have been out ten or fifteen years, how many times have you had head cases—Johnny, who was on skates, knocked out—a football player kicked in the head—people who have been hit over the head. Haven't you had hundreds and hundreds of these head cases?" Invariably they say, "I never thought about it that way." That goes not only for the head case, but for the back case, because they have treated hundreds and hundreds of back cases, and hundreds and hundreds of head cases. But you say to him, "On cross-examination if you are asked, 'Doctor, are you an expert?' the answer is, 'No, I don't pose as an expert in these cases. I feel I am competent to treat them, but I am not saying I am an expert.' "

If you are for the defendant, another question you ask is, "When you have a bad neurological case, what do you do with it, Doctor?" His answer will have to be, "I send it to a neurologist."

However you are at least in a position to convince him that he is competent to testify in these cases.

Often I have seen the defendant call in great experts—great experts. We can't make the argument in New York, but certainly in Idaho you can argue to a jury, "Who is a better doctor to judge the condition of this plaintiff, Dr. Jones, that the defendant called and paid $150 or $200, or Dr. Smith, the doctor I called, the doctor who delivers the babies, who takes care of the sick in our own community, who treats the workmen, the farmers in our own community, the doctor who saw this plaintiff of mine ten or twelve times—when Dr. Jones only saw him once! Don't you think, maybe, even your farmer jury might be impressed sufficiently to give you at least a thousand dollars instead of a five hundred dollar verdict? Am I hoping for too much?

Look at the doctor's cards. Look at the doctor's cards. Often you will find a history of the accident that doesn't gibe with the things the plaintiff tells you. What do you do? You ask the doctor if he honestly recalls the plaintiff saying that. If it disagrees and is fatal, you chuck the plaintiff out of the office. If the doctor feels he is not too sure, then he testifies he may have made a mistake.

As men of integrity and of honor, I needn't tell you it is only the scoundrel of a lawyer and the scoundrel of a doctor who will make a change in a hospital record even his own personal record. Look at the importance of knowing anatomy. There is a fracture of the oscalsis, a fracture of the heel. We get them in this type of case:

Over a period of the last ten or fifteen years I have tried many cases for structural steel workers. We have a terrific law called "The Labor Law," and Section 200 imposes on a general contractor a duty to give a man engaged in this type of occupation, a hazardous occupation, a safe place to work. "A safe place to work" reminds me of those Federal cases of "when is a vessel unseaworthy?" You know what they have held. These boys work hundreds of feet in the air, and sometimes they come down and land on their heels. When they land on their heels, the oscalsis, or heel bone, is crushed.

I have found that in 40% to 50% of these cases, with a fracture of the oscalsis, there is also a fracture of the spine. They go to hospitals. Hospitals sometimes fail to take X-rays of the spine. In our jurisdiction a fracture of the spine may add on anywhere from $30,000 to $40,000 to the verdict. If you don't know your medicine, this injury goes by unnoticed, you fail to X-ray the spine, you are deprived of a fee, and your client is deprived of just compensation. This worries me more than anything else, because if you do right by the injured, the fee, of course, will inevitably follow, as surely as night follows day.

I tell you this, not only to give you the importance of knowing these things, but to show you how vital it is to do some medical reading, some medical research, even if you handle only one case.

In New York medical testimony must be with reasonable certainty. Explain to your doctor that he can't say "may." He can't say "it could." In our jurisdiction he must say that "this injury came from the accident," and his opinion is predicated on reasonable certainty as a physician. If you have a similar problem, explain to your family physician that reasonable certainty shows the fairness of the

law; that reasonable certainty doesn't mean "dead certainty;" that reasonable certainty doesn't mean 100% absolute certainty; that it is more than a vague, nebulous guess; that every day of his practice, when he tells a lady, "I think you will have your baby in two months," or when he has the dread occasion to say to a son, "I think your father has a malignancy," he is passing opinions "with reasonable certainty."

In court conduct a proper direct with him. Let me tell you what I mean. Start in before he made the examination. Your questions should show what he observed first. "What did you notice about Joe Doakes as he entered your office, before you even examined him?" "I notieed his face was pale, his forehead was beaded with perspiration, he had a look of intense agony on his face, he walked with a slow guarded gait. He looked like a sick man."

Maybe that brings $25 more before the Idaho farmer jury! (Laughter)

It certainly doesn't hurt! It doesn't detract from the verdict!

"Then what did you tell him to do?" "I told him to climb up on the operating table." "How high up from the floor is the operating table?" "Three feet." "What happened?" "Well, he started to take his coat off, and as he got it half off he winced with pain, and I had to help him get his eoat off. He couldn't do it himself. I purposely let him get on this operating table himself. That's a way of testing these fellows. I watched him, and as he started, there was a look of intense agony, and he turned to me and said, 'Doctor, you will have to help me'."

That's good, in any jurisdiction, and no one can convince me otherwise. Now, that's even before you ask him, "After you examined him, what did you find, Doctor."

I have great respect for the common sense of the farmer. I am a country lawyer myself—got a farm up in Ulster County in New York. So if I ever come out here and you start this farmer business, I will tell them I am a little country lawyer myself. I know they are citizens with hard heads and good judgment, closed to certain things, open to others. Don't use them, as an alibi to excuse, forgive me, at times your own inefficieney.

The average lawyer will say to a doctor, "What did you find?" Answer by the doctor, "Sacroiliac sprain." "What did you do for him?" "I baked him twenty times." "Anything the matter with him today?" "Well, he has a little restriction of motion down there." Boom! What does that mean to the farmer jury? The farmer says to himself, 'How many times have I had a crick in my back after I did some weeding," and as George Gobel says, "And there you are, and here's the sbow." Don't you think you are in a better position to get a verdict if you say, "Doetor, you found a saeroiliac sprain. Now, Doctor, what was sprained?" Answer, "The erector spinae muscles." You are now in business. (Laughter)

"Doctor, describe the erector spinae muscles. What functions do they serve? The dear Lord had purpose in putting those muscles there, didn't he, Doctor?" "He certainly did." "What's the purpose of those ereetor spinae muscles? When you have a sprain, what happens to those museles?" "Well, they were stretched." "When they are stretched, what happens?" Hemorrhage." "Hemorrhage in those muscles?" "Yes." "How do they beal?" "They heal with fibrous tissue." "Doctor, have those muscles got tone, have they got elasticity?" "Yes, they have." "When they heal with fibrous tissue, what happens to the tone, and what happens to the elasticity?" "The tone is gone. It's something like a rubber band that is torn and that you tie up again." "Doctor, will they ever get back the same tone, the

same normal elasticity that God gave them before this aecident?" "No, they won't, because as I told you before, it heals with fibrous tissue."

Now, that isn't the case in the big-leagues that I illustrate, sueh as when a lawyer eomes into my office and says, "We have a beautiful case, Halpern, a leg off." This is a small case, and the way to conduet a direct examination. Why don't you conduet it that way? Answer: Beeause you won't read anatomy.

What a faseinating subject. What a fascinating subject. Fracture. Where is that fracture? Is it to the tibia, the thick bone? Is it to the fibula, the thin bone? Is it to a joint? These are the first things that you must ask yourself, in every fracture case. You must. Don't you think a jury will understand, no matter how conservative they are, if you say to them the fracture was a joint, and give them a homily illustration, gentlemen. A fracture that isn't a joint is like breaking a panel of a door, but a fracture of a joint, at a joint, is like breaking a door at the hinge of that door. Don't you think that even the most conservative juror will understand that?

How wonderful is the subject of anatomy. How it confirms, as I told some of you yesterday, my faith in a deity, and makes me the deist that I am. Look how miraculous this is.

When a fracture occurs, damage occurs to the periosteum. The bone has a covering called the periosteum which has a bone factory in it called octeogenetic cells. Look at the miracle that occurs when a fraeture is incurred. Out come a bunch of cells called osteoclasts, and what do you think they do? They eat away the rough, jagged edges pretty much the way you would repair some broken wood, or glue something together. They smooth them out first. Don't you think, if you get an explanation like that before a jury, make it relevant, that a jury will at least pay you a few extra dollars for imparting this information to them, and making their jury service interesting? (Laughter)

Then after the osteoclasts get through, wonder of wonders, out come the osteoblasts, and they start piling up calcium—putty, like a plumber wiping a joint. A homily illustration.

The hands of a trial lawyer are marvelous instruments. We hear a lot about demonstrative evidence these days. There seems to be a great cry to bring the corpse into the courtroom. I have dim views of this demonstrative evidence. I don't say it shouldn't be used. Try it in our state court and they will throw you out of the window with the skeleton after you. In our state courts in New York you cannot do it. I oppose it. I think it is unfair. A fellow has a sacroiliac injury, sprain of the back. He comes in with a skeleton. The judge says, "What's that for?" "I just want to show the jury where the sacroiliac joint is?" Scare the jury into giving him more money, with a skeleton. As a plaintiff's lawyer I doubt the fairness of these things, because to me a trial is a contest that should be eonducted fairly, if we are to have American justice, and not a game of trying to trick someone or trying to outwit someone. After all, the job of the lawyer is to articulate, and the youug lawyer should lay more stress on articulating than on having demonstrative evidence. You try to use that as a handy alibi. Essentially, you are a man of reason. You use words to convey logie, and reason to a jury.

The hands are marvelous. Let me give it to you. The head of the femur fits into the acetabulum. The jury says, 'Trying to show us how smart he is.' A different way of presenting it is this, and never try to show the jury you are a doctor. I sometimes mispronounce terms that are as familiar to me as my name.

Here is the head of the femur (Illustrating with hand and fist), here is the socket. Sacroiliac joint, rough deseription. Ilium bones look like a pair of elephant's ears. Sacrum are triangles turned upside down. Where the points of the triangles touch, those are the sacroiliac joints. They are tied in with cords, with ligaments, "and in my client's case one of those cords was torn, ruptured, the eords that tie in the sacrum."

Do I exaggerate to prove my point? Of course I do. I want to teaeh pleasantly. I put an end to this business of stuffed-shirt leeturing where the gentleman stands up and bores you for several hours, and advises you what a fine man he is and he has never been disbarred. If I were, I wouldn't be here in the first place.

Use your hands to illustrate injuries.

If I could pound another thing into you, plaintiff and defendant remember this: eolored boys have a song, that in my eups I like to hear—never get tried of hearing it— like to have it played at my funeral, but I guess they won't permit it. The song is, "Them Dry Bones." "How those bones hook up. How the ankle bones connect with the heel bones," ete. ete. Remember this: Them dry bones don't walk around by themselves. The skeleton doesn't walk around by itself, never. You fellows forget it! You fellows forget it, both on the part of the defendant and on the part of the plaintiff. The skeleton doesn't walk around by itself. It takes nerves. It takes museles. It takes ligaments. It takes tendons—tissues, soft parts. That's how you funetion, and when you have a fracture, you invaribly have other injury. I ean't conceive of a fracture where there isn't damage to a muscle, tendon, ligament, tissue, blood supply, soft parts. I can conceive of situations where this damage heals, and other situations where this damage doesn't. Never, never can there be a fraeture without other damage, either slight, moderate or serious.

So the defendant asks, "Is there any other damage? If there is none, this fracture shouldn't seare him." It is as long as it is broad. The plaintiff, on the other side, where there is a fracture, even if the fracture is healed, next question is, "What's the damage to the museles, the tendons, the tissues, the ligaments," and that's what you do with your family doctor, because you are talking sound medicine. You have looked in Cunningham's Anatomy. You know where your point of fracture is. You know certain things hook up at that point. "Doetor, he fractured a tibia." "That's true." Then you say, "Isn't it true that as I read in the book that there are museles, tendons, ligaments at that point?" Doctor, what happened to them?

Remember the osteoblasts that eome out after the osteoclasts get through. Often in fractures of the ribs you take X-rays, and it shows no fraeture. A day or two later no fraeture is shown. After the osteoclasts get through eating away to smooth the edges of broken ribs so healing can commenee, maybe after a week or ten days the fracture will be visualized—a fracture that wasn't visible on the X-ray taken a day or two after the accident.

You see an X-ray, and there is a bump. Nature is very generous. It sends out a lot of callus and thereafter it absorbs the putty, but it doesn't absorb it all completely, and sometimes the very process of healing sets up difficulty, because sometimes so much callus remains at that fraeture point that it is a pressure point, and a point of irritation on muscles, tendons, and ligaments.

If you have a fracture case, never go to court without a recent X-ray—never. Not in the language of Gilbert and Sullivan, "No, never—well, hardly ever." Never take an X-ray a week or so before you go to trial, because defendant's lawyer will

say to your doctor, if he knows you haven't a recent X-ray, "Doctor, that X-ray was taken a year or two ago," or however long it takes cases to be reached—three or four years down in my bailiwick, believe it or not. "Why, this X-ray was taken some time ago." "Yes," "And you haven't taken a recent X-ray, have you, so you can't tell the bony condition." See, not the general, but the bony condition of this fracture. Answer, "No, I can't."

Take an X-ray. You have a fracture of the right tibia. Take a recent X-ray, not only of the broken bone, but also the normal tibia on the other side. You know why you do that? To show the jury the difference between a normal and an abnormal condition. That will go a long way in making your explanation clear to the jury.

Now, we will take a breather for about five or ten minutes, because I am going to make doctors out of all of you in the hour or so that is left to me, and after you walk out of here you will be able to know what the annulus fibrosus, nucleus pulposus, lamineetomy, slipped disk, and myelogram mean, and you will see how easy the stuff is, because I promise every one of you will know it in ten minutes; and I will also talk about the question of the neuroses. Before my shouting gives you a neurosis, you better get out in the fresh air for five or ten minutes. (Applause) (Recess)

PRESIDENT RACINE: We are pleased to have the secretary of the Idaho Medical Society with us, as well as Dr. Manley Shaw, representing the Society. We are very pleased to have them. We also have representatives of the Idabo Industrial Accident Board, the chairman and the secretary.

MR. ISIDORE HALPERN: I made a promise that I shall keep, the same way I made Joe Imhoff a promise. I said that when he gets married I will come down from New York to his wedding, if he will have me; and I will keep that promise, because now I pledge it before the Idaho Bar. Maybe that goes for Cal Dworshak too, if he will have me.

I promised I was going to make clear to you such mysterious terms as annulus fibrosus, nucleus pulposus, laminectomy, myelogram. Did you think you would ever be able to understand these mysterious terms? When you hear the explanation, you will begin to see how simple these things are.

Neither am I scared by the presence of medical men, because if there be some inaccuracies, at least it grossly and roughly serves the lawyer's purpose and serves the purpose of explanation for the lay jury.

Someone wrote an article in The Reader's Digest called "The Personal—Injury Racket." (By W. L. White at page 105 of January, 1955 issue.) This is a terrible slur to the members of the profession. In it he wrote that the widow lady shouldn't get a lawyer, that the *kind* railroad company is *always ready* to put her on a pension and make her years happy ones; (laughter) and these cheats of lawyers come along and grab all the money from that poor widow. It further states that a slipped disk, can be faked! I wonder who sponsored those articles. Some of us are engaged in an effort to find out who sponsored them.

These days the courtroom rings, at least in my jurisdiction, with the whiplash injury—by the way, it's not an injury at all. It's just the mechanics by which injury occurs. The slipped disk. I told Dr. Shaw I shall demonstrate that there is no such thing as a slipped disk.

The judges complain that we are bringing an injury into the court. We are not.

This dispute is in the courtroom because of the doctors and not because of the lawyers. In the last number of years this diagnosis has been made with increasing frequency. We are not to be blamed for it. We are protagonists. We are not here to judge. If the lawyer is to judge, then let every petty, little lawyer be a judge, and let's close up the courtroom. In the overall seheme of things, no matter what attainments we have at the Bar, aren't we all just petty little lawyers in the entire scheme of justice. We are protagonists, and these claims are in the courtroom because of the doctors and because of the diagnoses they make with ever increasing frequency, and not because of the legal profession. So let us understand these mysterious terms.

Nucleus pulposus, annulus fibrosus, myelogram, discogram, and I will do it in about ten or fifteen minutes flat.

Let me revise certain notions you may have of the vertebrae, and again I will use my fists. The vertebra, most of you think, is solid bone. Discard that notion immediately. Vertebra is not solid bone. It's caneellous. Big term. You know what it means? The outside is solid. Homily illustration, like a fruit-filled candy. That's what your vertebra is like, solid on the outside, fruit-filled on the inside. Make believe that these two fists are vertebrae. You can understand, if one rested right on top of the other you would have absolutely no motion in the spine. You have seen these people who are unfortunately crippled with arthritis where the vertebrae are fused and they can't bend at all. The remarkable scheme of things is that there must exist mechanisms to enable the spine to bend in its various directions.

An important function is served by the eartilaginous disk, the intervertebral disks, because these two vertebrae have disks in between them. Forget about the atlas and the axis in the cervical vertebrae, but for our purpose the vertebrae have disks in between them, made of eartilage. There are different types of eartilage, not important for a general, rough understanding. Sinee between all of these disks there is this eartilage, yon ean begin to see it isn't a rigid thing. Your spine is no rigid thing. You can bend and move the spine because this cartilage exists between all the vertebrae.

So we know now, in about a minute and a half, that the vertebra is cancellous, and between the vertebrae there exists this cartilaginous structure called the intervertebral disks. That's simple, isn't it?

The disk has a plate on top, and a plate on the bottom; the plate on top connecting with the vertebra above, plate on bottom connecting with the vertebra below. That's the plate of the disk, of the intervertebral disk.

Around the disk there is a circular ligament called the annulus fibrosus. How do you like it? There it is. That circular disk is called the annulus fibrosus. Big stuff.

Nucleus pulposus. Visualize this disk—I explain it this way to a jury, as a doughnut. Inside the doughnut there is a goo—jelly doughnut. Semigelatinous is what they call it in medecine. All right. You have that. That's ealled the nueleus pulposus, the goo. Big stuff.

There are ligaments tying it up, auterior and posterior; the posterior stronger than the anterior. Anterior and posterior ligaments.

So what's the slipped disk? The annulus fibrosus herniates. It tears. You know what a hernia is. The annulus fibrosus tears the goo, the nucleus pulposus

comes oozing out, and that's a slipped disk. How do you like that? Three minutes flat.

You begin to see that the disk does not slip. The goo, the jelly, the nucleus pulposus comes out, or extrudes. Herniation, an extrusion of the nucleus pulposus, a tearing of the annulus fibrosus.

Don't you see how simple these things are for a lawyer? That's the way to give them to a jury, so when I cross-examine a doctor for the plaintiff, and he starts saying "slipped disk," I say, "In the first place, aren't you entirely wrong? Isn't it a fact that the disk doesn't slip?" Then we start this little debate back and forth, and he eventually admits that that's right, that he meant that the nucleus pulposus extrudes from the torn annulus fibrosus.

Insuranee companies yell, "You can't make such a claim unless you have a myelogram," and that's arrant, and nonsense. That I am ready to debate with the greatest orthopedists in this state or any other state, because if he takes the opposite view, I will bury him under so many volumes he won't be able to show his head above them. You don't need a myelogram to make the diagnosis. We will talk a little bit about the myelogram. What is it?

When you are in the law business you generally develop an ulcer. That's what we call an occupational risk. You go to the doctor, who takes an X-ray. He doesn't X-ray the ulcer. He doesn't, any more than the EKG shows the heart beat. It doesn't. It shows the electric potentials of the heart, quite a different thing. That's why you can have a negative EKG and the guy die within 24 hours. He can have a terrible EKG and still have a good, functional heart. That I will debate with the doctors, too.

Whenever I make these conceited statements, I am positive. What does the stomach X-ray show? You take barium. It's a contrast media. If one is unfortunate enough to have an ulcer it pushes the barium into certain shapes, and the doctors know what the type of shape means. You can't just X-ray the stomach, because the ulcer won't show. You know how the X-ray works. Where it penetrates the bone it is because there is a crack, and you can't take X-rays of a stomach ulcer. So you need a contrast media.

I told you the nucleus pulposus was semigelatinous, jello. You can't get an X-ray of that. So what did the boys do? The boys introduced a technique of taking X-rays called the myelogram.

In my book medicine is about 70 years old. It started, in my book, with Lewenhoch and the mieroscope. Don't let them tell you the Egyptians made operations on the skull. That's true, but they were letting out the evil spirits. That's why they did it. In the same way, the great Hebrew scholar Maimonodics, but he put a leaf near the ear so the worm of insanity could go out on the leaf. The Bible talks about the atom, but that doesn't mean they discovered nuclear physics back in the days of old Arabs. What I mean is, medicine is 70 years old, and a charlatan had something to do with it. My medical friends, his name was Paracelsus. He was a mountebank. We talk about Hippocrates, and we don't talk about a man that did a lot for medicine, a man by the name of Paracelsus.

Don't let me digress. Let me get back to what I was telling you. Here is what they do:

No. 1. They have to introduce this contrast media into the spine, to see if any of the stuff has extruded, if any of the nucleus pulposus has extruded from the

annulus fibrosus. They stick a needle in the spine below the spinal cord, and they take out cerebrospinal fluid, then inject, instead of the cerebrospinal fluid, stuff called pantopaque. They used to inject a dye called lipiodol, but they got into trouble with that dye. I will show you why in just a minute, because that brings us to the brain. We can't avoid it in discussing the subjeet.

