PROCEEDINGS

of the

IDAHO STATE BAR

VOLUME XXX, 1956

Thirtieth Annual Meeting
SUN VALLEY, IDAHO
July 12, 13, 14, 1956

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, 1936-39.
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.
RUSSELL S. RANDALL, Lewiston, 1953-56.

Present Commissioners and Officers

WILLIS E. SULLIVAN, Boise, President
GILBERT C. ST. CLAIR, Idaho Falls, Vice-President
CLAY V. SPEAR, Coeur d'Alene
PAUL B. ENNIS, Boise, Secretary

Local Bar Associations

Clearwater (2nd and 10th Judicial Districts)—Wynne M. Blake, President, Lewiston
Third Judicial District—Raymond D. Givens, President, Boise
Southeastern Idaho (5th and 6th Judicial Districts)—Gerald Olson, President, Pocatello.
Seventh District—Richard Riordan, President, Nampa
Eighth District—Herb Sanderson, President, Coeur d'Alene
Ninth District—Art Smith, President, Idaho Falls
Eleventh District (11th and 4th Judicial Districts)—Richard Seeley, President, Jerome
Shoshone County—Richard Magnuson, President, Wallace.

Newly elected Commissioners and Officers of Idaho State Bar to serve until 1957 Annual Meeting. Left to right: Willis E. Sullivan, President; Gilbert C. St. Clair, Vice President; Clay V. Spear, Commissioner, Northern Division, and Paul B. Ennis, Secretary.

SPEAKERS

Wilfred K. Lorry

John J. McDevitt III

Oscar W. Worthwine (right) receives first annual "Award of Merit", presented by Ralph R. Breshears.

SPEAKERS

Professor Fred E. Inbau

The Honorable Alexander A. Holtzoff

PROCEEDINGS

1956 Annual Meeting

IDAHO STATE BAR

Sun Valley, Idaho
Thursday, July 12, 1956

PRESIDENT RUSSELL S. RANDALL: The 1956 Annual Meeting of the Idaho State Bar will please come to order. First order of business, the Reverend Douglas Ellway of Hailey, Idaho, will give the invocation.

REV. W. D. ELLWAY: Will you just sit for a minute, please, gentlemen.

It is a very great privilege indeed to be invited to open your convention here, Mr. President, and I hope that my words will not be criticized too much by legal minds, because our good friend Joe didn't give me much time on this business, about an hour's notice, which isn't very adequate for any preparation. However, one or two things crossed my mind, and if I might have a couple of minutes, before we say the brief prayer.

As I was coming up the road, with regard to your profession, I thought it may or may not have come to your notice during the time of your training that the adequacy of a legal code of any country or of any nation since the beginning of time has depended for its application, as far as the public welfare is concerned, on the regard, not necessarily for the true God whom we worship, but for a diety (maybe of their own conception), but nevertheless one which the people at that particular time revered. For instance, the oldest legal code of which we have any particular knowledge, the Code of Hammurabi, was evolved (and I think we can say evolved truly with that legal system) at a time when those people had a particularly sound idea of worship, even though it was a god which was a false one.

We note, too, that the great Roman legal system, maybe the most just and fairest and best applied that the world has ever known, came into being at a time when the Romans had, although they were man-made gods, a high reverence and a pure form of worship of those ancient dieties.

Then the third example which we might take which shows the legal system at its worst, maybe, is that of the Jewish people, particularly at the time of our Lord's birth, when we concede their legal system, which was particularly closely connected with the worship of the true God, which made the situation more unfortunate than ever, was so petty at that particular time, as was their worship, that both their legal code and their worship of God lost any spirituality whatsoever; for when we talk of spirituality in terms of regard for God, we must understand that as God gave us laws by which we govern ourselves, so He left it up to man to apply those laws. It is necessary, as you all know, that further laws be made in addition to those directly-given, divine laws for the benefit of the peoples of any country.

I don't know whether it has any bearing on the legal status in this country, but the good Lord gave us ten commandments, and the United States has made five million more to enforce them. It may be something that should be considered.

The point that I wish to make for you gentlemen assembled here for your convention, is this: that when we think of those ancient law codes, and when we think of our own particular code in this country of the United States today, we have a code of laws in a country which has a higher regard for God than any other

country on the face of the earth today, not only as regards the country as a whole, but personally, the people in it. Our constitution was drawn up at a time in the history of the world when that world was particularly indifferent to the teachings of God. The body of people who drew up the constitution and laws of this country, the forefathers of your profession, gentlemen, were people who drew up that constitution to be the only example of its kind in the world of that time. There were continual and specific references to what they believed to be the will and the plan of the diety for the human race.