The brain has meninges—coverings, made up of the dura, the arachnoid, and the pia, and you will never forget it. You know the doetors use a jingle to remember their nerves. It goes, "On Mt. Olympus lofty top"—started that way. Each letter represented a certain nerve. I will get you to remember the brain coverings. "Dapper Dan was a railroad man. DAP. Dura, arachnoid, pia, covering of the brain, and eoverings of the spine as well. Dura is tough. That charming lady, Ilsa Koch, the Beast of Buchenwald, used to make lamp shades and gloves out of the dura. Oh, that lovely lady!

No. 2. When you operate on the brain, the brain is anesthetic. The doctors will tell you that. You can handle a brain without injecting an anesthetie. You inject the anesthetic for the other portion, until you get to the brain itself. Where does the headache come from? The dura.

Then you have the arachnoid—spider web. Then you have the pia, which is so delicate that it is mixed in with the brain. Between the pia and the arachnoid there is a space. There are hollows in the brain ealled ventricles. This is superficial. They manufacture cerebrospinal fluid, which bathes the brain, runs up and down the spine—and the spine has those eoverings, too.

So you introduce this stuff into the spine. What it is supposed to do is this: where the goo, the nueleus pulposus is extruded, this contrast media, just like the uleer in the stomach, will be pushed into a different shape, and they can tell that there is an extrusion, of the nucleus pulposus. They used to use lipiodol, and they found they could put the stuff in but they couldn't get it out. Believe me, my friends, it was nothing to laugh at.

Then they came along with pantopaque, and while this is better, it still in some instanees is carried up to the brain, to the subarachnoid space in the brain.

The authorities differ. Some say that the headaches last for short duration. Others say that it is a serious business. I tried to find out what's what by diseussing it with people who had the myelogram, about twenty of them. They tell me the pain of the myelogram is more than the pain of the so-called slipped disk—but I don't quote that as authority.

Don't you see that this is a thing fraught with danger. It also causes irritation to the sheaths of the spine, and other plaees, called leptomeningitis.

Why will I debate this with the doctors? Every text-book you read says never to use a myelogram as a clinical aid. Don't use it the way you would the X-ray, or the EKG, the electroeneephalogram. Don't use it that way. You use it when you are ready to operate, and that's to find out at what level the goo got out of this doughnut, at what level had the nucleus extruded from the annulus, or if there is more than one extrusion.

The great neurosurgeon, Jeff Browder, operates without it. The great Dandy, although it is said of him, "Dandy operated whenever was handy," and another guy said, "Every time was handy for Dandy." But he operated without the myelogram. I say this authoritatively, based on my studies of the literature, the myelogram should never be used as a diagnostic aid.

If you can't do it that way, what aids have you? Why can't this be faked? The answer is simple, an amazing fact to you. Ninety per eent of the slipped disks occur at the fourth and fifth lumbar vertebrae. Ninety to ninety-five pereent occur there, and I will tell you why they oceur there. There is a ehange in the body curve. To use a crude illustration, the body goes this way, and it changes there (illustrating with hands). What does it need? It needs a blow. Does the blow have to be direet? No. Twisting can eause it. Sneezing can eause it. Straining at the stool can eause it. I ean prove with the literature that some trauma it does need. I am aware of the faet that in elderly people there is a deterioration and degeneration of the disk, and when you see an old person who appears to be shrinking in height, it isn't your imagination. Forgetting arthritie changes, he is shrinking in height, beeause if I reeall my medieine eorrectly, one-fourth of the spine is made up of the disks, and the older we get the more changes there are in the disks, atrophy, so of eourse the person gets smaller. One doetor told me he saw a fellow who lost eight inches between the disks and arthritis; so the elderly people do shrink because of the ehanges in the disks. There is a eertain ligament there that degenerates ealled the ligamentum flavum—but there is no sense in going into that. But it still needs a blow.

It is easier to get this herniation where the disk is degenerated than it is in a healthy specimen.

Along eomes another set of boys and they say, a discogram. What's a discogram. They inject eontrast media right into the disk, and they judge by the way the needle goes in. If the disk is degenerated it will go in easier, and if it is not degenerated, it will go in a little harder. If there is a disk injury, with the injeetion there will be pain along the sciatie nerve that makes its exit somewhere around the fourth or fifth—I don't remember right offhand which lumbar vertebra it is—so there will be seiatie complaints. Then they also take an X-ray which shows eertain changes. That's a direct injeetion into the disk. I don't think—I may be wrong—that it is being used too much in our hospitals.

How do you diagnose this disk? Why am I so vicious in my statements about this article writer. Let me give you the symptoms you have to have—not all of them, but a great many of them, in my book. Pain in the back, sometimes radiating down the thigh, spasm of the muscles—and there is an important thing, spasm, nature's unconscious way of splining a musele. It becomes whiplike, rigid, where part of the baek is insulted, as they say in medical language, or injured. A list of the trunk away from the affected side; obliteration of the normal lumbar curve; droop of the buttoek; atrophy of the thighs and calf muscles; defect in inflexion and extension; tenderness on palpation over the affected area; tenderness over the course of the left buttock and over the course of the sciatic nerve; pain and limitation in performing the straight leg-raising task, now if I remember my medieine correctly, as the Lasague.

When the goo comes out and presses against the nerve you will have nerve involvement—that's a neurologist's job. When you go to eourt with a disk case, bring in two doctors, the orthopedist to give you the orthopedie findings, and the neurologist to give you the neurologieal findings.

Here is what you may have. You may have trouble with the knee jerk to a greater degree than in the ankle jerk. This nerve which makes its exit at the fourth and fifith supplies the extensor muscle of the toe, and sensory substance in the skin over the dorsum of the top surfaee of the foot. If you have this extrusion you will find abnormal findings of the knee jerk, ankle jerk, the Achilles—you remember why it is called that, the Greek mythology, where they dipped Achilles in the

river to make him immune to spears and they held on the ankle, and that portion the water badn't bathed—that's wby we use the term Achilles heel, Achilles tendon. Diminisbed sensation to pinpricks at the dorsum of the foot just above the great toe and for some distance up the leg; weakness in the extensor muscles that elevate the big toe; so you begin to see there is a definite, positive, pattern, both of orthopedic and neurological findings, before you make the diagnosis.

Sometimes you can take an X-ray, and you ean understand, of course, that where the goo oozes out the disks will beeome thinner and smaller, so sometimes the X-ray will show a narrowing of the intervertebral disk between the two vertebrae involved. But even if the X-ray doesn't show it, if you have a goodly portion of the symptoms, you are safe in saying you have what is, in my book erroneously labeled, a slipped disk.

Who should perform the operation? With due deference to the splendid medieal gentlemen who sit in this audienee, for my money not the orthopedist. They do it, and do it well. The neurosurgeon is the boy who should perform that operation.

Now I will tell you a remarkable thing. With conservative treatment, what do you think the percentage of recovery is? About 80%. With radieal treatment, what do you think the reeovery is? Same pereentage. Believe it or not, both with conservative and with radical treatment, the same pereentage of reeovery.

There you have enough to have some concept of what the slipped disk is.

Now, if I have any popularity with you at all, and if you think me realistic, I will spend the rest of my forty minutes talking to you about a fascinating subject, about a subject that makes me lose popularity with some—others will call it insane dribble and degenerate nonsense, because of their own fears, because they are afraid.

That's why the psychiatrist is crazy, because of our fears of the psychiatrist. It doesn't matter if we are smarter than the psychiatrist. We can be smarter than the bricklayer, but we ean't erect the briek wall. We ean be smarter than the plumber and the electrieian—we can't do plumbing and eleetrieal work. We can be smarter than the psychiatrist, but this is not a realm where you hitch up your pants and you talk good, common sense to the person who is sick—why pay those headshringers twenty dollars an hour just to do some talking. Twenty bucks an hour! You are sensible lawyers! You can handle it! The devil you can.

See a real psychosis, and see how logical you can be with a psychotie. See the psychotic who says, "I am in a concentration camp," the brilliant, intellectual college professor. Show him a newspaper of that town, and he will very quietly say to you, "This was printed to deceive me." The doctor comes around with a white jacket, and he says, "Who is he fooling, putting on that white jacket." The doctor comes around without the white jacket, and he says, "Look at him, without the white jacket. He's not a real doctor."

I tell you that as real as you are to me, to the psychotic everything is real. I had one at my house out in the country, who had been healed, and he spoke to me about his experienees. He says, "Hal, you see that fire burning in that fireplace?" It was in the fall, and we were talking over a glass of Scotch, smoking a cigar. He said, "If your sainted mother, whom you love, came down to earth and said, 'My son, I have returned to this earth to tell you one thing. There is no fire in that fireplace.' Would you believe it?" I said, "No." He said, "That's how real a psychotie's beliefs are to a psychotic."

Don't you forget it, that intelligence has nothing to do with it. You display

your own ignorance when you say, "He is weak-minded." They are no more weak-minded than the fellow who has a fracture of the hip. And you can't just give them a boot in the tail and straighten them out. You can't, because then you are behaving like the Russians.

I read the book they have written, which attempts to prove there is no neurosis in their army, and no psychosis. You know why? Before you have a disease you have to recognize it. They don't recognize it. They just take the fellow out and shoot him so the statistics are good! They have no neurosis, and they have no psychosis.

That's the way you are operating if you deny it.

When I was a young lawyer just admitted to practice, I lost a million— a fee of $250—and I was the smartest man in the world, I thought. A mother came to me to sue out a writ of habeas corpus for her daughter. There was nothing wrong she said with the girl—people were following her. I went down to the hospital to talk to the doctors, to see if she should be kept in there, and they almost threw me out. I was the first lawyer who ever came down there to ask their opinion who didn't serve the writ of habeas corpus.

There are a few psychiatrists who do lip service to a cause, for a fee, on both sides of the fence. The professional witness for the defendant who is spurious is not clothed with any special sanctity to me because he appears for the defendant, nor is he if he appears for the plaintiff. In my great search for knowledge it was explained to me why the crazy think as they think.

There are two doctors in this audience. Ask them. We still have a portion of the gill of a fish. In the nose we still have a portion of what the fish have. The rudimentary tail, called the coccyx. There is nothing contrary to religion in this. There is plan and purpose even in this evolution. This stuff didn't just happen, in my book, accidentally. There is plan and purpose. We know that organically we have a primitive brain. We know that. We know it from the markings on ancient skulls. We still have it. We have added something to it.

It's possible, isn't it, that we have a primitive thought left in a primitive brain?

All of a sudden, along came a man, and what a mid-Victorian prude he was— a mid-Victorian prude of the worst order. He was a young medical student, and his girl wanted to go skating. She wrote him asking if she could go skating with a gentleman they both knew. He said, "No, because he is liable to hold your arm. You can't go skating with that man." Wrote her hundreds of love letters, and as far as can be known, was absolutely faithful to her, and she was the one woman in his life. The name of that conservative, prudish gentleman is Sigmund Freud.

When he used the term "sex" he used it the way the Germans do, "lubeh," love, and all that deals with the traumatic neurosis.

How can you sell it to the jury when you scoff at it and laugh at it yourself. How can you sell it when you throw these terms around, and don't *know* what they mean. You're like the guy who wants to see his old mother when he hasn't seen her for a year, and his wife tells him he has a "mother fixation." You won't express an opinion on how to build a cabinet, and you dare express an opinion on this and throw these terms around. Thirty years have taught me that I know nothing about it. Come with me to these institutions. Watch them when they get insulin shock. Isn't it true that they swim like fish, claw like an ape, under insulin shock? We see them relive before us the whole philogenetic scale.

My Brooklynese has departed now. These things are close to me and dear to me, because I want to awaken people sensibly. Thc reason these terms have fallen into disrepute is that much-abused word "psychology" has taken on this connotation, "swindle the next guy." Use psychology, and sell the Eskimo an ice box. That's the trouble with the word.

Here was Freud, and here is where he got in trouble. There was a boy by the name of Mesmer who decided he could cure people with a magnet. They got better. People came to him, and he couldn't treat them all, so he said, "I will magnetize a tree, and I will tie ropes to it, and they will get hold of the ropes and the magnetism from the tree will go through the ropes and cure them." It worked in certain cases. Suddenly it occurred to Mesmer, maybe it isn't the magnet at all? "Maybe it is what I am telling them." Sure enough, he threw away the magnet, and the cures were exactly the same.

All this was forgotten about until a wealthy Frenchman came along by the name of Charcot who started dealing with hysterics, and a lot was done by the Frenchman.

Before I forget it, let me digress to teach you the importanee of the neurological symptoms. It all pertains to the brain, the skull, the neuroses. You are worried, wondering whether or not your plaintiff has a fractured skull. I am not. I am not worried about the presence or absence of the fractured skull. I can drop this watch, break the case, and the works keep on ticking. I can drop this watch, and don't break the case; the works stop, and are ruined.

You handle head cases, and you haven't the slightest idea of the importance of neurological symptoms. They are meaningless to you, and they are the essence.

I don't care if the skull has been fractured. The question to me is, what is the residual brain damage? How do you tell the residual brain damage? By the neurological symptoms. They mirror the things that are going in the brain, in the cerebral cortex, and in other places.

There is a guy by the name of Babinski, whose name is in every hospital. If you saw the entry "positive Babinski" on the hospital record, you would want to know what this Russian doctor is doing in an Ameriean hospital, and you might call up McCarthy to have him investigated. (Laughter)

Babinski had nothing to do one day, and he was walking out of the hospital, and he sees the foot of a guy extending from the sheet, and he tickled the sole of the foot. The toe goes up, and Babinski doesn't go home, because the toe should go down and shouldn't go up. Then he started experimentation, and where do you think he ended up. They end up with apes, and they start whittling away the brain of the ape. What do you think they find when they whittle away at the pyramidal tract in the motor area of the human brain? The toe goes up! So they reason, toe up, positive Babinski, damage in the motor area of the human brain.

You take a hospital record, and you see "Babinski" scribbled in a handwriting that only doctors can use, because they go to a school that teaches them how to make it tough for the laymen so you can't read it, so this priesthood can be maintained. They scribble these things, and you see these plns signs; to you they mean nothing. So I ask you, my colleagues, how can you practice accident law, or handle one case without some smattering of or knowing the importance of these things.

In every head case from here on in, you fellows find out, go to a doctor, and

ask if there are any positive neurological signs. The Romberg I don't think much of —you know this swaying business we all do more or less. However, certain signs together spell damage, and an injured brain.

So now let me get back to that French hospital. Charcot started to work with hysterics, and a young kid in medical school named Freud got a scholarship to go there. He became interested in hysterics that came to him started telling him stories that they had been sexually annoyed by parents. So he decided hysteria comes from these things, molestation by parents. One day he thinks, "Am I a dope. Maybe these stories are all fanciful. Maybe they were never molested." The next question is, "Sure, their mind is diseased. Why?" Why? Why? I will tell you why?

We are all in confliet. Every single one of you well-adjusted ladies and gentlemen, your speaker included, all have conflicts. You don't think it is so? Watch your nice wife, your lovely, sweet, charming, angelie wives when they eome out of ether, and listen to some of their language. Believe me, your faee will turn red! It's all right. It may seare you, but it doesn't seare me, because this is what the human being is: nothing degenerate, but a eombination of angel and animal. "What is man, that Thou hast made him little less than the angels," says the Good Book. Yet in many ways man is an ape, hut this ape is the only connecting link, isn't he, between the earth and the stars!

So don't let these things shock you. We are made up of a confliet, a confliet between what we want to do and what soeiety says we daren't do. That's where the conflict arises.

I had to give you this explanation to explain the neurosis. What's the conflict? A beautiful babe walks down the street, and I in my fifties, in the uneonscious say, "Oh, brother," and my conscious says, "Keep walking, you old fool. (Laughter)

It's just as simple as that. Do I say that we don't need the taboos? We would have no civilized society unless we have these taboos.

Half the hospital beds in America are filled with these cases. This degenerate science is getting cures. Sure, we have added mechamieal treatment, shock, but this degenerate science is rendering them amenable after they get the shock.

Don't be so stuffy and think this is horrible and ghastly, because you can't expect your farmer jury to understand it unless you do. How do I present it? Don't think that New York juries don't resist it, either.

I say to them, "We are as the dear Lord made us. Wc have genes. We have chromosomes that determine color and many other things. My client wanted to have a stiff upper chin, but the way he was made he didn't have it."

A stiff upper chin is nonsense, because that isn't involved in mental illness at all. Some of you who can't be hypnotized and boast about it, you can never hypnotize a mentally ill person! So don't boast so much that they can't hypnotize you, and that you can resist it, because what I am telling you is absolutely so.

O. K. So you have confliets. Confliets in the unconscious, the things you want to do society says you can't do. Here is what happens:

Imagine your soul is a phonograph record. What makes a record play musie? Lifc's needle hits a certain groove. In a phonograph record the needle you put on the record hits a certain seratch, and when it hits that scratch, it gives forth a certain tone. Similarly, on your psyche and on your soul, you as a child have

grown, and certain damage has been done to you, certain impacts, certain burts, certain scratches bave been made on your soul. What do I mean?

Parents say, "My Johnny loves me. My Mary, oh, she just adores me." Well, doting parents, let me take you to Columbia, and see with your own eyes whether they don't hate you a little, too. You begin to understand what is meant by love being ambivalent, a combination of love and hate. See them in Columbia, as I have. Here it is, with no fancy talk.

Children come in. You can look into the room, but the child can't look out. They say to the child, "Here is a doll. This is the mama doll. This is the papa. Play with the dolls, Johnny." And after awhile do you get sick watching what those kids do to one or the other or both dolls. *Wham.* Well, of course.

Tell Johnny he can't bave an ice cream soda before dinner, and be says, "Daddy, I understand." Deep in his heart he says, "This so-and-so won't give me no ice cream soda." (Laughter)

I am going to tell you something that is weird and fantastic. You really ought to drive me out of Idaho to have the nerve to tell you these things, and lecture on this degenerate business. You will find this in your public health records. Studies have been made. The effect of early toilet training carries in mature life. "Nice Johnny, move your bowels. Good boy. I house-broke him at six months." A boy who murdered a girl in Chicago was house-broken at six months. He exercised his natural functions whenever he broke into a house. Doesn't sound so stupid now, does it.

A good woman physician has made a lot of study on the effects of toilet training on the adult character. You live twenty years. You live thirty years. Life's needle may not hit that scratch until thirty years later. When it hits that scratch, it gives forth music. It determines the career you pick, the marriage you make. You don't know it.

You are like an iceberg. Me, too. One-tenth above the water, the conscious, nine-tenths below, the unconscious. Who says so? Anything new? The Bible says it. Peer Gynt says so. Thomas Payne, in the 17th Century, in the Anatomy of Melancholia, said it. He said you need an analyst. He said, "This melancholia, it seemeth to be the vapors, and a person that suffers from this disease, the vapors should talk to a person, provided that person he talks to in turn has spoken to an understanding person." In other words, the idea being the necessity for the analyst to be analyzed.

Believe me, my friends, I am realistic. You can't be an accident lawyer in New York City and cope with your overhead unless your feet are close to the ground. I have seen this. It's real.

Why the neurosis. Do you go out and get smacked by an automobile, and the neurosis comes in with the bump, as if there is something in the fender that carries with it a neurosis? Nonsense. We have a conflict, and we control it. No thanks to us. Imagine the conflict is like a stream, flowing along. Along comes an accident. The accident serves as the stone that dams up the conflict. Being dammed up, it explodes on the outside in the form of a neurosis. There is your so-called traumatic neurosis, a neurosis you couldn't have unless you were subject to the conflict between the unconscious desire and the taboos of society. You see a girl with a beautiful mink. You just don't tear the mink off her. Society says they will clap you in jail if you do. So you have the desire for the mink and the conscience says no. We don't hoist a bank. Oh, brother, if we had some of that

dough. Society says, "Try taking it, boy, and you will spend the rest of your life on a rock pile." So we have these conflicts.

So sometimes in these accidents, the conflict is dammed up, and outward symptoms occur. What are they? Hysteria. I have seen them, blind; nothing wrong with their eyes. I saw a woman whose arm went this way (up and down) one hundred and some odd to the minute. It was the result of an accident that injured nothing organically. Faker? No. Certain mental mechanisms in the unconscious started to operate.

There was the woman who couldn't walk, with no organic damage, and I, tough man, young Dr. Killdare, went to her—she was paralyzed—and said, *"Discard that crutch and walk."* She discarded the crutch, and fell flat on her face. (Laughter)

That's your neurosis. How do you prove it? I promised Cal and Joe I was going to tell them how to prove it. They were my reception committee, and whoever chose them had an inspired idea. I like those boys.

You plaintiff's lawyers kick because your farmer juries give yon nothing for neurosis. Your farmer juries and your city juries will give you money where there is a change, a change in life's pattern.

You can't tell me that a farmer jury won't give you money when Joe Smith has worked as a steel-maker or as a plumber for ten years, worked faithfully at one place; then after the accident he doesn't go back to work for six months. Your farmer jury will listen to the neurosis when you show them the background of a hard-working guy who suddenly gives up his employment after ten years, or has bizarre manifestations.

I have had them with a bark like dogs, walking through the courtroom barking like dogs—and they are not lying or faking. You begin to understand a little something about this degenerate subject called psychiatry.

I know all the gags, that the psychiatrist is the man who goes to the follies in Paris and looks at the audience. (Laughter)

The other one, that the neurotic builds dream castles, the psychotic lives in them, and the psychiatrist is the landlord who collects rent from both of them. (Laughter) I know all of them, believe me.

When do we get in trouble with the traumatic neurosis? When you have a housewife, with no employment record. I promised the boys, Cal and Joe, that I was going to tell them how to prove a neurosis when you have it. I will show it to you—and I am going to make the ten, as we crapshooters used to say, the tough way. I am going to prove a double neurosis for Cal and Joe. They are both my plaintiffs.

Let us say that Cal and Joe get into an accident. The accident itself isn't much, but I claim for both of them a neurosis. Here's how I do it. I call some lawyer up to the stand who has known Cal and Joe for a few years. The accident happened January 1st. I say to him, "Were you acquainted with Cal Dworshak and Joe Imhoff?" "Yes, knew them well." "Ever have occasion to go to a saloon with them?" "Quite often." 'Ever observe what they would do when the waiter came with the drinks? "They would tear the bottle out of his hand. They couldn't get it fast enough." (Laughter)

"Ever observe what would occur when a luscious, radiant girl came into the door?" "Oh, yes, frequently." "What would happen?" "Well, it was a toss-up who jumped

up first, Cal or Joe." "Now, did you observe them after the accident of January 1st?" "Yes, I did." "Did you observe them in the saloon?" "Yes, I did." What happened when the waiter came over with the drinks?" As preposterous as this may seem, Cal and Joe just turned away from it, just turned away from it. "Did you observe a pretty girl come into the cafe?" "Yes." "What did Cal and Jo do?" "They looked away from her in disgust."

Now, from such testimony everyone would believe that Cal and Joe have suffered from a traumatic neurosis, especially those of you who know the reputation of Cal and Joe. (Laughter)

This is a terrible way to pay them off for their nieeness to me!

What do I mean by that? Here is what I mean. Produce lay witnesses before your Idaho farmer jury. Those are your best witnesses. I promised the boys I would show you how it is done where your case is legitimate.

Mrs. O'Toole is in an accident. She suffers from traumatic neurosis. I produce Mrs. Murphy, a nice, white-haired lady. 'How long have you known Mrs. O'Toole?" "I have known her fifteen years." "Did you see the way she dressed before?" "Yes, her hair was always combed, clothing was neat." "What have you observed since the accident?" "She is dirty. Her dresses are full of clothing particles. Her hair is unkept. It is never combed any more."

"What do you know, Mrs. So-and-so?" "We are members of the same church circle, and before the accident at church suppers she helped plan and serve them." "What have you noticed after the accident?" "Since then she has never been to a church supper. She came to one after that, left the table, went into a corner, and I saw her cry." "Did you ever see that happen before the accident?" "No, I never did."

The letter carrier, the postman, reputable people, who know your plaintiff, who have seen her in everyday life, and who can testify as to a different pattern. I assure you, if your people are reputable, and not merely doing lip service to a cause, you have proven pretty much your traumatic neurosis.

My friends, before I close—and you will forgive my blunt way of talking—I have insulted them up at Yale—I have insulted them all over America. Believe me, I don't feel that I am the great "I am." Faults I have many. You don't know how many. You have to consult my wife for that, and she will give you quite a list. But even she who has suffered with me for close to thirty years will tell you that conceit isn't one of them. I am trying to reawaken the interest of the Bar in medicine.

Throughout the country there has been a great renaissance in the type of forum you are holding here. Your invitation to me is an indication of what is happening throughout the country. Some of you may he shocked at the way I spoke. It's all a question of taste.

I asked Joe and Cal what they were waiting for, two nice boys—why they didn't get married. They told me that they were waiting for the perfect wife. Both of them agreed as to the definition. I said, "Well, boys, what's your concept of the perfect wife, the girl you want to marry." They said, "A gorgeous, radiant, beautiful, over-sexed girl who is deaf and dumb, has a million, and owns a liquor store. (Laughter)

As I say, you may have objected to my speech. It is a question of taste.

I tried, in my way, to get you interested and make it easier. Forgive me, as your guest, if I criticized your home. Forgive me, because I am going to make drastic criticism.

I was shocked and couldn't believe the salaries the men on your courts were getting. I say it is a disgrace to the members of the Bar, and a disgrace to the community. I assure you I will get no commission from any judge if his salary should be raised. I estimate your cost of living as maybe 30% or 35% cheaper than the cost of living in New York City.

What do you pay district court judges? $7,500? We have an equivalent called the supreme court, and we pay them $36,000 a year. You might say, "Some of them are not worth more." Well, get those who are. You say people should be independently wealthy to go on the bench? I say they shouldn't. I say it is disgraceful to come here and find that a judge of the Supreme Court, equivalent to our Court of Appeals, is getting some $9,000. Our judges who handle the $6,000 cases get $25,000. Our judges in the municipal courts, who handle the $3,000 cases, and up to recently only $1,000, are getting $14,000 a year. I mean no ill, but I think the members of the Bar should unite and do something about it. I believe your judges are paid less than in any state in the Union, and it's a slur on you. You are fortunate to have the caliber of men you have on the salary you pay them.

I was shocked by the fees lawyers are getting. Cal and Joe will tell you. $150 or $200 for a default divorce! A novice in New York wouldn't take one of them for less than $250 or $300, with his disbursements. Casualty men, special trial, coming into court for $150 and $200 a day! Back in New York, $350 to $500 a day.

The fees of the lawyers are too low. The salaries of the judges are too low, compared to New York City standards. It isn't in the cards, considering the difference in the living costs and the fees of lawyers and judges, that the salaries of these men on your bench should be so low.

I will conclude with this: It took me eighteen hours to get here. I fly back again at one o'clock on Monday. Why did I come here? To make speeches? I have made them every day in my life for the last thirty years to juries. To get business? I give you my word that in the 15 to 20 years I have lectured throughout the country I haven't gotten a single case as a result of my lectures. Those of you who are mature know why I lecture. Men cannot live without an outgoing love, the psychiatrists say, and that's more than just the love of your wife and kids, father and mother, because that's pretty much self love, but to do things for others. All of you lawyers, wives, have all lived a life doing things for others.

You have been kind to me, like the bed of Procrustes. When the bed was too short, they stretched men to fit it; when he was too long, they cut his feet down to fit the size of the bed. You have extended to me the bed of Procrustes, but a different one. You have stretched me into stature that, believe me, I do not deserve. You members of the Bar have given me, a lawyer's lawyer, for twenty-five years making a living from members of the Bar, everything that I value, everything that I possess. The lawyers, not the lay clients, have given me my livelihood and my prestige. It is only fair that I pay back in small measure the many rewards that the members of the Bar have heaped upon me.

The law, while it is a jealous mistress to me, is in addition to that, a wonderful wife whom you grow to love more and more as the years go on; and the men in the Bar who are in their 50s and 60s know far beyond the younger men the

meaning of my words. If, by attending here, I have given you just one new idea, given you one bit of information that you never had before, ladies and gentlemen, I am very thankful that I had the privilege and pleasure of appearing before you. Thank you. (Applause)

PRESIDENT RACINE: I am sure we all appreciated that tremendously. It was an experience I feel that will not soon be forgotten, so far as I am personally concerned.

There is the lawyer's luncheon at the banquet room at the Lodge, and there is the ladies' luncheon on the Terrace of the Lodge at this time. Don't forget the meeting for this afternoon will convene at two o'clock. There will be a door prize again this afternoon, as there was this morning. We will recess until two o'clock.

(Recess 12:35 p.m. to 2:00 p.m.)

PRESIDENT RACINE: Mr. Larson, the chairman of the Resolutions Committee, has an announcement before we commence the formal meeting this afternoon. Mr. Larson.

MR. LARSON: Thank you, Mr. President. I announced at the meeting this morning, as chairman of the Resolutions Committee, that the committee would hold a meeting, and assumed that my announcement would indicate that it was that committee which would meet in one of Mr. Racine's rooms at four o'clock this afternoon. That room number is 366. I apparently neglected to announce that it would be just that committee that would meet there. I know that with the gracious invitation as extended you would all attend, but there will be refreshments served! If, however, you have a resolution, or if you represent some group which intends to present a resolution to the Resolutions Committee, would you please bring your resolution to that room, 366, in the Lodge, and have the resolution written in resolution form.

PRESIDENT RACINE: If any others are outside the Opera House, we would appreciate it if they would come in at this time. We have a few more registered than seem to be here this afternoon.

The Committee on Continuing Legal Education has distributed to you a questionnaire which they would greatly appreciate your filling out yet this afternoon, and leaving at the rear of the Opera House when you go out after the adjournment of this afternoon's session. It would be tremendously helpful to the committee to know the topics which the majority of those attending the meeting want. Since those attending the meeting more or less determine the policy for the future year, we will have to assume that those in attendance are representative of all the lawyers in Idaho. Your assistance in filling out this questionnaire will determine the expenditure of moneys as to the continuing legal edueation program. That constitutes one of the reasons for the inerease in license fees, so you will appreciate our interest in having you fill out the questionnaire.

It is our distinct honor to have the President of the American Bar Association with us during our annual meeting. Mr. Loyd Wright is a practicing attorney in Los Angeles in a firm there. He has been interested in Bar work and legal work for a great number of years, and has participated in the American Bar Association activities for that numher of years that he has been in active practice. He is the current president of the American Bar Association, and has felt it necessary and desirable to meet with as many lawyers throughout the country as possible. He very graciously accepted our invitation to this meeting, and I am sure we are just as bappy in having him here.

Mr. Loyd Wright. (Applause)

SPEECH OF MR. LOYD WRIGHT

Thank you, Mr. President, and distinguished members of the Bench. Ladies and gentlemen of the Idaho Bar. May I first have the privilege to thank you all for your gracious hospitality extended Mrs. Wright and me, and for the opportunity of attending your annual meeting. I would like to make a confession. I have been going around the country these last sixteeen years and telling them that there is no place in the world to hold an annual meeting of the Bar Association like your Sun Valley, and as of last Wednesday evening, when Mrs. Wright and I drove in here, I hadn't changed my mind. We have been east and south, and how refreshing it is when somebody says there is a hill or mountain, to be able to see something over ten feet high.

I had intended, when I received your invitation to talk with you and visit with you, to talk about the lawyers' obligation in government, but your distinguished governor took care of that. Then I thought per chance I might talk about the international field, try to pierce the horizon and see what we must do to avail ourselves of our opportunities in that area, but your distinguished Dean is going to take care of that this afternoon. I thought perhaps I would tell you something of the American Bar Center and American Bar Headquarters, but Paul Ennis has told me that he is going to run a motion picture in which the cast will, I am sure, be of much more interest to you than myself. By the way, that picture is made by the Public Relations Committee of the American Bar Association. It is our first effort to try and have a film to disclose to the laymen as well as the lawyer our functions in Chicago and our purposes and aims of the American Bar Association.

I had thought, too, that perhaps I might delve into the development of your state and my state, California. We have a great deal in common, but I hope that you don't listen or permit your chambers of commerce to attract so many people to this state that your natural beauty will be encumbered by smog, too many people, too many homes, or too many factories; and I believe that you will have a problem, because I note that you are fifth in the nation in water power resources and sooner or later these fellows who are ever chasing the almighty dollar are going to catch up with you and build factories that will mar the beauty of your state.

There are a great many activities of the American Bar Association that will be explained to you, as I said, on the film, but the American Bar Association must render its services in fields that the local or state bar associations does not cover, or else it does not justify itself. We realize, of course, that one of our prime objectives is to render all possible public service which is contemplated to improve the administration of justice at all levels of government. We exercise a catholic influence on state and local associations, and by direct action render service more and more at the national level. May I say to you that there isn't a week goes by but what the president of the American Bar is requested by the Congress to have someone appear on its behalf at Washington, and give the position of the American lawyers on some proposed legislation.

I might tell you that yesterday morning I spend practically all morning on the telephone trying to get someone to slow Congress a bit on social security. The American Bar House of Delegates, as you know, is the policy making body, and at our meeting in February, in Chicago, they voted almost unanimously to ask the Congress to include the lawyer on a voluntary basis. As of day before yesterday, Tuesday, for some unknown reason, the committee reported out a bill that includes the lawyer on a compulsory basis.

I have traveled most of the United States in the last ten months, and it is my honest opinion that the average lawyer, ninety per cent of them, do not want to be included on a compulsory basis, but that ninety per cent of them would like to have the opportunity and would request the Congress to provide for voluntary inclusion.

As president, I suggest to you that if the Idaho State Bar has not yet taken a position, that you might consider taking it at this meeting, and if you have a definite position, whichever way it may be, to let your representative in the House, particularly (because it is on that side now), and subsequently the Senate, know what you gentlemen want as members of the Bar in Idaho.

I would like to give you another illustration of the work that we do on a national level. You will remember I am sure, that recently the Congress raised the salaries of the Members of Congress and of the federal judiciary. This culminates a three-year effort of the American Bar Association to rectify an injustice of many years standing. Obviously this was an accomplishment of lawyers from throughout the nation working through the past three years. I don't know what it is that gets into the American people that we expect public servants to render service for so little in comparison to what they could obtain in free enterprise, and I am happy to say that I have already noted through the states the fact that the states are commencing to consider raising the compensation and extending the term of office of their judges. I know of no people who have been more badly treated, unless it be the school teachers and the police, than the judges throughout this nation. I believe that the laymen are presently of the frame of mind that they recognize a man is worthy of his hire no matter what occupation he may follow, and that a public servant is entitled to something commensurate with what he might obtain in private enterprise.

There are a great many things that I might discuss with you, but I sat at the table and heard Dean Spaeth make a four o'clock golf appointment, so I am going to visit with you rather briefly. I am not so concerned about the future of the profession of law in all of its technical aspects. Lawyers, students, bar associations, judges' law school. Law School Review, and a vast number of legal publications of all types, each concerned with the technical phases of the profession, will ever cause us to march forward in the improvement of our laws and the administration of them.

I call to your attention that the first purpose law specified in the Constitution of the American Bar Association reads as follows: "To uphold and defend the Constitution of the United States and maintain representative government." There have been of late many things that have disturbed our people about the administration of justice, and they are understandably confused. One of the most urgent matters before the public today is the proper function and use of the Fifth Amendment. This matter profoundly affects the safety of this country, and we as lawyers have a grave responsibility to see that it is placed in proper perspective.

I would like for just a few moments to discuss not necessarily my viewpoint, but what I honestly believe is the opinion that the lawyers throughout the nation with whom I have had the opportunity to visit believe in.

The paragraph that constitutes the fifth article of our Constitutional Bill of Rights contains within its brief compass a surprising number of our most precious and most effective guaranties of individual freedom against the collective power of the Federal Government. But in the light of recent events a reference to the

Fifth Amendment is not likely to call to mind the guarantee of indictment by a grand jury, the protection against double jeopardy, the prohibition against the taking of private property for public use without just compensation, or even the fundamental assurance that we shall not be deprived of life, liberty or property without due process of law. Today when we hear of the Fifth Amendment, we naturally think of that clause of the amendment that reads: "No person . . . shall be compelled in any criminal case to be a witness against himself," and it is of course this clause that I mean to discuss this afternoon.

The investigation into communist infiltration and subversion conducted by committees of both the House and the Senate in the past few years have revealed a number of once-trusted government officials and employees, newspaper reporters, of public school teachers and university professors, and even of officers of the court—lawyers—who have refused to answer questions regarding their connections with the communist conspiracy upon the ground that answers would implicate them in criminal activities. The sinister implications of these claims have once again aroused the public interest in the privilege against self-incrimination, now as an aspect of the struggle for national self-preservation. More and more people bave become directly concerned with this privilege and seek to learn just what a claim of the privilege can fairly be taken to mean. The widely-publicized hearings have served to introduce the layman to the Fifth Amendment, but they have failed to provide him with more than a nodding acquaintance.

As the only group in society trained and experienced in the interpretation and application of legal rules, the lawyers occupy a special position in the American scheme of things. Like all good coinage this special position has two sides, an obverse and a reverse, if you will. On one side is our unique privilege to pursue the practice of the arts and skills in which we have been trained. The reverse of this coin, and the concomitant of this privilege, is our obligation to the public to employ our training in the best interests of the community at large. It is, I believe, our clear responsibility to do what we can to explain to the citizenry the legal aspects of the great public issues of the day. Our duty to dispel misconceptions about legal rights is especially heavy when those rights find their origin in the Constitution. A system of government which puts its faith in the courts for the protection of individual liberty must ultimately find the vindication of that liberty in the hands of the lawyers. It is therefore our responsibility to speak out to remove the perplexities which belabor the public coneerning the Fifth Amendment.

What then should we tell the publie about the privilege against self-incrimination? The purpose behind the privilege against self-incrimination is the protection of the innoeent. The impossibility of divorcing the question of guilt from questions of the fairness of the proeedures by which guilt is determined is a fact that lawyers constantly live with. It follows that if we would protect the innocent we must also shield the guilty. There is no easy answer to this dilemma; a ehoice between ideal efficiency and ideal fairness has to be made. The choice clearly reflected in our legal system is that efficiency must be sacrificed.

Perhaps this purpose to proteet the innoeent ean be seen more clearly if we take a brief look at two of the subsidiary purposes ineluded within it. First, there is the purpose to protect the innocent members of society at large from the uncalled-for invasion of privacy which would attend the use of indiscriminate periodie inquisitions by the prosecutor as a means of discovering whether crimes might have been eommitted. The underlying assumption is, of course, that the privilege not to disclose will make wholesale interrogation valueless to the prosecutor, and so will deter him. In this aspect, the privilege against self-incrimination

is closely akin to the individual's constitutional right, guaranteed by the Fourth Amendment, to be secure in his property from unreasonable searches and seizures.

A second subsidiary purpose of the privilege, and perhaps a more significant justification for it, in the present day, is the protection of the innocent from the coercive measures of the overzealous enforcement officer. We bave long since abandoned torture as an accepted means of discovering the truth; the rack and the screw are no longer regarded as proper instruments for the implementation of the policy of the law of crimes. By requiring that evidence of crime come from sources other than the mouth of the accused, we remove one temptation from the police to employ coercive means. If every man has his price, so every man has his breaking point, the point where it is easier to give the interrogator the answer he seeks than to insist upon the truth. The high development of the science of brain-washing in the hands of the communists bears eloquent contemporary witness to the wisdom of a rule which reeognizes the unreliability of self accusation.

If we are not ready to repeal the Fifth Amendment, then it seems to me essential that we clear up the confusion which surrounds it, and make certain that the privilege is not misused to coneeal more than is necessary to bonor the constitutional liberties at stake. Let me suggest that our thinking about these problems can be clarified if we divide them into classes. First there are the problems faced by the person who has been summoned to appear as a witness before a court or an investigating body, and who is in doubt as to the scope of his right to refuse to answer and as to the wisdom of invoking that right. In a separate category I would put the problems faced by an employer who learns that one of his employees has for some reason claimed the privilege against self-incrimination. If the reluctant witness happens to be an employee of the Goverument, each of us, as a citizen, of course, shares in this responsibility of the employer.

In the first category, of the problems which eonfront the prospective witness and his lawyer, the basic questions have largely been settled in the courts, and although there may still be trouble along the edges, the general answers are relatively easy. The Constitution of the United States does not leave the protection of the individual to vague and lofty deelaration of the rights of man. A freedom stated so broadly that eacb of us can find in it the meaning he wishes is meaningless as a guide to aetion in concrete cases. The draftsmen of our Constitution wisely chose not to rely on sueb generalities, but instead provided protection for the individual in the form of specific legal rules, of definite and limited extent, and enforceable in the courts. And so it is with the privilege against self-incrimination. It is not intended as a shield to anyone who for any reason does not choose to cooperate with the duly constituted authorities. It is rather a legal rule that tells us simply that a man eannot be compelled to disclose under oath facts which might be used against him in a prosecution for the commission of a crime. Remember that, "facts which might be used against him in a prosecution for the eommission of a crime."

The witness can properly decline to answer only if there is a danger of a criminal prosecution. That the required disclosures will be embarrassing to him, that they will subject him to criticism or expose him to opprobrium, that they will impair his social standing and cause bim to lose his friends, or even that they will cost him his job, all these, separately or in eombination, are not enough to entitle a witness to refuse to reply.

A situation which has caused confusion and needs elarification is the case of the witness who is willing to answer any question relating to him and to his

own activities, but who is opposed to supplying any information about his friends and associates. He may be understandably reluctant to subject them to the discomforture of being called before a committee, or to expose them to the risk of prosecution, but the privilege against self-incrimination does not justify his position. The privilege is personal; a witness has no right to refuse to incriminate others. Indeed, if the witness knows that his associates have committed a serious crime, the refusal to disclose that fact makes the witness himself guilty of the crime of misprision of felony. In the more usual case, the witness probably believes his associates to be entirely innocent, but that is a judgment that he is not legally entitled to make.

One of the most persistent of the popular misconceptions concerning the Fifth Amendment is the notion that a witness is entitled to invoke it, or indeed that he is morally bound to invoke it, not because of any danger of self-incrimination, but rather as a gesture of protest against the conduct of legislative investigations. Sometimes this notion springs from the oversimplified dogma that the Government has no power to inquire into any citizen's political beliefs and loyalties; in other cases the supposed right to resist passively is attributed to unfairness in the operations of a particular legislative committee. This position, however based, carries disturbing implications. If generally accepted and followed, it would go far toward destroying the investigating powers of Congress. It should be self-evident that as the branch of government invested with responsibility for the formulation of national policy and for the determination of how that policy should be effectuated, Congress has not only the power but also the duty to inform itself for the intelligent discharge of its functions. Moreover, as the branch of the Federal Government most responsive to the popular will, Congress has the right to appeal to the public for support of its policies by making its findings known. A democracy can work only with a well informed electorate. As Woodrow Wilson said, "The informing function of Congress should be preferred even to its legislative function."