I would remind you, as one who has been chosen by God to try to do a part of His work in the world, mindful of the honor to be opening your meeting today, that you are part in the scheme, as far as God desires it to have been evolved by man in this world for His purpose. It is not the least important of anyone's. Yours is maybe more important than anyone's. Yours is a profession which is much-maligned. It lends itself, obviously, as we all know, in the minds of those members of your profession who are not too scrupulous, to much fraud, and so on.

At the same time, when we remember those who were the forefathers of this country, when we remember the way in which the liberty which they brought has been upheld ever since, when we remember the justice that pertains in the courts of this country, when we think of all that, we can see that although it is, as I said, a much-maligned profession, yet we remember, too, when we think that it is the basic foundation of all that is good and just and true, and you are the upholders of that foundation, or rather, building on that foundation, should we say, so that all those things may be maintained, and that this country goes along hand in hand with God, that the vision of God which is in this country is upheld by you, as mueh as by anybody else, so that this country may prosper and be an example for generations to come, as also it is beneficial and beautiful to those of us who live here at this present time.

Would you stand and join in a brief prayer now?

In the Name of the Father, and of the Son, and of the Holy Spirit, Amen. Almighty Cod, the father of all, Who calls every man to serve Thee in his plaee and in his time on this earth, we pray and beseech Thee that Thou will give Thy blessing on these gathered together here today. Grant that even if they do not think of Thee directly, yet nevertheless unconsciously in all their deliberations Thy moral laws may be of foree to them. Grant also that in this so-beautiful part of Thy creation they may for these few days enjoy relaxation, that they may make new friends and renew old friendships; that all things may work together from Thee through them for their benefit and the benefit of all whom they may contaet in their daily life.

Grant this, oh Lord, for the sake of Thy Blessed Savior, Jesus Christ, our Lord, who gave us the true law and pointed out to us how to follow it. Amen.

May the blessing of God Almighty, the Father, and the Son, and the Holy Spirit, be with you all, and remain with you all, this day, and always. Amen.

PRESIDENT RANDALL: The vice president of the Commission is the general chairman of arrangements for the convention, and I am going to call on Bill Sullivan now to make some announcements with respect to this convention.

MR. WILLIS E. SULLIVAN: President Randall, members of the Idaho State Bar, and guests. The Prosecuting Attorneys' Seetion is now having a brief meeting in the second floor lounge of the lodge. If there are any prosecutors here, you are

asked to please attend. They expect to be through in time for the institute, which will start before long.

The members of the reception and distinguished guest committee, come to the front of the auditorium immediately following today's session.

Bruce Bowler has called a meeting of the Representative Judicial Compensation Committee to be held in Room 366-A in the lodge immediately following today's session. In case some may have forgotten, I will read the names of the members of the committee who are requested to attend: David Doane, Karl Jeppesen, O. R. Baum, Dean E. Miller, Kales E. Lowe, Ray McNichols, Paris Hall, Ralph Litton, Andrew F. James, E. T. Knudsen, Vernon Daniel, Alden Hull, John Daly, Harold Ryan, Willis Moffatt, James E. Schiller, L. Charles Johnson, Wynn Blake. Obviously, a number of the members of that committee are not yet in attendance. If you should happen to see any of them during this meeting or immediately following, would you please ask them to come to Room 366-A of the lodge.

As has been done for the past several years, we have a number of door prizes which have been donated by law book companies. They will be given out at the commeneement of each session, starting tomorrow morning, and that will be the first order of business on the program. So, it behooves you to be on time.

You will noticc your registration card has a number on it, and that number is utilized in drawing and determining the winner of these door prizes. The attorney winning the prize must be in attendance at the time of the drawing, and would he please wear his card so that his number may be verificd?

The law books which are donated by the companies are from the Bobbs-Merrill Company, "The Tax Court Digest;" West Publishing Company, "West's Supreme Court Digest;" and two copies of "McCormick on Evidence;" Lawyers Cooperative Publishing Company, two copies of "Cowdery's Business and Legal Forms;" Bancroft-Whitney, "Bancroft's Probate Practice," in six volumes. Prentice-Hall, "How to Prove a Prima Facie Defense."

In addition to the institute sessions, the Commission has attempted to arrange a social program which we feel will entertain all of you and your wives. At 3:00 o'clock this afternoon there is a reception for the ladies, for the wives of the distinguished guests, and a sport-style show on the Mint Julip Terrace. At 7:00 o'clock tonight is the smorgasbord on the lodge terrace. At 8:00 o'clock tomorrow morning there is a breakfast meeting for all members of the Bar under 36 years of age in the Redwood Room in the lodge. That is the first meeting that has ever been held in this state of the Junior Bar Section.