Against this need to let the people know must be balanced the individual's claim to privacy. Traditionally we value freedom of belief as among our most fundamental rights, and we abhor efforts at thought control. It is probably unwise in ordinary times for government to inquire into the political theories espoused by an individual, but these are not ordinary times. When a political belief of a particular kind threatens the violent overthrow of the government, and is backed by a conspiratorial organization within our borders and by a mighty military force poised for action abroad, some inquiry into political beliefs must be tolerated if we are to survive. The Constitution does not compel us to sacrifice the freedom of the nation for a sanctity of an individual's thoughts.

It is futile, of course, to insist that legislative investigations have always been scrupulously fair, or that witnesses have never been mistreated. It is not surprising that on occasion the political branch of government behaves politically. Taking into account the laws of human nature, occasional injustices are certainly not improbable. It is crystal clear that unfairness in the conduct of such hearings is not confined to any particular committee, nor to any political party, nor to any era of our history.

The witness who invokes the Fifth Amendment without a foundation in fact for his claim fails in his obligations as a citizen and abuses a precious constitutional privilege. Beyond this, as Chief Justice John Marshall reminded us almost a century and a half ago, the statement of the witness that he fears a criminal prosecution when in fact he does not is "in conscience and in law . . . as much a perjury as if he had declared any other untruth upon his oath."

There have been, as you well know, decisions in our upper courts that have

gradually enlarged the intended purpose of the Fifth Amendment, and I think you and I are perhaps to blame. When we see our high courts, including our Supreme Court, substituting for the annual American foundation of law, preeedent, ideologies and sociallogieal philosophies sometimes apparently very remote from the case, you and I should protest. This right accrued to us from England. It arose in the early Seventeenth Century. It was in protest to the star chamber methods. It was because of the injustice that the Englisb people suffered. It is important that all hut two of our states considered it of such importance to the people that they included it in their constitutions.

Now, because I do not wish to impose on any other person's time, I want to devote just a few minutes to two of the most controversial questions raised by the use of the Fifth Amendment. The first of them arose in the field of education, both puhlic and private. We have heard much in these discussions about academic freedom, but I venture to suggest that no mention of it will be found in the Constitution. What is meant. I think, is simply this: The teacher's job is basically to seek the truth. With no economic axe to grind, he can afford to be objective and to consider all possible choices. We deplore the communist device of laying down the lines of orthodox theory in such fields as science, art, economics and religion. We believe that in the long run we will survive only if we are willing to test every principle and tradition in the crucible of reason. We must be careful, then, not to mistake the inquiring mind for a sign of disloyalty. On the other hand, it is the teacher's fundamental obligation to be objective and to accept the truth no matter where it may be found. If he owes a supervening loyalty to a political dogma, and finds his truth in a party deeree, he lacks the basic qualifications of the teacher. His loyalty is essential in view of the influence he exerts upon the thinking and beliefs of the immature minds committed to his training. The delicate problems posed by these considerations is how to eliminate these grave dangers of disloyal teachers without destroying the spirit of free inquiry which is the essence of education. But the questions of whether an investigation into the loyalty of teachers should be eonducted, and of whether the teacher should cooperate in such an investigation once it is begun, are vastly different. The use of the Fifth Amendment is inconsistent with this duty of candor, and accordingly a claim of the privilege should, as stated by the Association of American Universities, "place upon the professor a heavy burden of proof of his fitness to hold a teaching position."

Even more vital than the teacher to the preservation of liberty under law is the lawyer, and it is entirely appropriate that we should end this discussion with the matter of keeping our own house in order.

It seems to me that we lawyers too frequently lose sight of the fact that to be a member of the Bar and to practice law is not a right, but a high privilege dependent upon continuous exacting conditions. It is obvious that the distinction between a person's status as an individual and his status as an attorney and officer of the Court is of primary importance. The rights of an individual may or may not be consistent with his professional or official status. Where, however, the individual's rights are inconsistent, a choice becomes necessary either to forego the right or relinquish the profession. When the assertion of the eonstitutional right by one who is also an attorney to seek protection against self-incrimination under the Fifth Amendment is present, this seems to me to be completely inconsistent with bis high status as a member of the Bar and an officer of the court; and the implications arising therefrom are sueh as to destroy the privilege of license. They are repugnant to the oath taken at the time of entering the Bar, and negate the presumption of the fitness to continue as a lawyer by reason of lack of loyalty as displayed by the inferences and the requirements of frankness at all times.

The eboice of the personnel of a Bar rests with the state, but the court has a continuing responsibility to re-inquire and re-determine from time to time, and particularly when any suspicious circumstances arise, the fitness of an attorney to continue.

It is difficult to conceive any investigation more important to the administration of justice and to the government, both state and national, than whether a lawyer, an officer of the court, a privileged person by reason of his license from the state, is affiliated or is connected with the communist party or other subversive organizations or subversive persons. Such an inquiry involves the possible future existence of our nation and the security of all of our people. Loyalty to nation alone should be a sufficient incentive to speak truthfully and frankly wben properly interrogated, but the inherent loyalty that an individual owes to his country added to the greater responsibility of being an officer of the court, and therefore a trustee of the future privileges of our citizens, certainly compel frankness and truthfulness in this regard. While there is a constitutional right not to testify if a witness in good faith believes his testimony might incriminate him, this right flows to a person as an individual. It never was intended to protect a witness in an office, and it cannot prevent the court from determining whether the witness publicly invoking the Fifth Amendment has not cast such suspicion on his fitness as an officer of the Court that be should no longer enjoy the privilege. The court may not only withdraw its certification of him to the public and strike his name from its roles, but it has the duty under such circumstances to do so.

I repeat: It is the profession's obligation, and it is the profession's responsibility, to explain to the layman the full import of pleading the Fifth Amendment. People are confused, and rightfully so. The area in which you and I will agree that it is proper to plead the Fifth Amendment in this atomic age is in court. We must not do away with the privilege for those who have a legal right to plead it, but we must stop this damnable use of it by every Tom, Dick, and Harry to destroy the very Constitution that protects him, by being subversive and saying that you and I, as American citizens, have not the right to demand that he tell the truth.

I would be remiss in my duty to you good people of Idaho were I not to commend you for the splendid representation you have in the House of Delegates, and in all of the accomplishments of the American Bar. Lowell Merrill is your representative on the Board of Governors. Judge E. B. Smith has been in the House. It has been my privilege to work with him for a number of years, and you have as fine a representative in the American Bar Association in these two gentlemen as you will find in any bar assoeiation in the nation. I thank you (Applause)

PRESIDENT RACINE: Thank you very much, Mr. Wright. It is a great honor to have the president of the Ameriean Bar with us, and I am sure we enjoyed and received benefit from the talk you gave.

I neglected at the commencement of this session to call for door prizes, and perhaps it is just as well, as maybe there are a few more here now than at the commencement of this afternoon's session. Paul, will you draw? The door prize this afternoon is donated by Bobbs-Merrill, and is "Modern Trials," by Belli. No. 1. He is not present, so we will draw again. No. 16, Judge Anderson.

The film which Mr. Wright mentioned is "Dedication to Justice," arranged for and sponsored by the American Bar Association. It is a film all lawyers should be proud of, and will help them to be proud of their profession when they see it. At the conclusion of the film Dean Spaeth will be introduced by Mr. Willis Sullivan. (The film was then shown)

MR. WILLIS SULLIVAN: Mr. President, Members of the Bar, and Guests. I think that perhaps the reason President Racine asked me to introduce our speaker is beeause many years ago, at least so it seems to me, I attended Stanford. I did not, however, enter the Stanford Law Sehool, although it had an exeellent reputation at that time. I must confess the reason was that I was having such a wonderful time in my extra-curricular aetivities that I thought it would be an imposition to ask the law school professors to instruct me in law, and would have been an awful waste of their time.

Your Commission is extremely pleased that we bave been able to secure as a speaker at this eonvention a man who is not only a distinguished educator, but wbo has had broad experienee in government, particularly in foreign relations fields.

It is with great pleasure that I present to you Carl B. Spaeth, Dean of the Stanford Law School. (Applause)

DEAN CARL B. SPAETH: Mr. Sullivan, Mr. Racine, Members of the Idaho State Bar Association, Ladies and Gentlemen: I want first, on behalf of Mrs. Spaeth and myself, to express our very deep gratitude for your kindness in inviting us to be with you these days. Your greetings have been warm and friendly yesterday, and we look forward to enjoying this evening and tomorrow just as much.

This is our first visit to Idaho. I don't suppose that a law school dean gets around the country quite as much as the president of the Ameriean Bar Assoeiation, but he does get to quite a few plaees. Through the years I have managed to get to all of the states of the Union. As I have gone around I was reminded of the description of Mr. Molotov's trip across the country. You recall he went by train. I think he saw a lot, and there was a lot more he could have seen. It would be good for the Russians and good for the world's peace if a lot of them could travel around and see the great nation, its people and its resources.

This is near the end of the forty-eight, but I must say, I would rank it very high in the list of the many plaees we have been.

My talk, as announeed bas the sound of formality, and a definitive quality about it. I certainly am mueh too realistic to pretend to be very formal. I think anyone who is honest and speaks on the problem of foreign affairs today must eome with humility, not with the definitive and not with the final. It is in that spirit that I would like to take the time to speak to you.

You have heard a lot of speeches, and I have the same feeling as I got down in the end of the Smorgasbord last night. You have been listening for a long time—and I had been eating for a long time by the time I got there.

The tenth anniversary meeting of the General Assembly of the United Nations has been held in San Francisco. More than a decade has passed since, in mid World War II, the Department of State, in consultation with members of both parties in the House and Senate, began to work on the United States' draft of the charter of a new world organization. It was at about that time, roughly 1940-43, that our leaders and our people—the great majority of both parties—began to aceept the proposition that we would not again, we could not again, withdraw to the isolation and illusory security of our eontinent. If, following the use of guided missiles and long-range bombers in Europe, there had been lingering doubts concerning the illusory character of the security of isolation in the twentieth century, those doubts were put to rest for most of us when the test of the atom on New Mexico's desert was followed by Hiroshima and Nagasaki.

For many, the decade since the San Francisco conference bas been a *long*

time—years and years of frustration and disappointment. To many, these years have brought little save disillusionment eoneerning a eharter that was drafted in great hope for early realization of a peaeeful world. For others, a small minority, this decade of the mid-twentieth eentury has been a relatively short period of time. In view of this minority, the nations of the world, and the United States in partieular, have learned a great deal in ten short years about the strengths and weaknesses, about the feasible and the overly ambitious, for a world-wide enterprise created to maintain the peace.

When a period of fervent, deep-felt hope for a great, new human undertaking is followed by widespread, bitter disillusionment, it is not surprising that thoughtful men should begin to probe for the reasons, the reasons both for the exeess of hope and optimism and for the sequel of disappointment and disillusionment. Reeently some of the most able persons who have labored in the field of foreign affairs, men who came to learn about such affairs through long years of doing tough daily jobs on the international scene, have been looking back and have begun to state a philosophy of foreign policy for Americans. If what they submit as a philosophy of foreign policy is not acceptable to Americans generally, they nonetheless serve us well in their challenge that our government and people would do well to try as best they can to develop and express a foundation for judgment. These men do not seek to prescribe a specific policy for dealing with the Soviet Union, or with any of the other urgent problems which now face us. Because they are practical men, they are, of course, very much coneerned with the concrete problems of our time. It is their conviction, however, that a well-coneeived and comprehensive philosophy may greatly improve our disposition of the tasks of every day. In his introduetion to his book *Realities of American Foreign Policy*, George Kennan wrote:

"It is my hope that I may succeed in expressing to you what may be called 'a personal philosophy of foreign poliey'." In his introduction to Charles Marshall's provoeative contribution to the same effort, *The Limits of Foreign Policy*, President Everett of Hollins College, wrote:

> "The claims and counterelaims, the charges and eountercharges, have left students and the general public with an extremely *shaky* foundation, for judgment about some of the most serious questions of our day."

The key phrase here is "foundation for judgment." It was used as Kennan used his phrase "philosophy of foreign poliey."

What is your foundation for judging the particular case, the issue of the day, or month, or year in the foreign field? What is your philosophy of foreign policy?

Today I propose to use the Kennan and Marshall books as points of referenee for what is best described as an exereise in working toward a *philosophy* and thus toward a *foundation for judgment* with respect to foreign affairs.

George Kennan and Charles Marshall were colleagues on the Poliey Planning Staff of the Department of State. Their service ou that staff spanned a period of seven years—seven critical years—from 1947-1953. Kennan brought to his Policy Planning work twenty-five years of career service, much of it in Eastern Europe and the Soviet Union. Marshall had been a consultant to the House Foreign Affairs Committee in the 80th and in the 81st Congress, had taught Political Science at Harvard and had wide experience as a newspaperman. Walter Lippman has said of George Kennan:

> "The most learned of our officials, the most experienced of our scholars."

Charles Marshall holds his own with Kennan as a scholar and his experience has been more varied. Marshall definitely outranks his colleagues as a wit and raconteur of homely and delightfully apt tales and parables. Their views vary in detail, somewhat in emphasis. But taken together, they reinforce and complement one another in the expression of a coherent philosophy, an integrated foundation for judgment. Adherents to the new philosophy are many. The influence of this school of thought will be great.

What are the principal components of the new philosophy?

A constantly recurring theme, the underlying plea to all of us, is that we recognize that the problems with which we are faced in the world arena are not going to be resolved today or tomorrow by a perfect formula, a single treaty, a solemn declaration, a conference at the summit, at Geneva, or anywhere else. Problems in the foreign field, like problems in the home, the city, the state, and the nation, are going to be with us all of our lives. We recognize and accept the perennial character of domestic problems, whether they involve the family, the community, the farmer, labor or capital, or the role of the state within the nation. As we go from one congressional campaign to another on purely domestic issues, we struggle as our fathers struggled before us with such problems as those of taxation, power, education, utilities, and labor. But, at least until very recently, and it is true today for millions of our countrymen, we take an entirely different view of international problems. Here we reveal our underlying attitudes by referring to international problems as headaches, and, of course, one ought to be able to cure such a passing annoyance with the headache powder.

As one writer has put it, we must "give up the long love affair with the *simple* solution." As a people we have a healthy skepticism about the state's role in domestic affairs; we have, at least in precept, serious doubts concerning the wisdom and efficacy of expanded public authority at home. But turn to problems across the oceans and the same human and all too fallible instruments, public authority and the men who execute it, are expected to provide the answers—quickly and permanently.

A second theme, closely related to the first, and helping to explain "the long love affair with the simple solution" is expressed in the title of a recent book, "The *Limits* of Foreign Policy." In our deeds but, perhaps fortunately, more often in our words and in such pronouncements as those with which Senators and Congressmen punctuate the debates of the Congress, we Americans have appeared blissfully unaware of the possibility that there might be *any* limits to what we can do in the foreign field. There has been a great American illusion concerning our power to affect matters *outside* the United States. We charge that "The Democrats lost China," or "The Republicans lost Indo-China." But neither China nor Indo-China was *ours* to lose. We must face up to the sobering fact that beyond our frontiers, our power and influence, while great, are subject to sharp and definite limitations.

Why have some of us been caught by the illusion of American omnipotence, not only at home but abroad? The answer is, of course, to be found in large part in our history. We have had a glorious past. We conquered a continent partly by force but in large part by astute bargaining and diplomacy, the Louisiana Purchase, Florida, Alaska, the great Southwest. With the not insignificant aid of the British Navy, we established as inviolate the Monroe Doctrine and the independence of the Western Hemisphere. If we could do all this, and in the twentieth century win two World Wars, why should *we* acknowledge circumscribing limits in relation to Europe, Asia, or the Near East?

A third element in the philosophy eomes as a warning that no group of men, however wise, experienced and well informed, however powerful in resources, public and private, can hope to blueprint the future among nations—even for a relatively short time ahead. "Foresight in foreign poliey—the planning function," says one writer, "is best if seasoned with contingeney and a recognition of human limitation." The variables are too many and they are human as well as national. The state is still "man written large." No test tube will hold even a small segment of the mass of data which must be eomprehended for the detailed long-term planning which so many of our people seem to expect.

One writer tells of the very demanding lady in Milwaukee who asked him to outline American foreign policy for the next ten years. When he replied that he had no crystal ball, she reduced her demand to five years. When he stressed that the elements which would determine our policy had their origins beyond our frontiers, and that there were many variables and unpredictables involved in any real problem, "the lady answered with seorn for the Department of State for not having worked out a formula for eliminating tronble."

To appreciate the great extent to which a foreign policy, attempting to cope with the future, must be speculative and chancy, is *not* a source of weakness. To the eontrary, as Edmund Burke put it, "We can never walk surely but by being sensible of our blindness."

A fourth point of emphasis is the plea that we be true to ourselves, that we measure up at home, and we will be stronger abroad. The McCarthyite hysteria in a country more nearly safe from Communist revolution than any on this earth suggests to the rest of the world some deeper inner crisis, some gnawing fear of ourselves. National bchavior is, by this view, all of one piece: foreign policy is only a manifestation of the "inner development of our civilization." By this view "no iron curtain could suppress, even in the innermost depths of Siberia, the news that Amcrica had shed the shackles of disunity, confusion and doubt, had taken a new lease of hope and determination," and had rededieated herself to those first principles which for so long had made her the inspiration for people everywhere.

What *should* our *philosophy of foreign affairs* include under the rubric: the people, the legislature and the executive? One extreme, identified with the advocates of the Bricker Amendment, would cripple the federal executive, and shift a major part of the power to the legislature, state governments and thus to a diffused power among the people. They would return us to the Articles of Confederation. The fact that the Bricker movement almost succeeded in the Senate, and is not dead yet, makes clear that, even if it were desirable, there would be little support for the other extreme—for greater delegation to the executive either in law or in practice. I am one of those who would leave the Constitution as it is. As to operations under the Constitution, I would accept the fact and welcome the implications of a great democracy's, a great people's concern with both the general and the partieular of foreign policy in the mid-twentieth century.

The Congress and the people must be fully informed. Their views must be respected. But since our Constitution gives the Chief Exeeutive and his Cabinet primary responsibility in foreign affairs, the Chief Executive and his Cabinet must steadily provide leadership for an informed people. To say that Congress and the people have a voice in Foreign Affairs is not to say that the Secretary of State should be a messenger boy for elements in the Congress, or that our foreign policy should respond to the politician's interpretation of the latest Gallup poll. Too often, both under the Democrats and now under the Republicans, the Chief Executive and his Secretary of State have been followers, not leaders. They, not the Congress,

not the people, have been responsible for that impact, deplored by Kennan and Marshall, that disproportionate impact of popular emotion, prejudice, and parochialism on both the general and the particular in our foreign affairs.

When I speak of *leadership* in foreign affairs, I have in mind the President's personal fight against the Bricker Amendment. When I speak of *followership* in foreign affairs, I have in mind the bowing and scraping in the executive braneh whenever a certain vocal minority in the Senate lays down what it deems should be our Asian policy *for all time to come* both in and out of the United Nations.

I can best summarize what I have tried to say thus far by suggesting the relevance of each point already made to the United Nations and International Law.

First, neither the United Nations nor International Law, no single act or series of decisions in either forum, is going to put an end to the problem of war and peace. The United Nations and International Law, like the national government and domestie law, combine to provide a forum and a proeess of adjustment, through which men's problems can haltingly and imperfectly be eonsidered, debated and sometimes resolved.

Second, just as there are limits to Ameriean power in Europe and in Asia, so there are limits to American power, limits for Ameriean foreign policy, in the United Nations. We will destroy the United Nations in violation of International Law if we conceive it to be no more than an instrument for the expression of American power. We will destroy the United Nations through disuse if we refrain from using it as a forum save when we are sure that we will have our way.

Third, as we plan for action through the United Nations, or through any other medium or proeess of International Law, we must "season" our planning "with contingency and a reeognition of human limitations."

Fourth, we will strengthen the United Nations and all free peoples working toward the rule of law among meu, if we rededicate ourselves to the fundamentals of the Ameriean Way right here at home. New strength beyond any that eould eome by formal adherence to a covenant of human rights was given to the United Nations and to free peoples everywhere when Chief Justiee Warren read the unanimous opinion of the Supreme Court of the United States in the segregation cases. (Applause)

PRESIDENT RACINE: I believe we all appreciate the considered and thoughtful talk given to us by Dean Spaeth. The subjeet is one that, whether we are lawyers or in any other walk of life, all of us have a great and deep concern.

This coneludes our formal portion of the meeting. The morning session tomorrow will be the business session. We have the report of the Canvassing Committee at this time, as to the new commissioner for the Eastern Division. Would the chairman of the Canvassing Committee come forward, please.

MR. CHARLES SCOGGIN: Mr. President, the result of the eanvassing for the Eastern District Commissioner shows 61 votes cast, and 60 votes were cast for the new commissioner. One, which I suspect he cast, was cast for another. I will ask your permission to have Mr. L. H. Merrill to bring your new commissioner from the Eastern District forward and introduce him.

MR. L. H. MERRILL: Mr. President, and Ladies and Gentlemen: The Eastern Division is proud to bring to you a fiue lawyer, a gentleman, and a good friend to us all, Gilbert St. Clair of Idaho Falls. (Applause)

MR. GILBERT ST. CLAIR: President Racine, and Members of the Bar: I would like to thank the members of the Bar of the Eastern Division for their support. I also have a deep appreciation of the work and responsibilities that the commissioners and our great secretary, Paul Ennis, have. I have served on the Examining Committee for the past three years, and in the words of President Racine this morning, I hope that at the end or conclusion of my term I can say to you, as he did, "that you have been fortunate to have had a very excellent commissioner." Thank you. (Laughter and applause)

PRESIDENT RACINE: Mr. St. Clair took my remarks a little more seriously than I meant them! Now, we will adjourn the meeting.

(Recess at 4:23 p.m.)

Saturday, July 9, 1955

PRESIDENT RACINE: The meeting will please come to order. We have a number of sets of books to be given away. We have one set of Cowdery's Forms. We have the West's United States Supreme Court Digest. We have two copies of The Lawyer from Antiquity to Modern Times, three copies of Horno's "Legal Education in the United States," donated by Bancroft-Whitney, a two-volume loose-leaf service on income taxes by Commerce Clearing House, five annual subscriptions to the Idaho Voter, and two subscriptions to the Idaho Capitol Reports, which is the advance sheet service from the Idaho Supreme Court. We also have a set from Prentice-Hall. They haven't advised us exactly what it is yet, but there will be a certificate awarded to whoever has the number called. From the attendance practically everyone should get some prize before we are through. If there are any others out there would they please come in.

Number 104 for Cowdery's Forms. Mr. Hugh Maquire went fishing this morning. Oh, no he didn't. (Laughter)

This will be for a subscription to the Idaho Voter. No. 49. You will receive it, Mr. Merrill. A note will be made and the publishing company will be informed.

This will be for another set of the Idaho Voter. No. 78, Carl A. Burke. No. 51, Sam Kaufman. No. 28, Pat Arney. No. 48, L. F. Racine. That is myself, and I am disqualified. No. 68, Gilbert St. Clair, disqualified, as he was elected last evening. No. 26, Judge Norris, not present. No. 43, Mr. Ferguson. We will notify the publishing company and you will receive the subscription.

No. 76, Willis Sullivan, disqualified. No. 80, Beverley Bistline. You will receive a subscription to the Idaho Voter.

The Capitol Report, the advance sheet, No. 48, Mr. Alden Hull.

We are going to take an unfair advantage of you on the rest of these publications, particularly the Supreme Court Digest, and we are simply going to have the drawings unannounced during the remainder of the morning session. We hope that it may keep some of you here.

The first report on the agenda this morning is the report of the Prosecuting Attorneys' Section.

MR. WAYNE MacGREGOR: Mr. President, Members of the Association, and Guests: The president of our association unfortunately is not in attendanee, and this was not learned until just recently . . . in fact, the first day of the meeting. It has been a little difficult to prepare a report.

The Proseeuting Attorneys' Association of the State of Idaho met on the 8th and 9th of February in Boise, at which time there were 34 in attendanee. The officials eleeted were: Lloyd Martinson, president; W. C. MaeGregor, Jr., Vice-President; Kent Power, Secretary; Nels Sahl, Treasurer. At this meeting we bad an address by Graydon Smith, the newly-elected Attorney General, which consisted mainly of an introduetory talk to the prosecuting attorneys. During the meeting we also had an address by Harlan Hill, the Federal Probation Officer for the State of Idaho, wbo submitted a legislative proposal for the prosecutors' approval after a considerable discussion.

A committee was appointed which revised the legislation to conform to wbat we thought to be practical eonditions throughout the state. The legislation as then amended was then submitted to the proper eommittee in the legislature. I might add that such legislation as enacted differed drastically from that submitted by the group.

Our Association also submitted recommendations by way of prepared legislation to the Counties and Municipalities Committee of the Senate, recommending various salary adjustments. Unfortunately this died in eommittee. However, some of the prosecuting attorneys did, through individual action of their local representatives in the House and Senate, secure some upward salary adjustments. Unfortunately, others did not.

Various other legislative proposals in relation to our criminal code were submitted to the legislature. The majority of the proposals were successfully passed.

At this meeting a committee was appointed to investigate problems of criminal enforcement, and a committee entitled Criminal Code Revision Committee was appointed with Howard Adkins, Cecil Hobdey, and Robert McLaughlin on the committee. Mr. McLaughlin was appointed chairman of the committee.

A committee was also appointed to revise our present prosecutor's form manual, and this work is progressing on schedule. The chairman of that eommittee is Howard Adkins.

I might say that funds have been appropriated, and are being used in the work of these eommittees.

The fees for membership in the Association were raised from $10 to $25, and this has resulted in a substantial increase in the Association's bank account, which helps immensely in aiding our committee work.

In an attempt to coordinate law enforcement work in respect to geographic, economic, and other similar factors, the Association has divided itself into subdistriets. The northern portion of the state, comprising that part north of the Salmon River, has fully organized itself and held its first semi-annual meeting last spring. They are now seheduled to bold another meeting at the end of this month in Coeur d'Alene. We feel that such subdivision, because of the great distances involved, will greatly aid us in our law enforcement work.

Since eoming to Sun Valley, we have had some business meetings, and have been in attendance at the present meeting. Yesterday we had a luncheon meeting and were addressed by Winston G. Taylor, superintendent of the Idaho State Industrial School. His talk was very instructive to all of us with respect to the work we carry on with juveniles. It will be of great benefit in the future.

This morning we had a breakfast meeting and round-table discussion on the

admission of evidence in criminal cases, and adjourned to the Bar meeting. Thank you. (Applause)

PRESIDENT RACINE: Mr. MacGregor, I take it the report from the Prosecutors takes no affirmative action from the body, and if there are no questions to be asked of Mr. MacGregor regarding his section, we will proceed to the next report.

We have the report of the Judicial Section, Justice Smith reporting.

JUSTICE E. B. SMITH: Mr. President, and Members of the Idaho State Bar: The Judicial Conference met the day of July 7th, 1955. There were present 12 district judges, 3 Supreme Court judges, I former justice of the Supreme Court, Governor Smylie, and Mr. Wright, the president of the American Bar Association, and members of the Associated Dailies, Incorporated.

The Governor made remarks and suggestions relating to the judges' retirement fund to the effect that a study should be made relating to the additional coverages by the fund. The plan of the fund should be enlarged to include the widow of the decedent judge; and in that connection, recommended that the plan of the firemen's fund be studied, and that consideration be given to seeking the Federal Retirement System for the judges' retirement fund as has been taken advantage of by the firemen's fund.

The press committee expressed the view generally the relations of the newspapers with the judiciary were on a very excellent public relations basis. More accuracy in reporting generally on matters of judicial import was discussed, and recommendations will be made in cooperation with the press and members of the judiciary.

Canon No. 35 came in for its full share of discussion by the press committee, and by President Wright at national level. The consensus of opinion, however, was that the canon as it presently exists and has been formulated by the American Bar Association should remain undisturbed. That was the instruction given to me to so report at the Philadelphia meeting as your state delegate to the American Bar Association.

General discussion was had with reference to general courtroom decorum. The members of the press volunteered their views that judicial salaries as presently existing in the State of Idaho were highly inadequate and should be remedied.

The indeterminate sentence statute came in for its discussion by the judges, and instances recited of deemed inequities. It was also pointed out that the present aspects of inequities having to do with the indeterminate sentence created very difficult public relations, both as far as the district judiciary is concerned, and the prosecuting officers of your state and county levels.

The Judicial Conference adopted a resolution that the chairman, who is the Chief Justice, appoint a committee of three members to study the indeterminate sentence situation, and to cooperate with Prosecuting Attorneys' Section or any other division which may be appointed by the Bar, and to present a plan of redraft at the next Judicial Conference. That is deemed a very important subject with reference to public relations.

The Conference adopted a resolution that the Chairman appoint a committee to make a study of the retirement plan, with cognizance to be given to the Governor's suggestions, and that a redraft and other pertinent suggestions be presented at the next Conference.

A detailed discussion was had relating to the proposed Rules of Civil Procedure in Idaho. The district judges as a whole expressed themselves as being in favor of improvement in procedural aspects generally.

The Conferenee then adopted a resolution expressing their viewpoint as being in favor of a revision of civil procedure, thereby better to secure just, speedy, and inexpensive determination of every action.

The Conference adopted a resolution that the chairman appoint a committee to recommend a uniform plan of court minute entry, and report back at the next conference. There seems to be, at the present time, no standardization of that system, so far as the district judges are concerned.

The Conference constituted its membership as a committee to study the judicial salary situation, and to make studies and gather information relating thereto, and to cooperate with the organized Bar in its committees, and the other agencies as have indicated their interest in the subject matter, and any other agencies that may enter into that field, as time goes on.

The Chairman was instructed to appoint a committee for the next conference relating to the program.

That constitutes the report of the Judicial Section.

Now in my capacity as a member of the Bar, and perhaps from the standpoint that the justices of the Supreme Court more or less have a little bit to do with the organized Bar aspects, I would like to make mention of the splendid character of the program which has been developed by your Bar, particularly with reference to the subject matters which depart from the strict characteristics of pure Bar program designed and intended to be presented from a monetary standpoint. The Bar programs are so often formulated with the idea of plans and specifications as to how you may improve your law practice. I think it is very highly proper that at times, on your Bar, you bring to the Bar subject matters as you have done here, particularly the subject matters of Mr. Spaeth and Mr. Wright, which do not have anything to do with your law practice from a monetary standpoint; but they are certainly valuable from the standpoint of information on current subject matters, and of vital interest.

Now in my capacity as your state delegate to the American Bar, I would be highly remiss if I did not mention something that has occurred recently. It is the fact that the American Bar Association, through its president, has seen fit to offer to your secretary, Paul Ennis, its high office as chief administrative officer with headquarters in Chicago. In that connection, Mr. Ennis has seen fit to refuse this high offer, and that high honor, seeking rather to remain steadfast to the State of Idaho, which is his choice, and to his own Idaho State Bar, and to his present office as secretary.

I mention that from this standpoint, that the American Bas Association has recognized the executive abilyity of your very spendid secretary. He is certainly to be very greatly complimented from the standpoint of the very great loyalty which he has exhibited; and unfortunately, as far as the American Bar Association, he has seen fit to stay with your state rather than to go to Chicago to headquarters.

I thank you. (Applause)

PRESIDENT RACINE: Thank you, Mr. Justice Smith. Is there any particular action that the Judicial Section felt was necessary to be taken by the Annual Meeting in convention assembled, as the term goes? From your report I take it that we

are going forward with the various matters that were recommended, and of course there will be the usual cooperation between the Section and the standing committee.

JUSTICE E. B. SMITH: There were two recommendations which I could glean from this report, which I passed to the Resolutions Committee.

PRESIDENT RACINE: Thank you, Mr. Justice Smith.

I think it is a high tribute to our secretary, Paul, that he certainly didn't tell any of us about the honor Justice Smith referred to. It was the first I had heard concerning the matter, and I think perhaps that's true with most of the rest of you. All of us who have worked with Paul—and this is not on the program—know the work that he has done, and the tremendous amount of time he does put into the welfare of this Association, and I personally want to express my thanks to Paul—and it is not because we are old friends or he is a fraternity brother—but I am very serious in saying that he does a wonderful job.

The next report on the agenda this morning is from the Legislative Committee, Mr. David Doane.

MR. DAVID DOANE: Mr. President, Guests, and Fellow Members of the Idaho State Bar: On December 6, 1954, your Board of Commissioners appointed 78 lawyers throughout this state, representing each of the 44 counties, to serve on the standing committee known as the Legislative Committee of the Idaho State Bar. The executive committee consisted of Willis C. Moffitt, Commissioner Willis Sullivan, George Greenfield, and David Doane, all of Boise. As I understand it, the reason that the executive committee was selected from that community was because of the custom in the past of the legislative committee throughout each legislative session to hold weekly meetings; and it made it rather difficult for members outside Boise itself to come in every week for that purpose.

As a result of this appointment, the first meeting of the executive committee was held on December 28, 1954, and at that time we were advised that the Commissioners had suggested a new idea for the activities of this committee. They thought that it would be well that this committee undertake to render a legislative service to the members of the Idaho legislature, similar to that service which the Oregon State Bar has been rendering to the Oregon legislature during the past years. The executive committee agreed to undertake this job, providing we could locate sufficient volunteer lawyers to take on specific projects and give of their time for that purpose. So a canvass was made in Boise, and on January 5th, at the next meeting, we were able to report that 17 volunteers in the City of Boise had offered their services.

It became apparent that this committee would be loaded with such a large volume and such a different type of work than they had had before that they had better decide on a set of principles to govern the activities of this committee. I think that I might well read to you what the committee adopted as the principles to govern its activities throughout the session:

"The primary responsibility of the Idaho State Bar Legislative Committee is to carry out the directions of the membership of the Idaho State Bar expressed in the resolutions adopted at the 1954 annual meeting. In addition, that committee should, upon request, serve in an advisory capacity to the judiciary committees of the House and Senate with respect to any legislation introduced through those committees. The Legislative Committee should also be concerned with remedial or corrective

legislation relating to the courts or to the judicial process, and any such legislation should be carefully studied, and if found acceptable, those bills should be supported. Whenever it comes to the attention of the Committee that any proposed legislation is in obvious conflict with the Constitution, or a serious doubt as to constitutionality exists with respect to any such legislation, the Committee should express such an opinion to the appropriate officials or committees of the legislature.

"The individual members of the Committee shall also serve as members of the Legislative Advisory Committee, and supervise the work of lawyers who volunteer to render gratuitous legal services to the official committees of the Idaho legislature. In this connection the committee will consider all written requests for such legal assistance, and refer approved requests to lawyers volunteering their services. In general, requests for legal assistance should be granted with respect to matters of general public interest, not involving private interests, as to which the advice and services of private attorneys are available, or customarily rendered for hire."

These principles were adopted by the committee, and we tried, as nearly as possible, to comply with them throughout the legislative session. At this meeting on January 5th, after the adoption of these principles, a letter was drafted in the name of the Board of Commissioners of the Idaho State Bar, addressed to the President of the Senate, the Speaker of the House, and a copy to the Governor and the Attorney General, whereby the Idaho State Bar offered the services of the Legislative Advisory Committee to the regular committees of the legislature. Directions were made in this letter, suggesting that if they desired legal services such as research, general advice, preparations and drafting of bills affecting the public interest, with the understanding that private attorneys were not to be deprived of any private work, that the committee be contacted.

After these letters were sent out, the chairman of these various committees of the legislature then wrote their requests to our hard-working secretary, and he brought them each week to the Legislative Advisory Committee, where they were screened to see that they complied with those principles. Assignments were made to the volunteers, and the service was rendered.

I don't have an exact count, but there were at least between 35 and 40 different requests which were handled by this committee, from the legislature.

As to the responsibility of the Legislative Committee for spousoring the State Bar legislative program, I might point out that we were 100% successful in this last legislative session, in that we were asked to pass a bill to increase the lawyers' annual license fee to $25. This was passed. It wasn't too hard. The farmers thought that the lawyers might just as well raise their own fees if they wanted to. We also had it on a little graduation—that is, the lawyers who have been admitted for three years or less would only pay $15; all others $25, in compliance with the annual meeting of 1954.

The other two main accomplishments, so far as the Bar program is concerned, consisted of the elimination of jurisdictional limitations on probate courts and justice courts. As you well know, annually for many years the Bar has been trying to accomplish this. Finally, this last session, by Senate Joint Resolution 4 and Senate Joint Resolution 5, this elimination was accomplished. This time we did not attempt to eliminate the probate and justice courts as constitutional courts, but rather we confined our activities to eliminating the limitations on their respective jurisdictions. This would seem to be sufficient, and passed both houses, after a little difficulty with Senate Joint 5 in the Senate. We had to send out a special mimeographed

letter at one time, when the resolution was up for reconsideration, but it did finally pass, so we were 100% effective in that regard.

We also passed Senate Bill No. 89, relieving subsistence expenses of the Supreme Court justices from the limitations of the standard pay and allowanees act, and House Bill No. 91, increasing the Supreme Court Clerk's salary.

Senate Bills 90 and 91 were also promoted and sponsored by this group, along with the Supreme Court. Justice E. B. Smith was very effective on those two bills, which had to do with the new form of judicial ballot, requiring candidates for district judge in those districts where there are two district judges to be elected, and in elections for Supreme Court in those years when two judges are to be elected, to specify the incumbent which they seek to replace, or the vacancy of the last incumbent which they desire to succeed.

These bills were in substantially the same form that were presented to the 32nd legislative session and failed to pass. They also passed.

You may be interested in knowing just how effective this legislative advisory committee was. We don't know for sure, and I don't think any one person would know, but the fact that every single bill that was sponsored by the Bar legislative committee indicates to me that this offer of service to the legislature did actually meet with the approval and had a lot to do with our public relations.

We met weekly, not only with the members of the Executive Committee, but with any lawyer who happened to be in town and interested in legislation was asked to come. Various members of the judiciary met with us from time to time. We asked the members of the judiciary committees of both houses to meet with us when they could. Raymond Givens, who was secretary of the House of Representatives, and Guy Cordon, who was attorney for the Senate, met with us regularly. Those two legislative attorneys said that in their opinion this offer of service by the Bar was very favorably reeeived. Speaker R. H. Young, Jr., who is also a member of this Bar, said that he thought it was a fine gesture, and met generally with the approval of the entire membership of the legislature. We believe that it was well worthwhile.

It was the first try at this sort of thing, and it probably needs a lot of remedial work to make it more efficient and more effeetive. For one thing, it would be better if there could be more participation by lawyers throughout the state rather than having it confined so much to Boise. In Oregon we understand the procedure is that there are two lawyers who come in from various parts of the state, and stay for one week in Salem, during the legislative session, and devote their entire time for one week to rendering service to the various members of the legislature.

On our final meeting March 1st, our committee resolved that we should present at least two resolutions to this body for action, and they have already been presented to the chairman of the Resolutions Committee. This committee also suggested that we present three questions to this group for consideration, if it desires to continue the legislative advisory committee. First: Whether or not the committee should undertake in the future to prepare bills or to serve only in the capacity of advisors and to conduct research on legislative problems. 2. Whether or not the services of the committee should be made available to interim committees of the legislature. 3. Whether or not it was feasible to arrange for active participation by attorneys outside the Boise area as members of the legislative advisory committee.

We would appreciate some discussion and some advice on this, if this body sees fit to continue the activities of the legislative advisory committee.

I believe that concludes the formal report of this committee, and I wish to say, Mr. President, it was a real pleasure to work on this committee, and I want to say that this hard-working secretary of ours also acted as secretary of the legislative committee, and without him I am sure we wouldn't have accomplished nearly as much as we did.

I also want to say that there was never a lawyer, anywhere in the state, not just in Boise, who didn't rally to the cause when we needed him during the course of this last legislative session, and if we could get that kind of spirit and cooperation infiltrated throughout the entire Bar, I am sure we would always be successful, 100%, in the legislative program. (Applause.)

PRESIDENT RACINE: Thank you, Mr. Doane. The report will be received and filed. The questions asked by Mr. Doane as to the continuance of the legislative committee may require some discussion. Are there any questions anyone in the meeting would desire to ask Mr. Doane? If not, then I take it we can take this matter up at the time the various resolutions are presented by the chairman of the Resolutions Committee.

We have a report from the Committee on Continuing Legal Education, Mr. Sidney Smith reporting.

We might as well draw another number and see who might get something. We will draw for another copy of "The Lawyer from Antiquity to Modern Times." No. 20. Professor Berman. We have the copy, and we will be glad to deliver it to you, sir.

Now, Mr. Smith.

MR. SIDNEY SMITH: Mr. President, and Fellow Members of the Bar: Your Committee on Continuing Legal Education consists of the following, other than your chairman: Mr. Kales Lowe of Burley, Mr. John Carver, Jr., of Boise, and Mr. Thomas Walenta, Professor of the University of Idaho at Moscow. Your committee was appointed last fall. On the instructions of your secretary, we were to mark time pending the outcome of the legislative activity on the raising of the fees of the lawyers, to see if there would be sufficient funds in order to carry on this program.

To formulate a program there has been considerable attention and thought given by the members individually and as a group, not only in our own locale with our own Bar committees, but also here while at this session. We have been looking for guidance and for help. It is a program which we feel needs a good start, yet the indications in the state as to previous starts of this nature have not been satisfactory. We want to be certain we get off in the proper manner.

We are working closely with the American Bar Association, and we have thought that there are few, actually, who realize what continuing legal education means. I am borrowing, with consent of Mr. Mulder, a few of his remarks which I am going to lift from a previous speech he has made to other Bar associations.

He said, "We have heard very much recently about public relations in the legal profession. It has become a most important aspect of the work of the organized Bar. We see it cropping up in local, state, and national lawyers' groups. We are trying to impress the public with the service that the lawyers can perform. We are trying to dilute and extinguish the antagonism and apathy which so many laymen exhibit toward our profession. As public relations programs develop, they encompass a variety of types of activity. I should like to suggest that one aspect of the public

relations which should not be overlooked is that of continuing legal education. It is not only important that lawyers continue to improve their professional competence, it is good public relations to make the public cognizant of the fact that lawyers are busily engaged in increasing their practical and scholarly knowledge for the benefit of their clients. It is one thing to conduct radio and television programs advising the public of the necessity of consulting a lawyer for drawing a will, for settling a boundary dispute, and a thousand other things. It is equally important to advise the public by radio, by television, and by printed word, that lawyers are keeping abreast of the times professionally. Continuing legal education is a made-to-order aspect of public relations of great significance."