Tomorrow at 12:15 there is a ladies luncheon at Trail Creek Cabin. Transportation for the trip will be available at 12:00 noon. At 12:30 tomorrow afternoon there is a lawyers' luncheon at the lodge dining room. At that luncheon a report of the Committee to Increase Judieial Salaries will be made by the chairman of the committee, Bruce Bowler.

At 6:30 tomorrow afternoon is the social hour in the Redwood Room of the lodge. At 7:30 p.m. tomorrow is the annual banquet in the lodge dining room, at which time the 1956 Award of Merit will be made.

On Saturday, at 1:30 p.m., is the 5th Annual Lawyers' Golf Tournament and Trap Shoot, with the members wishing to register for the golf tournament registering with John Gunn and those wishing to shoot in the trap tournament registering with George Kneeland. At 7:30 Saturday evening an informal dinner on the

lodge terrace, at which the trophies will be awarded for the trap shoot and golf tournament. At 9:30 Saturday evening is the ice show.

We feel that we have arranged a program that will be instructive and entertaining and interesting to all of you. We sincerely hope that you enjoy it. Thank you. (Applause)

PRESIDENT RANDALL: At this time I would like to name the two committees. The Canvassing Committee, which will canvass the election for the commissioner for the Northern District, will be Hugh Maguire, chairman, Thomas Feeney, and Eugene Thomas. They will meet, or are privileged to meet, I will say, in Room 438 of the lodge, at any time they desire. The ballots had to be in by 12 noon, so they can be counted. The report of that committee will be tomorrow afternoon.

The Resolution Committee will be Dale Clemons, chairman, Arthur Smith, T. M. Robertson, Ralph Breshears, Don Bistline, Charles Herndon, Marcus J. Ware, Robert Elder, and William Tuson. That committee will meet, or may meet, in Room 366-A of the lodge on Friday afternoon. I am going to ask the chairman if he will be sure to arrange for the meeting of his committee.

Any member of the Bar who wishes to present a resolution to the Resolutions Committee, is requested to have it written in proper form, and submitted to the chairman or any member of the committee prior to its meeting tomorrow afternoon.

The next item is the annual report from our secretary.

SECRETARY ENNIS: Mr. Chairman and members of the Idaho State Bar: Each year it is my task to report to you the statistics regarding our financial situation, the membership of the Bar as affected by admissions and deaths, and to report the actions of the Board in connection with disciplinary matters.

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

EXPENDITURES—June 1, 1955, to June 1, 1956:		
Personal Services	$ 4,304.25	
Travel Expense	5,526.23	
Other Miscellaneous Expense	3,357.08°	
Capital Outlay	575.00	
Social Security Fund Transfers	75.44	
General Fund Transfers	18.37	
		$13,856.37
RECEIPTS—June 1, 1955, to June 1, 1956	$ 16,466.45	
Balance June 1, 1955	19,442.02	
		$35,908.47
Less Expense	$ 13,856.37	
Balance June 1, 1956		$22,052.10°°

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

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:		6/1/55	6/1/56
State of Idaho	$	168.98	$ 269.54
West Coast Airlines		6.08	
	$	175.06	$ 269.54
Cash	$	.10	
Deposit in First National Bank		1,817.69	1,751.85
	$	1,992.85	$ 2,021.39
Gain		28.54	
	$	2,021.39	$ 2,021.39
Gain:			
Unexpended Bar Registration Fee—1955 meeting			$ 28.54

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

	1955	1956	Increase
Northern Division	134	136	1.4%
Western Division	316	319	1.0%
Eastern Division	146	152	4.0%
Military Service	10	5	50.0%°
Out of State Membership	28	22	20.5%°
Total	634	634	

°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:

Shoshone County Bar Association	22
Clearwater Bar Association	63
Third District Bar Association	169
Southeastern Idaho Bar Association	92
Seventh District Bar Association	79
Eighth District Bar Association	58
Ninth District Bar Association	51
Eleventh and Fourth District Bar Association	73
	607
Military Service	5
Out of State	22
	634

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

Morton C. Taylor, Seattle, Washington
D. Worth Clark, Los Angeles, California
John W. Clark, Malad, Idaho
H. B. Redford, Rupert, Idaho
Eugene A. Cox, Lewiston, Idaho
Donald R. Good, Blackfoot, Idaho
J. M. Thompson, Boise, Idaho
Thomas E. Ray, Malad, Idaho
Pascoe B. Carter, Menlo Park, California
Sennett S. Taylor, Wallace, Idaho
Clifton Y. Creelman, Lewiston, Idaho
Frank D. Ryan, Weiser, Idaho
William E. Lee, Boise, Idaho
Oliver C. Wilson, Coeur d'Alene, Idaho
Monroe G. Whitney, Coeur d'Alene, Idaho
Herbert W. Whitten, Chico, California
Hensley G. Harris, St. Anthony, Idaho
Charles H. Richeson, Boise, Idaho
George W. Suppiger, Tucson, Arizona
Walter Griffiths, Caldwell, Idaho
Clarence Hillman, Boise, Idaho
Frank Kimble, Orofino, Idaho
Thomas E. Buckner, Knoxville, Tennessee
Jo Gibson Martin, Pioche, Nevada
Louis G. Peterson, Moscow
Nicodemus D. Wernette, Spokane, Washington
James S. Bogart, Boise, Idaho

With respect to admission to the Bar, two examinations were administered during the past year, one in September, 1955, and the other in April, 1956. In the first examination there were a total of twenty applicants, nineteen of whom passed, one of whom failed. In the April examination, eight took it, all of whom passed. Of the twenty-eight applicants, twenty-seven, or 96.4% successfully passed the examination.

During the past year numerous complaints, formal and informal, were filed in the office of the Secretary. Upon receipt of any communication, which does not constitute a written verified form of complaint, indicating that a person is aggrieved by reason of some conduct on the part of a lawyer, such person is informed of the requirement of the rules governing disciplinary action that the facts out of which the charge of improper or unethical conduct arises must be set forth in writing and verified. Such information is given in a manner neither to discourage nor encourage the filing of a complaint. Often times the complainant fails to comply with the procedural requirements and no action is taken, except in those cases where the charge of misconduct is of such a serious nature as to impose upon the Board the obligation of making an independent investigation upon its own behalf and with the thought that if the investigation appears to support the charge, the Board may institute disciplinary proceedings on its own motion, as allowed by the rules. Ten formal complaints were considered by the Commission during the past year. On the basis of preliminary investigation, which involves an interview with the complainant and witnesses and the checking on

apparent sources of information as well as an interview with the attorney charged with misconduct, a recommendation is made to the Board as to whether or not formal disciplinary proceedings shall be instituted. Eight of the ten complaints filed were dismissed after receipt of report of preliminary investigation. In one case where the dilatory conduct of a lawyer and his failure to account to his client appeared to have arisen as the result of the excessive use of intoxicating liquor, further disciplinary action was held in abeyance conditioned upon the attorney's total abstinence from the use of alcoholic beverages as a demonstration of his rehabilitation as claimed by the attorney. One complaint is now being investigated preliminarily and report is awaited.

PRESIDENT RANDALL: Any comments on the Secretary's Report? If not, we will order it approved and filed.

The next item on the program is the President's address. Whenever I see that word "address" it frightens me because it means that the speaker should utter some profound thoughts which would challenge the intelligence of his audience. I would rather consider this a report of the activities of your Commission for the previous year.

In order that you may not think I am encroaching on the time of more important speakers, I regret to announce that Mr. E. Smythe Gambrell, president of the American Bar Association, and Mr. Maxwell, the president-elect of the American Bar Association, were both unable to attend this convention. Mr. Gambrell was involved in a hearing for one of his most important clients in New York City, and could not get away; and Mr. Maxwell and Mr. Gambrell are both leaving tomorrow for England to arrange for the meeting of the American Bar with the British Bar in 1957.

In appearing before you as president of this Association, I hope you will permit one personal reference. It was just 25 years ago this month that as a graduate of the University of Idaho Law School I was invited to speak to the Idaho State Bar, on the impressions of a law graduate. At that time I was young, frightened and inexperienced, and I assure you that the only difference now is that I am no longer young.

In making this report, we do not do so in the spirit of seeking commendation for what the Commission has done, but more to keep you informed of what your Commission is doing, with special emphasis upon those functions that we feel should have the continuing support of the Bar.

Before going into the report of our activities, I want to thank every member of the Bar who has so willingly given his time and services in committee work for the Bar. You will recall about two years ago we reactivated the statewide committees. Those committees have worked hard. They have done a good job, and only on very rare occasions have we as a commission failed to received full cooperation of lawyers working on those committees.

The most important function of the commission, as it always has been and in my opinion always will be, is governing the admission of new members to our Bar. We have in the last two or three years somewhat changed our procedure in Bar examinations. You will recall that when most of us took the Bar we had 50 bar exam questions. We have reduced that number now to 30, and rather than having what we call the single-issue question, we have adopted the plan of having what we call a multiple-issue question. We think that is a better test of legal ability. We think it fairer to the Bar, and we also think it is fairer to the applicant.