Now, I am only touching on the problem of continuing legal education, as there is another report relative to public relations, but there are two functions: first of all, the seminar, one in which a very comprehensive and penetrating study is permitted in which one could actually become a specialist. It may be a series of lectures, as we set forth in our questionnaires.

On the other hand, there is another phase which is a how-to-do-it institute, a practical workshop application. Our problem in the inception is to consider, we have felt, the short session, first of all. How to commence?

The questionnaire we furnished to you yesterday was in order to give some guidance to our committee. The questions that were there posed represent the thinking and the questions that were in the mind of each of your committee members. We want this to be a program that is satisfactory to the gentlemen of the Bar. It is not to be something that we feel should be forced on the Bar, but something that you gentlemen would like yourselves.

We felt that the attorneys who belive enough in the Bar program and are interested enough in the organization and our professional standing to attend this convention, would be generally, although not wholly, most interested in this type of program, and we would be able to get a better sampling of your attitude and ideas by furnishing you a questionnaire at this meeting.

You will recall that for the past few years there has been here at our meetings in Sun Valley a type of how-to-do-it institute—short, granted. A few years ago we had a matter of partnership taxation. We had another lecture on demonstrative evidence. Yesterday you had Mr. Halpern, who lectured and impressed all of us. It is that type of lecturing and instruction that we are interested in bringing to the lawyers of the state. That is what we mean by continuing legal education.

These programs have been short. It is the intention that the institute type would be of longer duration, and provide time in which there would be discussion and questioning. We are interested in our questionnaire finding how long you would be willing to attend such a session.

Generally, this is the result of the questionnaire. We received, up until a few moments ago, 29 of the questionnaires. Actually, that doesn't give us much of an indication, with somewhat over 100 registered, with over 600 members of the Bar. It is a small percentage to give an indication, but we at least have a better indication than we had before.

There were three suggestions. On 26 of the 29 they were in favor of a short-form course. That is what we requested, a course of 3 to 10 lectures.

By and large the result of the tabulation shows that lifetime and testimentary estate planning was by far the most important to the greater number of those here present; and Federal Rules of Civil Procedure was second.

There was established a pattern which we rather expected, that the people in the Pocatello area, the Boise area, and the area to the north, requested as first preference that the institute be held in that area nearest to them. One day was the indicated preference of the length or duration of such a workshop.

We believe there are several ways of handling this, and that instead of using the title to be an institute, it should be developed as the Idaho Bar Workshop. This follows the same pattern as in the Ameriean Bar Association, and it will be entitled that, for this program.

There are two other things considered. There is a matter of bringing a lecturer into the state to hold a series of meetings, commencing, say, in Pocatello on Monday, the same lecturer to be in Boise the next day, and on the third day to be in the northern end of the state, probably at Moscow.

This is your program, and we believe that that may be the easiest way, although it may be a little more costly, to get the same program to every member of the Bar. We feel that everyone is so entitled to it.

The suggestion has been made that perhaps we could sugar-coat this, and I am going to ask for some indication from the group here, in having a meeting of the workshop in Moscow at a time or prior to one of the football games, whether it be homecoming, W. S. C. game, or some other game at Moscow. It may attract more of our people who would travel that great distance. We are cognizant of the geographical difficulties we have here, and it would be the same for the lecturers and also for those members of the Bar, because it is going to be quite a bit of time out of the office.

Although there is an increase in fees to further this program, it is the belief of your committee that it was not the intention that these funds be expended only for this program, and that it would not be the feeling of the Bar that they would not pay a tuition fee to attend one of these institutes or workshops. That is the way that it is conducted in nearly every other state—that is, that those in attendance would pay a nominal fee of perhaps $10 or $15 to care for the cost, and the education that they in particular receive there. There are other costs, incidental to the program, that would be taken care of by the increase in fees.

If there is no objection to that type of program, insofar as cost being assessed to those in attendance, I believe your committee will continue with that understanding. If there is an objection, we wish that objection at this time.

It is felt that there may be workshops conducted, as there have been in the past by bar associations, where they are held by the bars themselves. Your committee wishes to work with them, but there is absolutely no restriction on that type of activity generated by your own local bar association.

Now, I am going to ask at this time—if I am not out of order, Mr. President—if you would approve of a program in which we try to set up workshops in three different places in the state on successive days. If you would believe in that, I would like to have a show of hands. Practically everyone in the room has raised their hands. It is enough of an indication to the committee.

Would you believe it advisable—we realize this should stand on its own two feet—but would you be interested in another program in which we could have an institute at Moscow on a day preceding a football game? There is a tax item to be considered there. Would you be interested in such a program? The thought would be to have a workshop on Friday preceding a game, an all-day workshop, the hours probably from 9 to 12, and 2 to 5, with opportunity for discussion. How

many of the group here would be interested in attending such a program? We have 15 or 20 here which would be enough, from a financial standpoint, to break even on a program of that nature.

The committee wishes me to impress upon you that above all else this is something your committee cannot do alone, but the success of it is entirely with the cooperation of the members of the Bar. When we set up such a program, it will succeed or fail, depending on our response in getting good people to do the work. We need your attendance at the workshops that will be presented.

If there are any questions or suggestions that any of you have, the members of the committee will be here and we will welcome them. Thank you very much. (Applause.)

PRESIDENT RACINE: Thank you very much, Sid, for your report on the continuing legal educational program. I take it that your thought is that the program might well be initiated by a discussion in a local bar, and then a request to the committee for an institute. In other words, you would desire that it be initiated from the local association, after they had met and determined what they might desire, and if you could work the program in for, say, three meetings on three successive days in various parts of the state by reason of enough requests from enough associations, then you would proceed with one institute, the same type in the three places.

MR. SIDNEY SMITH: I would say that what you have suggested, Mr. President, is something that could be in addition to what we intend to do. I think that our sampling is sufficient that we intend to formulate a program immediately where we will have, during the fall or winter while travel is satisfactory, an institute probably on lifetime and testimentary estate planning, or Federal rules. We will have it set up in the three places; and in addition, if there are other institutes or workshops desirable, we will try to work those in, additionally, and also we will attempt to have one at Moscow, sometime in the fall.

PRESIDENT RACINE: Are there any questions from the members? If not, the report will be received and filed, and we trust the work of the committee can go forward successfully.

We have enough books here to try another drawing. Some members have come in whose names were previously called. Unfortunately, their numbers will not be in the box now. I hope they won't leave because of that! For that reason I won't name them. No. 52 for the two-volume Loose-Leaf Service on Income and Estate Taxes by Commerce Clearing House. Mr. Arthur Oliver. There will be a certificate given, Mr. Oliver, and you will receive the set.

Now, the report of the Public Relations Committee, Mr. Alden Hull.

MR. ALDEN HULL: Mr. President, and Members of the Bar: By way of preliminary remarks to the formal report, I would like to say I certainly do feel like a supernumerary this morning, after hearing the remarks of Mr. Justice Smith, Mr. Doane, and Mr. Sid Smith, pertaining to the work of their committees in public relations. It does confirm what our committee very soon learned when it entered upon its work, and that is that every facet of the legal profession touches or is embroiled in public relations.

However, the Public Relations Committee, as established by the American Bar Association ,and your State Association, is somewhat of a catalyst for the work of all committees in reference to our relationships with the public and the laity.

The American Bar Association has actively participated, engendered a public relations program on a national level for the past five years. Only recently they came forth with a manual which I wish every attorney in the state could have in his library, because the work done by the American Bar Association indicates the prominence this program has in their planning and thinking. I suspect that the efforts made to impose upon some of the other professions in the last few years has created an awareness in the legal profession that public relations is extremely important.

I think perbaps the legal profession suffers more from the lack of public relations than any of the other professions. I think this is true because of the nature of our activities, the fact that we are protagonists, and much of our efforts are in the public eye as adversaries. Public relations is not to sell legal services. Its purpose is to sell the legal profession.

If I might, I would like to add one additional accolade to those already bestowed upon our secretary today. His efforts on our behalf bave been of great benefit. We submitted a preliminary draft to Paul, and his comments were of immeasurable value. It's a real inspiration and a real assistance to us to have him back in the background where he does remain so unobtrusively to help and assist all committees.

Now, if I may proceed.

REPORT OF THE COMMITTEE ON PUBLIC RELATIONS IDAHO STATE BAR ASSOCIATION, SUN VALLEY, IDAHO, July 7-9, 1955

MEMBERS OF THE IDAHO STATE BAR ASSOCIATION:

Your Committee on Public Relations was activated subsequent to the last annual meeting of the assoeiation. Tbe Conmittee has met once as a group and in the interim has exchanged considerable correspondence. The Committee has relied and is relying to a considerable extent on the experience of other state associations, which have pioneered this field and today are conducting an active and reportedly successful public relations program. The extent and scope of the Public Relations program in some of the other states is starting and has convinced your Committee that there is a great deal to be done in this field. We would like at this time to give thanks to Mr. Phillip S. Habermann, Executive Secretary of the Wisconsin Bar Association, wbo has been most generous in furnishing the Committee with information and excellent suggestious of all kinds. In addition we have freely and extensively borrowed from the American Bar Assoeiation's manual, "Public Relations for Bar Associations."

The Committee, cognizant that the Public Relations program as such is new to most Idaho attorneys, has purposely expanded this report to include more than suggestions for immediate application by the Idaho Bar, but also to include a general, and we hope brief, outline of the entire Publie Relations program, as formulated and recommended by the American Bar Association. We are also aware that several district and local associations have actively entered into a Public Relations program. We wish to acknowledge their work and hope that they will pass on the benefit of their experiences to the Committee and the Association.

I. OBJECTIVES:

Tbe recent publication by the American Bar Association of their long-awaited manual on *"Public Relations for Bar Associations"* furnishes a convenient and detailed statement of the public relations objectives for state bar associations and the

cooperating local bar associations to build public confidence in the profession, the judiciary and the American system of courts and laws.

After careful analysis of the problem, the American Bar Association Committee sets forth a long-range prescription for public relations into which we may well fit our program as follows:

1. Educate and re-educate the public as to the significance of law, lawyers and courts, and the indispensability of each to the preservation of the American form of society and government.
2. Educate the lawyer as to his own individual responsibility to the community, to his clients, and to his fellow-lawyers, and afford him the opportunity to continue his legal education.
3. Improve the administration of justice, so as to insure fair and imparial adjudication of cases, and their speediest disposition consistent with justice.
4. Establish and publicize Legal Aid Organizations for those who cannot afford to pay for legal service.
5. Establish and publicize Lawyer Referral Service to assist those who need legal guidance and can afford to pay reasonably for it, but who do not know how to go about getting such service.
6. Handle all grievances against lawyers promptly and efficiently, and impose disciplinary action, including disbarment, where such action is warranted. Ultimately provide for reimbursement of clients who have suffered embezzlement at the hands of any lawyer.

II. FOUNDATION FOR GOOD PUBLIC RELATIONS:

A. *Re-educating the Individual Lawyer*:

1. The individual lawyer must be made to realize and assume his responsibility.
2. Necessitates a critical examination of grievance procedure. Prompt and certain disciplinary action by the organized bar is a good deterrent, though not necessarily a lasting cure.
   (a) See pamphlet *"Confidentially for You, Mr. Attorney,* published and issued by Wisconsin Bar Association. Reproduced in the June issue of the Idaho State Bar News Bulletin in 1954.
   (b) When public is involved proper publicity should aceompany disciplinary action.
3. Refrain from adversely criticising in public other members of our bar and the courts.

B. *Improvement in the Administration of Justice*:

1. Members of the bar are encouraged to take a more active part in the selection of judges. Idaho has taken steps in this direction in the last few years.
2. Delays are causing the public to turn to substitutes and frequently to accept inadequate and unfair settlements.
3. Failure of attorneys to complete client's work is source of great criticism.

C. *Making Legal Services Available to All*:

1. All public opinion surveys agree that a person of moderate means

very often does not know what a lawyer can do for him or believes that the lawyers' charges will be too high.

2. Lawyer Referral Service:
   (a) Almost universally, the efforts of the organized bar to make legal counsel available to everyone needing it at a cost within their means, is recognized as one of its most potent public relations weapons.
   (b) Includes Legal Aid Bureaus and activities of A.B.A. Committee on Legal Service to the Armed Forces.

D. *Teaching American Citizenship*:
   (a) Teaching in the fundamental of government has and is being neglected.
   (b) Lawyer can be of great assistance as speaker and instructor on Ameriean Citizenship.
   (c) The Citizenship program should be a part of Junior High, High School, University and College curriculi.

E. *Supporting Community Enterprises*:
   (a) Local bar associations should not become involved in partisan political activity. However, fight for "good government" measures need not be partisan.
   (b) Other suggested activities: Civil Defense programs. Sponsor essay contests in American History and Government, give citizenship and other awards, arrange visits to courts, join crime prevention projects and aid in drafting "public interest" legislation.

III. METHODS: (Telling the Lawyer's Story)
*Caveat (see attached, Exhibit "A.")

A. *Public Relations Committee on State and Local Level*:
   1. Three-lawyer committee should suffice.
   2. Each member should be a "specialist" entrusted with supervision of Committee's activities in one or more information media.
      (a) Specialists should have authority to act.
   3. Must be elose working relationship between state and local committees, as well as between local committees.

B. *Press News Stories, Press Releases, Editorials, Correction of Misleading Articles, Magazine Articles*:
   1. Press coverage in the form of regular news stories, press-releases, editorials, feature stories, legal artieles, lawyer eomments and magazine articles, ranks second only to the attorney-client conference in its importance to public relations and the bar. It is most available of the media and can be utilized at relatively small cost.
      (a) Good Bar-Press relationship important—must be a program of mutual assistance.
      (b) News: Election of officers, committee appointments, meeting announcements, speaker's programs, committee reports—are all news:
      Big news: Creation of legal aid organization, establishment of lawyer's referral service.

(c) Editorials, features and articles often attract more notice than straight news stories. Special effort must be made to supply the press with this type, either written by lawyers or based on ideas submitted to the press by lawyers.

(1) Series of "Know Your Law," etc.

(2) Legislative service for laymen.

C. *Radio*:

1. Utilize radios for Legal News, Announcements, Prepared Speeches and Discussions, Forums, Legal Dramas and special programs.
2. Forums popular because lawyers generally well informed and usually more willing to partieipate. Suggested subjects:
   What about our Courts
   Local taxation and Budgets
   Is our Jury System Adequate
   The Lawyer's Responsibility in Time of Crisis
3. Legal dramas good—but one word of warning. It is recommended trained radio actors should undertake this type of program and with professional supervision. There are exceptions:
   (a) However, there are excellent transcribed series such as Colorado's "You and the Law" and Attorney at Law; or True Legal Dramas produced by the Erie Court Bar Association, Buffalo, New York, and "That's the Law," produced by the Junior Bar of the State Bar of Texas.
4. *Prepared Scripts*:
   These are excellent and well done. Many associations have these available. These are designed for a lawyer, and announcer, or for two or more lawyers.
5. *Cost*—most stations usually anxious to carry these types of programs as part of their public service.

D. *Television*:

1. Originating stations limited in Idaho but there are many very excellent series conducted by various bars. All variety of presentations.

E. *Motion Pictures*:

1. Almost every state has a film library service that includes many suitable films for Bar Association work in all subjects. Particularly, there are many suitable films for use in schools, before service clubs, women's organizations, churches, etc.
2. The Michigan and Texas Bars have produced own films:
   (a) Michigan—"Living Under Law"
   (b) Texas—"With Benefit of Counsel"
3. The American Judicature Society has prepared a list of 16 millimeter films on Legal and Citizenship subjects.

F. *Pamphlets, Folders and Mailings*:

1. Possibly the most widely used media for the direct dissemination of information the laymen is by the use of pamphlets and mailings. Attached hereto as Exhibit "B" are many pamphlets now being used throughout the United States. Their titles include "Meet Your

Lawyer," "Read Before You Sign," "Landlord and Tenant," "Your Rights," and many more.

2. These pamphlets can be made available through and by the offices of attorneys in public display racks; also, at municipal, state and county offices.
3. Institutions, such as banks, title companies, etc. have mailed these pamphlets.

G. *Institutional Advertising*:

1. Advertising by the organized bar is permitted under certain conditions. However, these important precautions were prepared by the Standing Committee on Professional Ethics and Grievances of the American Bar Association.
   (a) It (institutional advertising) should be carried on by the organized bar, in order that any semblance of personal solicitation will be avoided.
   (b) That the purpose is to give the layman beneficial information, to enable lawyers as a whole to render a better professional service, to promote order in society, to prevent litigation and controversy and to enhance the public esteem of the legal profession, the judicial process and the judicial establishments, should be made plain.
   (c) It must in fact be motivated by a desire to benefit the lay public and carried out in such a way as to avoid the impression that it is actuated by selfish desire to increase professional employment; and any plan, however well intended, that on trial fails to convince the lay public that the purpose is to benefit the layman and not to promote professional employment should be promptly abandoned.
   (d) It should be carried on in a manner in keeping with the dignity and traditions of the profession.
2. Advertising by Banks, Title and Trust Companies and Insurance Companies is widely recognized and widely used.

H. *Speakers' Bureau*:

1. Speakers' programs and speakers' bureau are important to bar public relations. They are popular. There is an ample supply of lawyer-speakers; good lawyer speakers are in constant demand; and a speakers' bureau can be undertaken and maintained at little or no cost to the bar association.
2. Many prepared speeches available for use by Bureaus.

IV. *SUGGESTED PROGRAM FOR THE IDAHO STATE BAR ASSOCIATION*:

1. Your Committee recommends that insofar as possible, the following proposed projects be considered by the state and local bar associations as part of their public relations program:
   (a) THE APPOINTMENT OF A PUBLIC RELATIONS COMMITTEE BY EVERY DISTRICT OR LOCAL ASSOCIATION, and advising the Secretary of the State Association of their names.
   (h) The appointment by each association of an effective and operating grievance committee with a program approved by the Committee on Grievances of the State Association.

In this regard the Committee has been advised that Board of Commissioners bas under consideration new rules for disciplinary procedure which are patterned to some extent after the model rules recently proposed by the committee on ethics and grievances of the American Bar Association.

(c) Add to the curriculum of the College of Law, University of Idaho, a eourse, emphasizing the lawyer-client rclationship.

(d) That the State Associations edit, print and distribute to every law office in thc state an initial issue of the pamphlet series. Incidcntally, I think most of the attorneys have seen at one time or another these pamphlets which, by and large, are a part of the reading material in the waiting rooms or offices. It is writtcn for the laity, and deal with common problems of the laity. The Wisconsin Bar, Minnesota Bar, and only recently the Washington Bar instituted this type of program. The Wisconsin Bar also bas an interesting type of grapb. I don't know if you can see it. I only came across it today. It is very nominal in cost, but are presentable in a room. We do recommend that the Idaho Bar make an initial issue of four or five of these for use by attorneys in their offices.

(e) That eacb association institutc an active program to promote citizenship in the schools by means of speakers, movies and essay contests. In this connection, we have prepared speeches. Some even bavc the jokes already in them. We can submit those through the secretary of the association. The Amcrican Bar does encourage this.

(f) That each and every association program the new American Bar Association film "Dcdication to Justicc." That in addition bookings of this film be aranged for local service clubs, schools, churches, etc. I would like to add here that we saw the introduction that is made for Bar associations, by Mr. Wright. There is another introduction which is to be used in presenting it to lay groups. When you order that film, the cost of which is five dollars, specify for which group you plan to use it. The American Bar takes a great deal of pride in that film, and encouragcs its use.

(g) That thc Statc Association make available to eacb local association lists of films available for showings; preparcd speeches and talks.

(h) That the state association undertake to interest the large banking institutions, title and insurancc companics in institutional advertising program. That in addition the State Association seek the aid of thesc same institutions in preparing practical "mail outs."

(i) That cach and every local association interest the newspapers, dailies and weeklies, that cover their respectivc arcas in bandling the series "Know Your Law." This program should be instituted in the fall and consists of approximately 26 articles.

(j) That the State Association make available to the local associations with radio stations in their areas a list of the available transcribed legal radio programs and the cost of the same.

(k) That a copy of this report be sent to each association as an outline to assist in developing a program on local levcl.

(l) That each and every attorney of the State Association develop an awareness of the value of good puhlic relations to himself and his profession.

2. *COST*:

The above program as outlined entails relatively little expense. The cost of the pamphlets to the State Association is the largest single item, and it is believed by the Committee that the original issue of the series suggested would entail an outlay of $400-$500, and that re-orders and re-issues should be on the basis of the members purchasing the same for a nominal fee.

The cost of the individual radio programs vary, but this cost would be borne by the local or district associations. Most movie films can be acquired by paying the postage.

The lists of speeches, films, etc. can be mimeographed at a very nominal figure.

Speakers' bureaus cost nothing. Essay contest prizes should probably not exeeed $50.00 in the aggregate and should be borne by the local or district association.

Your committee believes the suggested program is not too ambitious for the state and local associations. We trust that it will receive the attention of each and every member of the Bar.