I want to thank now the members of the examining committee who have worked so diligently over several years' time in grading these Bar examinations.

The biggest function that the Commission has undertaken in the last few years has been the revision of our rules of civil procedure. You will recall that in 1954 the Bar at its annual meeting adopted a resolution calling for a revision of our rules of civil procedure. Your Commission took that as a command that there should be some concrete proposals made to the Bar and to the Court for the revision of our rules. This had been attempted for some time without much success, and we came to the conclusion that the only way we could get the job done was to employ professional help. We contacted Bobbs-Merrill law book publishers and they agreed to do the editorial work for us. We found that the Bar Commission did not have the funds to do this, but we went to the Code Commission, and the Code Commission cooperated with us 100%, in having this study made. At this time I would like to thank the members of the Code Commission for the cooperation and assistance we have had from them on this project.

We also employed E. H. Casterlin, a practicing lawyer at Pocatello, Idaho, to collaborate with the editors of Bobbs-Merrill. The draft of these rules was prepared and submitted to the Bar Commission and the Code Commission, and after they were approved by both of those commissions they were returned to Bobbs-Merrill for printing, and in the last few days I am sure that you have received in the mail copies of our proposal for revision of the rules of civil procedure.

We think that if we are to improve the administration of justice in the State of Idaho, there must be a revision of our rules of civil procedure. I have had the privilege of attending conferences of other Bar officers in our state, and I have come to the conclusion that insofar as our rules of civil procedure are concerned, to a certain extent, Idaho is still in the horse-and-buggy days. No longer should a law suit be determined by surprise, or by delaying tactics. A law suit is a very simple thing. It is nothing more than a search for the truth, and anything that will help the truth to be found, fairly, expeditiously, and impartially, we as a Bar should support it.

Your Bar Commission has been accused of being advocates of these new rules of civil procedure, and I can only say to that, we plead guilty, because we feel that the adoption of these rules will be a substantial improvement in the administration of justice in the State of Idaho.

We also commenced one other project in this last year. We appointed a committee on Continuing Legal Education, and we held two institutes in the State of Idaho under the sponsorship of the Bar Commission, the first last fall at Moscow. That was jointly sponsored by the Law School of the University of Idaho and the Bar Commission. We ran into very serious storms. The attendance wasn't very good, but we hope that will be an annual affair and that the law school and the Bar Association will jointly sponsor an institute. We have already arranged for the time for the one this fall; and, I am sure by coincidence only, it is going to be held at the same time that the University of Idaho plays W.S.C. in football I think we have a block of 50 rooms reserved now for this institute, and we certainly hope that the lawyers of Idaho will start to come to these institutes.

We also held an institute at Twin Falls, Idaho, which I think was one of the outstanding institutes that I have ever attended. It was put on largely by Idaho lawyers, and it was an excellent job. The attendance was excellent, and we hope that we can continue this function of holding institutes, one in the north and one in the south.

Another institute was held in the State of Idaho at Idaho Falls which was sponsored by the lawyers of that Judicial District, with the life underwriters and the accountants, and I understand that was an outstanding success. We would like to encourage other local bar associations to sponsor these institutes. I can assure you the State Bar will cooperate in any way it can in these legal institutes.

One other project we have commenced, of which you will hear more tomorrow, is this matter of trying to see that the judges of our state are adequately compensated. The judges of Idaho now are paid less than judges in any other state in the United States. We think that this is a deplorable condition, and we think that as a Bar we must take the lead in seeing if we can correct this situation. We are organizing the Bar in various committees throughout the state, and our complete report will be made tomorrow by Bruce Bowler, the chairman of the committee, and we hope that the lawyers will all attend that luncheon as we need the support of the lawyers to put this project over.

In doing this it is necessary that we have some funds to pay the necessary expenses. As Paul told you, our money is controlled by the State of Idaho, and we do not feel that money spent to raise the salaries of judges would be a legitimate charge against public funds. We therefore have organized the Idaho State Bar Foundation, which is a separate corporation, to which the donations will be made for this project, but it has been made in sueh a manner that we hope it is a permanent organization.

I think the Bar has to participate in programs from time to time which requires the expenditure of funds which are not legitimate eharges against the state. I think it is necessary that the Bar have some funds available for these projects. I think that we should be thinking in terms of scholarships for outstanding legal students. If our state grows and the number of lawyers grows, eventually we might think in terms of building a home for the Idaho State Bar. All of these things could be done under a foundation, the same as the Ameriean Bar has done, as well as many of the state Bar associations.