Respectfully submitted,

ARTHUR L. SMITH
LOUIS GORRONO
ALDEN HULL, *Chairman.*

(Applause)

EXHIBIT "A"

CAVEAT

1. The use of any recognized media for the purpose of disseminating information about law, courts, and lawyers is not unethical or improper.
2. There should be no direct solicitation of business, but it is proper to encourage laymen to procure legal services before entering into business transactions in order to prevent difficulties and complications which only a lawyer would foresee.
3. It is proper to inform the public of the various services a lawyer is trained and competent to perform.
4. It is proper to inform the public of the standards employed by the lawyer in fixing his fees in order to discourage the unfortunate notion that lawyers' fees are too high.
5. Illustrations accompanying messages to the public are proper as long as they are in keeping with the dignity of the profession. Resemblance to commercial advertising illustrations should be strictly avoided.
6. Catch or commercial phases should be avoided, and the language employed should be in keeping with the dignity of the profession.
7. The purpose which motivates the information should be made plain, i. e., to afford better professional service, prevent controversy and litigation, et cetera.
8. The information should be sponsored by a state association or a local bar association, or both.
9. Names of individual lawyers should not be used, exeept when introduced as speakers, or as participants in radio or television programs.

PRESIDENT RACINE: Thank you, Mr. Hull. The work of the committee has obviously been thorough, and the report was complete, will be received, and filed. Are there any questions of the chairman of the committee from the floor?

If not, we will proceed to the next report. However, first I think we can draw another door prize. We have a letter from Prentice-Hall, in which the representative of Prentice-Hall simply says, "Enclosed is a card which can be returned to him by whoever may receive this particular door prize, and an appropriate publication from Prentice-Hall will be forwarded to the holder of the card."

No. 71, Peter Boyd. I don't believe he is present. No. 84, E. B. Taylor. Judge Taylor left a little early. No. 92, James Cunningham. No. 127, John Carver. (Present)

In connection with the report on Continuing Legal Education, it should be announced that the Oregon State Bar has very cordially invited any member of the Idaho State Bar to their annual meeting in Baker, Oregon, in mid-September. It is my understanding they have a number of institute speakers of the workshop type. It is apparently a very ambitious and interesting program they have arranged. They have invited any member of the Idaho Bar who may desire to attend that meeting.

The report of the Committee on Unauthorized Practice, Mr. Robert Copple. Blaine Anderson has been asked to report for the Committee.

MR. BLAINE ANDERSON: Mr. President, and Members of the Idaho Bar: The Committee on Unauthorized Practice of Law was activated by the Board of Commissioners on December 4, 1954, by the appointment of the following committee: R. H. Copple, chairman, Boise, Idaho; J. Blaine Anderson, Blackfoot, Idaho; James W. Wayne, Coeur d'Alene.

The activities of the committee since the appointment has consisted principally of laying the groundwork for the future. The committee agreed that since this was by direction of the Idaho Bar a permanent standing committee, a permanent record should be established for the guidance of future compilation of Idaho cases concerning the unauthorized practice of the law. This work was begun, and is nearly finished. The committee felt that we should conduct permanent negotiations with various business and professional groups in Idaho toward the end of arriving at a statement of principles with respect to the practice of law as it affects other business and professional groups, being the feeling of the committee that large numbers of unauthorized persons are performing legal services in ignorance of what constitutes the practice of the law.

The first step in this direction was made by committee member J. Blaine Anderson on April 11, 1955, when he spoke to the Idaho Realty Association at their regional convention. The response was enthusiastic by that group, and the officers of the Real Estate Association are anxious to sit down and work out with us a statement of principles for the guidance of their members in the future in order that there will be a lessening of conflict and friction between lawyers and real estate brokers and salesmen.

In this connection, it is obvious that the Committee on Unauthorized Practice has a very fine opportunity again in the field of public relations. It is somewhat appalling to come in contact with the various groups that are perhaps most guilty of unauthorized practice, and their universal ignorance. A great deal of such practice is carried out in innocence, or at least in ignorance of the fact that they have gone beyond their proper sphere. We believe we will find this condition to exist in other groups, and setting forth a statement of principles should greatly aid in clearing the air and preventing future violations, that might lessen the work of your committee in seeking contempt citations, or cease and desist orders.

The chairman of the committee, Robert Copple, reported to the Board of

Commissioners in Boise at the spring meeting, which was attended by the presidents of the local Bar associations also. Suggestions were received from the Commissioners and the local Bar presidents, and these suggestions are greatly appreciated by your committee.

One complaint of unauthorized practice was made to the committee. Investigation disclosed that the services which were contemplated would constitute a violation, but the matter was amicably settled by the agreement of all those involved, and they agreed to desist from the proposed services. In this case the person who would have become involved in the unauthorized practice was ignorant of the fact that the services proposed constituted unauthorized practice of the law.

Two other complaints are at this time before the committee, and are being investigated.

The committee hopes that it will be possible to have a meeting of the entire committee membership in the very near future, at which time we will lay out for dissemination to all members of the Bar the Idaho cases dealing with the unauthorized practice of the law, as well as our aims for the future.

I might state also that we intend to meet with the Joint Four-State Convention of Real Estate Brokers at Spokane in October, at which time we hope to be able to get definite action from the Idaho Real Estate Brokers Association with respect to the adoption of a statement of principles.

Thank you very much. (Applause)

PRESIDENT RACINE: Thank you very much, Mr. Anderson. The report of the committee will be accepted and filed. Are there any questions from the floor? We are running slightly behind time. We have a few more books here we might draw on. We have two publications, The Voter Publishing Company. We will draw those two at this time. No. 46, Paul B. Ennis, disqualified. No. 35, Dean Stimson. We will advise the publishing company, Dean. You are not disqualified. No. 55, A. H. Nielsen. I don't believe he is present. No. 116, Herm Rossie. No. 19, Kent Lake. No. 124, Z. Reed Millar. We will notify the publishing company, Mr. Millar.

We have one copy of "The Lawyer from Antiquity to Modern Times. No. 90, John Ferbraugh. No. 24, Eugene Smith. The copy is up here and we will deliver it to you, Mr. Smith.

One subscription to the Capitol Reports, the advance sheets, remaining, and then the Supreme Court Digest we will hold off for awhile. No. 119, Merrill Gee. No. 67, Gus Anderson. We will notify the publishing company.

Now, we have Mr. Anderson also, giving a report on the Committee on Lawyer Referral and Legal Aid.

MR. GUS CARR ANDERSON: Mr. President, Commissioners, and Members of the Idaho Bar: I have been instructed by my seat companions to make this short, and I will try to do that very thing.

Your Committee on Lawyer Referral and Legal Aid was appointed in January of this year. We held one meeting yesterday. However, we have had considerable correspondence with regard to the organization of the state for the purpose of setting up a system of lawyer referral and legal aid. Mr. Givens of Lewiston is on the committee, and Mr. Charles Donaldson of Boise, and myself, of Pocatello.

In our correspondence, we discussed the various systems that have been set

up, and secured a large amount of information from the American Bar Association. However, there has been a system of legal aid and lawyer referral operating in Poeatello for some three years, and although there was no blood, there was a little pain at first. However, we have suceessfully evolved a system for a small town of having a suceessful referral system and legal aid without any expense to the Bar except a small initial fee.

After the committee has studied what we use in Poeatello, and I might say we reeeived a citation from the Ameriean Bar Association for our work there, we decided to adopt a system such as we have there.

I might say that the history of our small referral system in Pocatello met with some opposition initially. However, it went ahead, and the opposition disappeared. The system works, in brief, something like this. We appoint a secretary, and we prefer to bave it in a public place, and easily accessible to the public. Initially we had it in the law library, and the law librarian was the first secretary. However, when the state legislature disposed of our law library and our librarian, we had to go someplace else. We now operate from the Bannock Hotel, and the secretary there takes care of all applicants for legal aid or the assistance of a lawyer.

I migbt say, and it will surprise you, once you get into the matter, bow afraid a large percentage of the population is to see a lawyer. There is some kind of a psychosis, some fear of walking into a lawyer's office, because they have the idea that they will perbaps be skinned, bave to mortgage their bouse for baving a few words with a lawyer. It is really a very serious problem. By judicious advertising that the most they will bave to pay through the referral system or legal aid is three dollars, and if they don't bave the three dollars, we will do it for nothing, they lose some of that fear. The thing we are trying to do is remove that fear, get the legal business that is drying up on the vine by reason of the fact that people don't want to go into a lawyer's office. We think we bave been quite successful in Pocatello.

After the applicant goes in to our local secretary, the members of the referral system or legal aid society are called up. One other thing we stress is that we want the person wbo comes in to see a lawyer *now*. We don't want them to be standing around waiting, so if the person wbo is on the list can't see the individual in a reasonable time, if they are not in the office, we go down to the next one. Then an appointment is made, preferably for an immediate meeting. Then the person is given a slip saying they have an appointment with whoever it may be. It also indicates on the slip whether they paid the three dollars, or wbether they didn't. If it is a charity case we try to distribute it among the members of our legal aid so that one isn't unduly burdened.

Last year in Pocatello alone we bad some 267 applicants. Out of that arose some excellent business. Most of it, say half of it, is not very good business. It is business that probably should go into a lawyer's office anyway, but it satisfies the person wbo seeks your advice, and the next time he does have some business, be knows wbere to go, and he is not afraid of the lawyer, and be is willing to walk into your office, and do business with you.

In organizing the state, Mr. Givens will organize the northern part, and a member will he appointed for each judicial district to organize his district. Mr. Donaldson will bandle the southwestern part of the state. I will bandle the southeastern part of the state in the saine manner, and we will attempt to organize the smallest communities along the line that I have set up.

What we do with the three dollars paid to the secretary, we divide with the

secretary, who takes $1.50; our legal aid society gets the other $1.50. With the $1.50, as we accumulate money, we put ads in the paper advertising the lawyer referral, that people can consult with the referral system and secure the services of a lawyer.

In addition we also advertise such items as will bring business directly into your office, like we advertise "Have you made a will yet?" "Do you want to make a will?" "Who should you consult when making a will?" Then we advise them to consult their lawyer. If they don't have a lawyer, then they can come to the Legal Aid Society.

We feel that the system, if set up through the State of Idaho, can be very successful and beneficial to the lawyer. It builds up a lot of good will. I believe in Pocatello it has helped us in our public relations, and in general, I think it has been beneficial to the lawyer because it has developed clients that he wouldn't have had in the first place. It has developed business.

I hope in the next meeting we can report to you the setting up over the state of a considerable number of lawyer referral and legal aid societies. Thank you. (Applause)

MR. RACINE: Thank you, Mr. Anderson, for your fine report. It will be received and filed. Are there any questions from the floor of the chairman?

MR. REGINALD REEVES: I would just like to comment that the work of that committee, or that the legal aid type of work might well also benefit some people who might not have otherwise have had help, other than just the lawyers.

PRESIDENT RACINE: I think that's very true.

The chairman of the Professional Ethics and Grievances Committee, Mr. Emery Knudson, is not present. Mr. Bill Gigray of Caldwell will give the report of that committee.

MR. WILLIAM GIGRAY: Mr. President, Commissioners, Fellow Lawyers, and Guests: This is going to be the shortest report of all. (Applause)

I am happy to say that we have no report of anybody violating professional ethics, and we have received no grievances from anyone, lawyer or otherwise. We were very active, as you can tell, from what we have done!

Mr. Knudson, John Daly, and myself were appointed on the committee last fall, and John promptly resigned, leaving Mr. Knudson and me to carry this heavy burden.

You have borne up well under this lengthy report, and I thank you for your attention. (Laughter and applause)

MR. RACINE: Are there any questions?

VOICE: Why did John Daly resign?

PRESIDENT RACINE: You will have to ask John. He wrote a number of letters, but I never found out. (Laughter)

The report of the Resolutions Committee, Mr. Bert Larson as chairman.

MR. BERT LARSON: Gentlemen, you will be happy to know that there are fewer resolutions this year by about nine than there were last year. You will also be happy to know, those of you who handed proposed resolutions to the com-

mittee, that all with the exception of one resulted in a resolution being adopted. I want to thank the committee members for their industry and energy and the expediency with which these resolutions were prepared for your consideration.

RESOLUTION 1

BE IT RESOLVED That the Idaho State Bar Association extend to the officials and members of Sun Valley its sincere and grateful appreciation for the most efficient and courteous treatment extended to the members of the Association, their wives and guests, during convention here.

Mr. President, I move the adoption of Resolution 1.

(Whereupon the motion was seconded from the floor, was put to a vote, and carried unanimously.)

MR. BERT LARSON:

RESOLUTION 2

BE IT RESOLVED that the Idaho State Bar Association express its most sincere thanks, appreciation, and commendation to L. F. Racine, Jr., President; Paul B. Ennis, Secretary, Russell F. Randall, Vice-President, and Willis E. Sullivan, Commissioner, and the various committees appointed for the very efficient and excellent way in which they have conducted and managed this convention, with particular emphasis upon the very fine selection of speakers and the entertainment provided the members, their wives, and guests; further that these officers be additionally commended for the thoughtful and earnest manner in which they have accomplished their duties in behalf of this organization during the past year.

Mr. President, I move the adoption of Resolution 2.

PRESIDENT RACINE: Does the resolution fail for want of a second?

(Whereupon the motion was seconded from the floor, was put to a vote, and carried unanimously.)

MR. BERT LARSON:

RESOLUTION 3

BE IT RESOLVED That the Idaho State Bar Association extend to Governor Robert E. Smylie, A. H. Nielsen, Isidore Halpern, Loyd Wright, and Dean Carl B. Spaeth our most sincere thanks and grateful appreciation for honoring us by their personal appearance at our convention and delivering to us their inspiring, interesting, and instructive addresses.

Mr. President, I move the adoption of Resolution 3.

(Whereupon, the motion was seconded from the floor, was put to a vote, and carried unanimously.)

MR. BERT LARSON:

RESOLUTION 4

BE IT RESOLVED that the Idaho State Bar Association particularly thanks Marge Ennis for the very efficient and charming manner in which she has performed her duties as secretary to the secretary.

Mr. President, I move the adoption of Resolution 4.

PRESIDENT RACINE: The resolution has been moved and seconded. There being no opposition, the resolution is passed.

MR. BERT LARSON: Resolution 4 concludes the acknowledgments. Those of you who have been reading newspapers or doing something else during the

course of the reading of those might now pay more particular attention, since you may have some objection to some of these following resolutions.

RESOLUTION 5

BE IT RESOLVED that the Legislative Advisory Committee be continued as a standing committee of the Idaho State Bar.

Mr. President, I move the adoption of Resolution 5.

PRESIDENT RACINE: Is there a second to Resolution 5? The resolution has been moved and seconded. If there is no discussion, we will vote on the resolution.

MR. EBERLE: Does that include the principles they have adopted? I suggest that the motion he amended to include those.

PRESIDENT RACINE: I did not include those. You do so move?

MR. EBERLE: I will make a motion that the resolution be amended to include the principles as set forth in Doane's report.

PRESIDENT RACINE: Any objection from the chairman of the Resolutions Committee?

MR. BERT LARSON: I can't speak for the committee, but personally I have no objection.

PRESIDENT RACINE: I take it there is no objection. That heing so, is there a second to the motion of Mr. Eherle? It has been moved and seconded that the resolution proposed by the Resolutions Committee he amended to include the rules as they have now been formed of the Committee. Is that correct, Mr. Eherle?

MR. EBERLE: The statement of principles.

PRESIDENT RACINE: You are voting on the resolution as amended, if there is no objection to the amendment at all from the floor. "Be it resolved that the Legislative Advisory Committee he continued as a standing committee of the Idaho State Bar, and that the rules and statement of principles of the committee be included." Is there a second to the motion?

VOICE: I second.

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

MR. BERT LARSON:

RESOLUTION 6

BE IT RESOLVED that the Idaho State Bar sponsor at the next legislative session of the State of Idaho, an appropriation to activate the office of legislative counsel for the State of Idaho

Mr. President, I move the adoption of Resolution 6.

PRESIDENT RACINE: Before we continue, there is a rule we are governed by in these annual meetings, that all motions and resolutions relating to or affecting statutes of the State of Idaho, rules of court, the policy of the Idaho State Bar, or the government of local Bar associations, shall be determined on the last day of the annual meeting of the Idaho State Bar, unless the Board fix a different date therefor by the vote of all the members of the Idaho State Bar cast as follows: each local Bar association organized and existing as provided by Rules 186 and 187 shall be entitled to as many votes as there are bona fide residents, members of the Idaho State Bar, within the territorial limits of such association at the time of such annual meeting, and the members of any local present shall cast the entire vote of the members of the local association.

Now, I take it we may well be able to dispense with that rule as to some of these matters if there is no opposition at all. Now, if there is any question, or if there is any opposition to Resolution 6 proposed by the Resolutions Committee, may we hear from anyone so opposing the resolution. If not, I take it there would be no opposition from anyone present, and necessarily there would be no local Bar association opposing the resolution.

MR. KAUFMAN: What is the purpose of the legislative counsel. You have counsel in both the Senate and the House, if I am not mistaken. What is the purpose of this particular resolution?

PRESIDENT RACINE: I will ask the chairman of the Resolutions Committee to explain the discussion in the Resolutions Committee.

MR. BERT LARSON: The summary of our discussions has revealed that the legislature has already established the office of legislative counsel. It's a permanent job. The person who fills that office, as I understand it, is available throughout each working day of each year for any problems relating to what may be legislative problems coming up in the next legislature. In other words, it's designed, as I understand it, to avoid that last-minute rush of attempting to get bills prepared and the research work done on them after the legislature has started in session. The office exists, but no appropriation was made to put it into effect. There is no legislative counsel as such now in the State of Idaho. The discussions before the committee indicated that such an office would be advisable, and therefore the resolution was proposed. I believe that any additional question, if my statement is not a fair one, should be directed to Mr. Doane, the chairman of the Legislative Committee.

MR. DAVID DOANE: Mr. President, by way of explanation, I might point out that the Legislative Committee, in its final meeting, asked that this resolution be introduced at this meeting. There was considerable misunderstanding by several members of the Bar as to whether or not the activities of the Legislative Advisory Committee would be in conflict with the activities of such a legislative counsel. The consensus was that it certainly would not. They are two separate and distinct functions. The legislative counsel is in effect in California, Nevada, Arizona, and several other states with very, very good success. I think as members of the Bar you are particularly interested in having the bills passed in the legislature in as accurate a fashion as possible, and in conformance with already existing statutes, and it has been the experience of these other states that this legislative counsel more than pays its salary and expenses of his office by saving a tremendous amount of printing expense and unnecessary detail in making corrections that are almost always made in the legislature because there is no one fellow that is singularly responsible to see that they are drafted in proper form, and checked; and furthermore, this legislative counsel would have a research library that would be invaluable to the legislators themselves as individuals, as well as to each legislative committee. We believe that it is something that the Bar should take a real interest in, get behind, and support, and show the public that it is not in conflict with the services that were offered in the last session.

MR. DALE MORGAN: With the appropriation, this counsel will be a full-time paid state employee?

MR. DAVID DOANE: That's correct, an employee of the legislature. He is hired by the legislature itself. There might be one or two minor amendments to the existing statute, Mr. President, that should be made, but I assume if the Bar sponsored the appropriation it would also be inferred that the legislative committee would make the necessary corrections in the existing statutes.

PRESIDENT RACINE: You think this is simply a resolution as to the policy of the Bar at the next legislative session.

MR. DAVID DOANE: Yes.

PRESIDENT RACINE: Are you ready for the question? Apparently you are. All those in favor of the resolution, the resolution being that the Idaho State Bar sponsor at the next legislative session of the State of Idaho an appropriation to activate the office of legislative counsel for the State of Idaho; all those in favor by saying "aye." Opposed? The ayes have it, and the resolution is adopted.

MR. BERT LARSON: When I indicated that the first four resolutions did not meet with any opposition, I did not mean to infer that each subsequent resolution should be met with opposition!

RESOLUTION 7

BE IT RESOLVED that the Idaho State Bar appoint a committee to make a study and report to the next annual meeting of the Idaho State Bar, covering required legal publications and the possible elimination of some of them in their entirety, and simplification and shortening of those deemed to be required, especially considering the number of times they should be published.

Mr. President, I move the adoption of Resolution 7.

PRESIDENT RACINE: I call to your attention, with respect to Resolution 7, that this only involves a committee being appointed, and no positive aetion insofar as changing the present publication is contained in the resolution. That bcing true, and requiring only the appointment of a committee, there is no immedate change in policy, and I take it that it is not necessary to vote by separate Bar association groups. The resolution has been heard, and it has been seconded. Are you ready for the question?

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

MR. BERT LARSON:

RESOLUTION 8

BE IT RESOLVED that the Idaho State Bar favors the inclusion of lawyers within the Social Security Act on a voluntary basis, and is opposed to inclusion of lawyers within the Act on a compulsory basis.

Mr. President, I move the adoption of Resolution 8.

PRESIDENT RACINE: This is a resolution which I believe is a distinct policy matter, and would probably require vote by Bar associations unless there is no opposition at all from the floor. Is there opposition?

VOICE: I oppose it as it is worded.

PRESIDENT RACINE: Then we will vote by Bar associations. The Shoshone Bar Association is entitled to 24 votes. The Clearwater Bar Association is entitled to 62 votes. The Third District Bar is entitled to 165 votes. Southern Idaho Bar Association, 92 votes. The Seventh District Bar Association to 61 votes. The Eighth District Bar Association to 48 votes. The Ninth District Bar Association to 54 votes. The Eleventh and Fourth Bar Associations to 90 votes.

Do you need time to consult in your individual Bar groups before voting? Mr. Justice Smith.