We have kept up our contact with the University of Idaho Law School. The Commission met in Moscow at the same time as the institute, and met with the Dean and part of the faculty. We have also kept up our contacts with the American Bar Association. A member of the Commission has attended every meeting of the American Bar.

The regional meeting in Spokane of the American Bar was attended by two of the Commission, and by our secretary. I might say in passing that that was an outstanding meeting. I think that we there see the Ameriean Bar getting down on the level of the local practicing lawyer.

Our Committee on Public Relations has done an excellent job in the last year. They have met on numerous occasions and have made some concrete proposals to the Bar Commission, and it is probably the fault of the Commission that those have not been put in effect, but we find that we are continually confronted with the lack of funds. Certainly it is not the fault of this Committee that some of the things that they have recommended to us have not been put into effect, and I am sure that in the near future some of those recommendations will be actually put into effect and circulated to the Bar.

The Committee on Unauthorized Practice has done an excellent job. They have met with the State Realty Board and have adopted a memorandum of understanding between the lawyers and the real estate men, and I believe that that is to be presented Saturday morning for approval of the Bar.

In singling out these committees I do not mean to indicate that the other committees have not done a good job, but those two committees are very important and have done an excellent job.

Last fall we called the local Bar presidents into a meeting at Boise, and I believo practically every local Bar was represented. I think that was something that was well worthwhile. It gave the Commission an opportunity to present to the local Bar presidents and through them to the local lawyers the program that the Commission is trying to put over. I hope that in the future we will continue to have meetings of the local Bar presidents, as we feel more good can come to the lawyers from a local level than from the state level.

As a result, partly, of these local Bar president meetings, the local Bars have become more active than they ever have before.

There is one other matter I would like to mention, and that is that before the lawyers of Idaho will be asked to approve these proposed rules of civil procedure, the Commission intends to hold local institutes with each local Bar association to explain these rules thoroughly, and give everyone in the state an opportunity to express his approval or disapproval. It will be after the local lawyers have had an opportunity to do this that it will be presented to the Court for its approval.

It has been a very distinct honor for me to be president of your Association, and I assure you that with the close of this convention my interest in the legal profession and my interest in the Idaho State Bar will not cease. I certainly will be willing to do anything in the future that I can to promote the welfare of the lawyers and the Bar.

Thank you very much. (Applause)

I am going to ask Gilbert C. St. Clair, our commissioner from the Eastern District, to introduce our next speaker to you.

MR. ST. CLAIR: Mr. President, Members of the Bar, and Guests. In view of the cancellation of the president of the American Bar Association, and the president-elect of the American Bar Association, I doubt if the next speaker is aware of his place on the program. I have had no chance to talk with him before his arrival.

However, he is a member of the Bar of the States of Missouri, Ohio, Washington, and New York. He has been the dean of the College of Law at the University of Idaho since 1946. He has appeared before this body several times, and I am sure you all are acquainted with him. Dean Edward S. Stimson.

DEAN STIMSON: Mr. President, Mr. St. Clair, Commissioners, and members of the Idaho State Bar Association:

It is a pleasure to be here. I appreciate the opportunity to talk to you about the University of Idaho College of Law, and its relation to the Idaho State Bar.

It is my conception that the law school should not only be a law school, but it should be a sort of legal center. Its functions would be, of course, the law school function. It would include service to lawyers, and would also include research.

Now, I mean by service to the lawyers, such things as the first annual Idaho law institute, which we held at the law school at the University in cooperation

with the Idaho State Bar Association. Professor Walenta worked very hard on that, as did all of the members of the Association's Committee on Continuing Legal Education. Plans, as President Randall already said, are already being made for the second institute. This year it will be earlier so as to avoid the snow storms.

I also mean by serviee to the lawyers such things as our research projects. These projects should result in books on the Idaho law, such as the book on the Idaho law of evidence, a book on the Idaho law of Community property, and the like.

I also mean by service to the lawyers a publication which would keep Idaho lawyers up-to-date on the Idaho law as it comes out, and on new developments in the law generally.

We have tried for some years to establish a law review. It would have been established long before this, except that we have never been able to secure the appropriation of funds for that purpose, although in three different budgets that went to the legislature that was included. However, it was in the second priority. Since the people who design our budget are not lawyers, that's the rating it seemed worth to them, and the legislature did not get in any of those years into the second priority.

I would like to make our faculty members available for local bar meetings in the state. The faculty members are willing and anxious to do this. However, the College of Law budget does not have sufficient travel funds so that we can pay the expenses of faculty members to these meetings. If you want faculty members to discuss some subject in his field of interest in which you are interested, I am afraid it would be necessary for you to provide his expenses.

In short, we want to be as useful and helpful to the lawyers of this State as possible, within the funds made available to us by the legislature.

On the teaching side of our job, we are proud of our achievements, and I would like to report to you what we have been doing. First, a few words about our plant and equipment. Our plant has been gradually growing, and we have aequired additional classrooms, new offices, as time has gone on. The library grows at the rate of about five or six hundred volumes a year. It has now reached a total of 21,000 volumes, which is all the space we have in our present quarters.

In about two years we will have new quarters. We will move into the space of the administration building, which is being vacated by the general library. We plan that this space shall be remodeled so as to furnish first-class quarters for the law school. There will be classrooms, a courtroom, offices for the faculty, library room, typing room, student lounge, and locker room. The new space will make available a book space of about 40,000 volumes, so we should have space for the library for a number of years.

I believe we have the best law library in the State. It is also one of the best selected small law school libraries in the country. We have all of the Federal reports, State Supreme Court Reports, most of the English material, statutes of all the states, quite a selection of text books, all of the law reviews which are published in the United States, digests, and materials of that sort. We have been spending $4000 a year for new books. We hope to spend in succeeding years about $5000 per year.

We have revised and streamlined our curriculum. Under the elective system which we had up until about a year ago, we had more courses than the students could take. However, we found that the choice which students made was not a very good one. We had students graduating who had not had a course in evidence, or who had not had a course in corporations, or had not had a course in bills and notes. Now the course is almost entirely prescribed. The student must take a course we have selected, and we make certain that he does not leave out important and basic courses like evidence, corporations, bills and notes.

For about eight years now we have had a practice court, which under Professor Peterson has reached a high degree of perfection. The student actually tries a case before a jury. Sometimes an incident is staged by the dramatic students. Other students witness this drama, and then serve as witnesses in the trial. High school students are used for jurors. Therefore, the student lawyers go through the whole business of preparing pleadings and actually trying a case before a jury. In the second semester the case is on appeal before a court consisting of judges and lawyers, acting as an appellate bench. All of the papers in perfecting the appeal are prepared, and oral argument is made.

A more recent development is our moot court competition. The bar of the City of New York organized a nationwide moot court competition. First they have regional competition. The winners of the regional competition then go to New York City, and compete for the honor of being adjudged the best moot court team in the country. We at the University of Idaho started the Northwest competition two years ago. We also organized within our school competition amongst student teams to decide the winning team within the school, and these students compete for the honor of representing the school in the Northwest Regional Competition.

This is all extra-curricular activity for these students, but practically all of them are participating in it, and we believe they are getting a great deal out of it.

The staff at the University of Idaho College of Law consists of the dean, five other faculty members, a secretary to the dean, librarian, and a stenographer. Professor Berman's salary comes from special research funds of the University. We hope his salary can be put on a regular College of Law budget so we do not have the uncertainties of appealing to the research council for these funds, none of whom are lawyers except myself. These faculty members have been with us long enough so they have gained a high degree of competency in their specialties. They may be able to make suggestions for solution of some of your problems. They have been producing books. For example, Professor Peterson has a mimeographed book on the "Idaho Practice in Trials and Appeals." Professor Bell's "Handbook of the Idaho Law of Evidence" has been completed. He has a little polishing to do on it. On my way up here I went to Caldwell to talk to Caxton Printer people, to see if they would publish it. We hope to know in a month or two just when and how that can be put out.

Professor Brockelbank, as you know, is working on a book on the "Community Property Law of Idaho." I have completed a set of mimeographed cases on "Conflicts of Law." Professor Walenta has mimeographed materials on "Employees' Pension Plans and Trusts."

Some of us have published articles in the legal journals--Brochelbank, Bell, Peterson, and myself. If we can keep the present staff, I am sure we can continue to do a fine job of teaching, research, and service.

I say "if," because the salary which we pay professors at the University of

Idaho College of Law is not competitive with what is paid in similar law schools in the West. We run the risk that these men will be offered higher salaries by other law schools, and we will lose them, just at the point when they are getting productive. Like other teachers at the University of Idaho, law teacher salaries are below the level of those paid in similar university law schools in the West.

The American Bar Association standards for law professor salaries are about what supreme court judges receive. As you know, our Supreme Court judges receive the lowest salaries in any state in the union, but law professor salaries are substantially below those salaries. The average income of lawyers in Idaho, according to a report made last year, is $7,292.59. The average law professor's salary at the University of Idaho is substantially below that figure.