JUSTICE E. B. SMITH: Members of the Idaho State Bar: I again am

addressing you in my capacity as your Idaho State Delegate to the American Bar Association. This particular resolution is one of the most controversial subject matters that has arisen in the United States, so far as lawyers are concerned. It has been up before the American Bar Association for the last three years, and has been contested backwards and forwards, and those contests and presentations have been most highly interesting and enlightening.

During the year ending 1954 the American Bar Association conducted a survey over the United States, particularly through all Bar associations, in order thereby to ascertain the consensus of opinion relating to this most controversial subject matter. At the last meeting of the American Bar Association the tabulations were presented which indicated to a very high majority that the lawyers in the United States absolutely opposed a social security program on a compulsory basis.

There are a good many reasons which were advanced and can be advanced for taking that attitude, but the chief one may be stated to be this: that the lawyers are in a profession in which the age factors do not creep up so fast as they do in those lines of endeavor where you are using your body from your neck down to make a living instead of from your neck up; that a lawyer is engaged in his activities, in many, many cases, far beyond his alloted three score and ten years; that as and when it becomes his lot, if it should be, to partake in any social security program, his life allotment then is very short—and incidentally, if he has had any economic sense at all, as he has gone along, he has pretty well made arrangements for those very few remaining years. That is sufficient to give you one of the main highlights.

You want to know how I voted, of course, at that 1954 meeting. I voted in favor of voluntary inclusion, or voluntary basis in the social security program, as your Idaho State Delegate. Of course I am willing to stand corrected at this meeting, and to carry on at the coming Philadelphia meeting, at which time the matter will again come up for further discussion. Of course I desire at this meeting to go on record personally as a member of your Idaho State Bar, as being absolutely opposed to any basis whatever other than a voluntary basis, as being included in any social security program.

This resolution merely goes to a policy, and nothing else. That policy, however, will be recorded by telegraph immediately upon the passage of this resolution, by your secretary to headquarters of the American Bar and to Mr. Loyd Wright, so be careful what you do. That is my message, gentlemen.

MR. HAMILTON: I don't know much about it, to start with. In other words, I don't know whether or not there is a provision for voluntary inclusion of individuals as members of the profession. My feelings on the subject are, at least until I am informed to the contrary, are we in a position to dictate to the Congress of the United States that we will either go in on a voluntary basis or will stay out forever. In other words, if the Congress would never include the lawyers under social security unless it were on a compulsory basis, then I feel as though there may be other lawyers who would prefer to be in it. They would prefer it on a voluntary basis, because there are other lawyers who prefer not to be, in respect to their opinions. But in a democracy if the bulk of the people prefer a certain law or regulation passed, that is the way the law or regulation will eventually be put in force, and that is the general theory of social security to start with. If there is a clear provision whereby groups such as lawyers could come in on a voluntary basis, then I would withdraw my objection.

PRESIDENT RACINE: It is my understanding that it is the position of the

American Bar, after a poll taken, and I believe the Idaho Bar members were also polled, that we as a group favor inclusion on a voluntary basis. I am not personally suffieiently familiar with the legislation now before the Congress to know whether or not we would be ineluded on a voluntary basis if we absolutely oppose the compulsory basis.

JUSTICE E. B. SMITH: I will attempt to answer the argument which has just been advanced. After the vote which was taken at the American Bar Association meeting in 1954, the consensus of opinion, as a matter of principle, was transmitted to the Congress and its committee. Again, I mention it was on a voluntary basis, as being included in the Federal social security program. By virtue of some misunderstanding somewhere—and I would desire to state it on that basis, rather than on any other suspected basis of chicanerous conduct on the part of some Congressional committee—the lawyers were included in pending legislation hefore the Congress now, and attempted to be enacted on a hurry-up program, on an involuntary or compulsory basis. That is pending now.

As an example of the incongruity, ministers of the gospel and doctors are not included in that proposed legislation now pending on a compulsory basis.

Now, where the so-called chicanery, as I call it, occurred, we don't know, but we have a very heavy lobby in Washington, D. C., and we intend to get into this arena immediately by telegraph from all over the United States in order to head that sort of national legislation off.

The American Bar Association does not favor it, regardless of what this Bar Association does. We just do not believe in that type of legislation for lawyers.

I don't know whether I have answered the gentleman from Shoshone County, but I stand herc ready for some more questions, because this is very close to my heart, and it is absolutely opposed to the way I think. I would certainly deem it very much to my distaste, should my own Bar Association attempt to instruct me to vote other than I think.

VOICE: Do you have any objection to this resolution as it is worded?

JUSTICE E. B. SMITH: I do not. It is merely a matter of policy. I tell you this: While Loyd Wright was here he spent $150 worth of telephoning over the United States in order to correlate this thing immediately into the American Bar Association lobby in Congress. That was one of the purposes, of course, that he was here for, which developed later—it was not his primary objective in coming here to visit with us, but it developed to be a very important objective.

These things that we are talking about now have great national objectives, and I admonish you to be very careful how you vote on these things, because your secretary is going to be on the telegraph wires immediately.

PRESIDENT RACINE: I might, before the question, answer Mr. Hamilton's question—Mr. Hamilton is from Kootenai County. Whatever we do is simply advicc to our Congressional dclegation as to how we feel. Thc lobby for the American Bar Association will continue to oppose inclusion of lawyers on a compulsory basis, but they do favor inclusion on a voluntary basis. Whatever we might do would only have such force as might be of valuc to our Congressional delegation.

Are you ready for the question?

(Whereupon, the motion was put to a vote by the various Bar associations, called in order, and was passed unanimously.)

PRESIDENT RACINE: The district bar associations having voted unanimously

in favor of the resolution, the resolution is adopted, and the secretary is instructed to so advise the American Bar Association and our Congressional delegation.

MR. BERT LARSON: So you know where we stand, we have fifteen resolutions. This is Resolution 9.

RESOLUTION 9

BE IT RESOLVED that the Idaho State Bar sponsor legislation whereby district judges would receive the actual necessary expenses of subsistence while away from their places of residence in performance of their judicial functions on the same basis as the Supreme Court justices are now reimbursed.

Mr. President, I move the adoption of Resolution 9.

PRESIDENT RACINE: The resolution has been moved and seconded. This is again a matter of policy unless there is absolutely no opposition from the floor, in which event I take it we could dispense with voting by Bar association. Is there any objection at all from anyone on the floor to this resolution?

(Whereupon, there being no objection, the question was put, and the motion carried unanimously.)

MR. BERT LARSON:

RESOLUTION 10

WHEREAS physicians and lawyers are each members of a profession dedicated to furnish professional skill and services to the public, and whereas certain problems have arisen in each profession in connection with the other that might result in detriment to the patients or clients of the professions, to the professions themselves, and to the public as a whole.

NOW THEREFORE, to create a better understanding and closer relationship and unity between the legal and medical professions, that each may better serve the other and the public, and in order to provide a solution to certain common problems,

BE IT RESOLVED that the Idaho State Bar Commission be authorized to arrange a compact between the Idaho State Bar and the Idaho State Medical Soeiety setting forth the principles which will govern the relationship professionally between the doctors and lawyers in their respective professions.

Mr. President, I move the adoption of Resolution 10.

PRESIDENT RACINE: You have heard the resolution. Is there a second to the resolution? The resolution has been moved and seconded. This is again a matter of policy. However, it only requires for the arrangement of a compact. It would require conferences between the Commission and the Society, and there is no definite stipulated policy now announced in the resolution. I therefore take it that unless there is individual opposition from the floor to the resolution, we need not vote by bar groups.

JUSTICE E. B. SMITH: Mr. President, I very recently left the profession, and the practiee of law. I don't know whether I will be returning to it in a short time or not. That's the reason I am evincing interest in this so-called pact at this time, by virtue of the fact that I perhaps had quite a practice in medical-legal subject matter.

I would like to have our chairman explain the purposes of this kind of a resolution. I can see that it may have some benefit provided, and only provided,

the doctors also consider adopting a similar resolution. In other words, if this is a one-sided affair, it would be absolutely useless so far as your Bar Association and your attorneys are concerned. You have to have a mutuality. You have to have this pact entered into by your physicians.

I know from many, many years of association with your physicians that this should be a very fine thing, particularly for the young lawyers who are very reticent, and shall we say, timid in approaching the members of the medical profession in the preparation of their cases. We people who have been in the profession for a good many years take it for granted that we are entitled to approach those physicians to help us prepare these cases, assuming, of course, that we are going to get some kind of a fee to pay them for their services. We know from long years of practice that they are very cooperative, but the young members of the profession don't know that.

So my argument is this: this is a good resolution provided that we would have the mutuality with reference to the medical association or the physicians and surgeons, but otherwise it is absolutely useless.

PRESIDENT RACINE: I might answer your comments, Mr. Justice Smith, in this fashion. The resolution and the wording for the resolution is that the Commission be authorized to arrange a compact. The compact, necessarily, I take it, would be one mutually adopted by each of the organizations concerned. The resolution came about by reason of a compact recently arranged in Oregon between the Bar Association and the Medical Society whereby each organization adopted a statement of principles. The statement of principles were rather lengthy, and were not included in the resolution. However, they do attempt to cover most of the various problems that might arise in the relationship between the doctor and the lawyer in the practice of their respective professions. It certainly would look toward a mutual compact from the individual organizations of each profession.

JUSTICE E. B. SMITH: Does the resolution contain the word "mutual" before the word "compact?"

PRESIDENT RACINE: No, it does not. Perhaps that might make the resolution better.

JUSTICE E. B. SMITH: That will make the resolution acceptable to me, and I move that an amendment to include the word "mutual" before the word "compact" be made. Then it removes by objection.

PRESIDENT RACINE: Does the chairman of the committee accept the suggested amendment?

MR. BERT LARSON: I have no objection.

PRESIDENT RACINE: There being no objection from the Resolution Committee, the resolution as heretofore read to you, excepting with the insertion of the word "mutual" before the word "compact," is now before the group. Is there a second to the amendment? It has been moved and seconded. There is no objection, I take it, to the amendment at all. If there is no opposition, we will not vote by local Bar associations.

MR. DALE MORGAN: I have one question. Do I understand the wording, where it says, "to arrange for a compact, to mean simply to make arrangements, or does that include the authority to adopt a compact?

PRESIDENT RACINE: That's my wording there, and it worries me, as I

didn't think there would be so many questions about it. I think the thought was that the Commission would go ahead and actually draft a compact, a suggested compact, and present it to the Medical Society, and attempt to get them in meeting assembled to agree and resolve such a compact, and then we would have to do likewise.

MR. DALE MORGAN: In other words, it provides carte blanc authority for the Commission to enter into what they consider to be an appropriate compact on behalf of the Commission.

PRESIDENT RACINE: I don't understand it so. I think the fault is now, and I take it there would be some time consumed in making the arrangements with the necessary officials of the Medical Society to even draft a compact. I think this simply looks toward the preliminary steps in making a joint statement of principles between the two organizations.

VOICES: Question.

(Whereupon, the motion as amended was put to a vote, and carried unanimously.)

MR. BERT LARSON:

RESOLUTION 11

BE IT RESOLVED that the Board of Commissioners of the Idaho State Bar create and appoint a standing committee on rules of practice and procedure to assist and work with the Idaho State Supreme Court in the exercise of its rule-making power.

Mr. President, I move the adoption of Resolution 11.

PRESIDENT RACINE: You have heard the resolution, and it has been seconded. This again is a statement of policy, although actually it has been the policy of the Bar for some time so to work with the Court.

MR. FRANK MEEK: Isn't that the duty of the Commission now without the appointment of a committee?

PRESIDENT RACINE: It seems to me that it is, but the thought was that perhaps the work of the Commission could be implemented by a committee to work with the Commission. It may not be necessary at all, and I know nothing more about it than that. Perhaps the chairman of the Resolutions Committee can further explain the matter.

MR. BERT LARSON: It was the understanding of our committee that it was suggested by the judiciary sections that such a committee be established, and therefore that resolution was proposed.

PRESIDENT RACINE: I think we can dispense with Bar association voting on this particular resolution. All those in favor of the resolution as read signify by saying "aye." Opposed "nay." The ayes have it, with one exception, the Seventh District, 61 votes, against it.

MR. BERT LARSON:

RESOLUTION 12

BE IT RESOLVED that the Board of Commissioners of the Idaho State Bar appoint a committee to conduct a study of the existing system for selection of jurors, and at the next annual meeting make recommendations designed to improve the system.

Mr. President, I move the adoption of Resolution 12.

PRESIDENT RACINE: Is there a second to the resolution? There is. This again is a resolution whieh requires no positive aetion at this time one way or the other, other than the appointment of a committee, whieh is presently within the power of the Commission. All those in favor of the resolution say "aye." Those against, "nay." The Sixth District Bar Association opposes the resolution. The resolution is adopted, otherwise.

MR. BERT LARSON:

RESOLUTION 13

BE IT RESOLVED that the Board of Commissioners of the Idaho State Bar appoint a committee to study and report upon the advisahility of increasing fees for jurors and witnesses.

Mr. President, I move the adoption of Resolution 13.

PRESIDENT RACINE: The resolution has heen seconded. This again requires merely the appointment of a committee, and no positive action on the part of the group other than the appointment of a committee.

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

MR. BERT LARSON:

RESOLUTION 14

BE IT RESOLVED that the Idaho State Bar sponsor legislation looking toward the redrafting and improving of the Judges' Retirement Act.

Mr. President, I move the adoption of Resolution 14.

PRESIDENT RACINE: The resolution has been moved and seconded. This is a matter which would he other than the appointment of a eommittee, and would be a matter of policy of the Bar. It will require the voting by individual Bar groups.

(Whereupon, the motion was put to a vote by Bar associations, and carried unanimously.)

MR. BERT LARSON:

RESOLUTION 15

BE IT RESOLVED that the Idaho State Bar sponsor litigation looking toward the increase of the salaries of the judiciary and for security of tenure of office.

Mr. President, I move the adoption of Resolution 15.

MR. DAVID DOANE: If you change that "litigation" to "legislation!" (Laughter)

PRESIDENT RACINE: The resolution says "legislation."

(Whereupon, the motion was seconded, and thcre being no diseussion, was put to a vote by Bar associations, and earried unanimously.)

MR. BERT LARSON: I apologize for misreading that word. It reminded me of a similar incident when our mucb praised secretary was in a toastmasters meeting, and was giving us a speech ou musie. I will not repeat the ineident, beeause of some embarrassment that may be caused our secretary, but I urge each of you to inquire of him as to his slip of the tongue, because if be is inclined to reveal it to you, I believe you will find it very amusing.

We had one other report presented to us in the Resolutions Committee. We feel we should give you some information with respect to that report. It came from the Committee on Uniform Fee Schedules. The Resolutions Committee did not take any action on the recommendations of that committee, and merely returns it here to the Idaho State Bar Association for further consideration at this open meeting.

That concludes the report of the Resolutions Committee. (Applause)

PRESIDENT RACINE: In view of what has been said by the chairman of the Resolutions Committee regarding the report of the Committee on Fee Schedules, although it is rather late, now being 12:15, I am wondering if there is a desire from the floor to discuss the matter of minimum fees. Most of you were here when the report of the chairman of that committee was given to you on last Thursday. If there is a desire to discuss the matter at this time, you may do so. We will entertain any motions or resolutions regarding the matter from the floor. If there is no discussion, the committee will simply be instructed to continue its study, and they can take the matter up with the local Bar association, and no doubt it can again be presented to the meeting next year, or perhaps earlier by ballot. Is there any discussion? (Silence)

The next matter on the agenda is the introduction of the President-Elect. Yes, Mr. Doane.

MR. DAVID DOANE: I just thought of one more resolution it seems to me we ought to adopt here. Maybe it doesn't have to be in that form, but I would like to have it mentioned, and that is with respect to the two constitutional amendments that were passed this last session. It seems to me that this association should undertake to promote an educational program through the Bar associations informing the public of the importance of ratifying those amendments at the next general election. I think it is a function of this Association to do that, because of the technical nature.

PRESIDENT RACINE: Those are the matters pertaining to the jurisdiction of the probate and justice courts.

MR. DAVID DOANE: If you think a resolution is advisable, I have one prepared that I would be glad to propose.

PRESIDENT RACINE: We would certainly be happy to entertain the resolution.

RESOLUTION 16

BE IT RESOLVED that the Idaho State Bar Association sponsor through its local Bar associations an educational program informing the public of the importance of the court reorganization and judicial reform of ratifying the constitutional amendments relating to the elimination of the jurisdictional limitations of probate and justices courts at the next general election.

PRESIDENT RACINE: Is there a second to the resolution? Now is there any opposition to the resolution, in order that we might dispense with voting by Bar groups?

(Whereupon, the resolution was put to a vote, and carried unanimously.)

SECRETARY PAUL B. ENNIS: I would like to inquire whether or not transportation might be arranged for Dean Spaeth and his wife to Boise. They are catching a plane out of there tomorrow morning at 11:20. If there are any

volunteers who would like to take the Dean and his wife back to Boise with them in the morning, which would require about a 7:00 departure, we would certainly appreciate hearing from you.

The Board would like to extend an invitation to every lawyer in the State to present an article or to submit an artiele for printing in the Idaho State Bar News Bulletin. We already have one such article submitted which will appear in the next issue of the Bulletin. Many of you, when you are briefing, will be eonsidering some problems of interest generally to Idaho lawyers, and if you would like to submit an article on any subject you think will be of general interest, we would be glad to publish it for you.

(Mr. and Mrs. Kent B. Power took
Dean Spaeth and his wife to Boise)

I might make just one additional comment. This morning I came here feeling very rested, full of vim and vigor, but there have been so many comments on how hard I work that I am completely exhausted.

PRESIDENT RACINE: We can now draw for the Supreme Court Digest. No. 40, Professor Thomas R. Walenta, of the University. He doesn't need it, but he gets it.

My remarks at this stage might be felt to be pure formality, but they aren't. Very sincerely, and honestly, I have thoroughly enjoyed my tenn in office. I greatly appreciate the opportunity that you gave me to be in office. It has been a worthwhile experience for me personally. I hope that I have justified to some extent your placing me in office as one of the officials of your Association.

We have a very fine president-elect. I don't imagne it will be any great surprise to you that he is going to be your next president. Mr. Russell Randall of Lewiston has served on the Commission for two years, and he will be your next president.

As one of my colleagues so aptly put it last evening, my peacock feathers will now be exchanged for a feather duster. I felt like a feather duster for some time. I appreciate having served you.

Thank you. (Prolonged applause)

MR. RUSSELL S. RANDALL: Mr. President and Members of the Bar: I think I speak for all the members of the Bar when I say to Lou Racine, for the job he has done, "well done." This not only eoncludes three years of work on the Commission for Lou, it also concludes four or five additional years on the examining committee.

I think it is also idle for me to stand before you and thank you for the election to this office. I am sure that you realize that this is the greatest honor that has ever come to me, and I assure you that I cherish it.

I have a fifty-minute inaugural address prepared, but unless there is some demand from the audience, I am going to forego that. I would like to impose on you for two or three minutes of your time, though, to tell you something of what we intend to do for the next year.

We are going to continue our program we have started to activate and keep activated the local Bar presidents in our state eommittee. We think that more good can come to the lawyers and to the Bar as a whole from a local level than it can from a state level.

I think we are also going to become more aggressive in this matter of unauthorized practice of law. If we are going to continue to admit members to this profession, I think it is our duty to see that the law business is preserved for them, and that those who are now engaging in the practice of law without a license to do so should stop.

We are also going to continue our work on continuing legal education, and I can assure every local Bar in the state that the State Bar Commission will be very glad to assist you in any institute that you might want to start or hold, and I will also assure that we should call in to those institutes our law school at the University of Idaho, where we have some very excellent talent.

One of the principal things we will do will be to continue our work on the revision of the rules of civil procedure. There is no lawyer who is going to be asked to approve any proposals for changes in our rules of civil procedure until he has had an opportunity to study them. It is our policy, and it is going to be our program, that when this study is received from Bobbs-Merrill, it will be published and circulated to all members of the Bar, and we will then go out in legal institutes ourselves over the state and discuss those proposals with the individual lawyers; and after that, if we have the approval of the local Bar associations and the lawyers of the state, we then expect to go to the Court and ask for the approval of those new rules.

We are going to continue to work on a disciplinary procedure. I think that you will agree with me that when any lawyer is accused of unethical conduct, he is entitled to a speedy and fair trial. That has not happened in the past, and we are going to try to correct that.

There is one matter that I feel very strongly about. It has been mentioned at this Convention several times, and it has been mentioned far more eloquently than I can do yesterday by Mr. Halpern, and that is the condition of our judicial salaries. I understand that the State of Idaho at the present time enjoys a very questionable position in having the lowest judicial salaries in the United States. I do not believe Idaho deserves that position. I think we have a judiciary that is just as good as in any other state in the Union, and I think they are entitled to a compensation which will adequately compensate them for the work they do. When we as lawyers go to an active, practicing lawyer, and ask him to fill a position on the Bench, I think it is up to us to see that he is going to be adequately compensated. I assure you that your Bar Commission in the next year is going to do some work on this. I realize that there will be no legislative session in the ensuing year, but I do not think it is a matter that should wait until the legislature meets. I think we should start to do it now.

I would like to say to you very frankly that your Bar Commission is a service commission, trying to serve the public and the lawyers. If at any time any lawyer in the State of Idaho wishes to take any matter up with your Bar Commission, I assure you that you will be well received.

That is all I have to say. I appreciate again the opportunity of serving you.

If there is no further business, this Annual Convention is adjourned.

(Applause, and adjournment at 12:30 p.m.)

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