We do not appoint a man to the faculty of the College of Law unless he has an A.B. or B.S. Degree. In addition, he must have his law degree. He must be within the top 10% of his law school graduating class. He also should have had some graduate work in law, and some practical experience as a lawyer.

Do you want us to keep these men? Do you want legal education at the University of Idaho College of Law to continue to be of high quality? If so, you ean help by supporting higher salaries for law professors.

The number of graduates from law schools in the United States is not now sufficient to supply the need for lawyers. In 1947 the enrollment in law schools in the United States was 51,015. By 1954 the number of students in law schools had declined to 39,565, a decline of 11,450. This decline is due to two things, primarily. First, the increase of the required amount of pre-legal education from 2 years to 3. Secondly, selective service. A high school student, graduating from high school today, who plans to be a lawyer, must have 3 years of pre-legal education in a university. He must have 3 years in law school, and 2 years in military service. There are fewer who are willing to spend this long time, and that, I think, is what has caused the decline in the number of students in the country.

We can see this in another way. The demand for graduates is much greater than it used to be. We have representatives of the J. A. C. branches of the various services coming to the law school to recruit men. It used to be that unless you were acquainted with the President of the United States you couldn't get into the J. A. C. Now they are recruiting. The same is true of the various federal governmental agencies. The result is that today's placement is no problem. However, most of the students would still rather practice law than go into any of the services, and most of them do want to practice law.

There is no tuition at the University of Idaho College of Law for residents of Idaho. Nonetheless, although in that sense the costs are low at the University of Idaho, many of the students have to support themselves, in whole or in part. We have at the law school no scholarships, and we have only one cash prize, which is a $100 prize offered by a title company. I was glad to hear President Randall support and state the need for seholarships. We hope that some of you will feel moved to contribute funds for either scholarships or cash prizes for students.

Thank you very much. (Applause)

(Recess for 5 minutes)

PRESIDENT RANDALL: I am going to ask Bill Sullivan if he will introduce our next speaker.

mesh, the sides, bottom, and top. There was a group of people in there, with hands outstretched on the mesh, some of them shouting, some of them just looking downcast. He asked his angel guide who they were. It was explained to him that this unusual group was made up of folks from Idaho, who having explored and experienced the pleasures of the heavenly area, had now petitioned for a return to that glorious spot on earth, the State of Idaho.

I should like to thank you for the courtesies that have thus far been extended to us, far and above what we are entitled to, and far and above that which we have earned. I have spoken in a number of jurisdictions throughout these United States, and I can say to you that you folks outdo the vaunted hospitality of the south. The handsome men in your association and the beautiful women I had the pleasure of meeting indicate that you have nothing to be concerned about on that score, either.

Last night's efforts to make John and me feel at home might suggest that if I were to speak like a banker, at least if the Idaho bar is not solvent, but it is certainly liquid. I might say that we needed that. In our section of the country—I guess you consider Philadelphia almost as far east as you can get—a majority of the people feel that it involves a major physical effort to drive to a shopping center a half a mile from home, and a really large adventure is to go to New York City, 90 miles away! When a couple of your members picked John and me up at Twin Falls, we were delighted at the courtesy extended. We were somewhat distressed that these men should have been put out to travel this vast distance of 85 miles each way simply to pick us up. We had made arrangements to rent a car and drive here through the badlands, lava, cactus bushes, or sagebrush, and all the natural beauty here.

Since the young men might be in the audience and I don't want to embarrass them, I won't mention their names. But the young man who was driving the car —I say driving, but what I really mean is flying, although I don't know that he realized he was piloting, not driving—said, "Hell, we don't consider it worthwhile to open the garage doors unless we have to go 250 miles." He drove us from Twin Falls to Sun Valley in 67 minutes flat. I clocked it. I clocked it. If there is a sign, as reported to me, that said "Monotonous, ain't it," I didn't get a chance to read it! (Laughter)

When he described the lava formations, he was talking of what was five miles back by the time he finished talking. But, we enjoyed it, and yet I imagine that is why your president, commissioners, secretary, felt upon looking at us that we needed a little stimulation last night! (Laughter)

I wouldn't like you to feel that we are so presumptuous as to feel that we are the oracles, and you will go away from here vastly more intelligent than you came. You may go away more angry than you came. There may be a number of things that I say with which you will disagree, because I don't know how many plaintiff's lawyers there are in Idaho. I know there are a number of defendant's lawyers. It is unfortunate that so many good men went down the wrong road! However, maybe I can help to open a new vista to some of you, so you can realize that there are green pastures on the other side, too. I realize there are many among you who are much more experienced, learned, and effective, than I, but an exchange of views by members of our profession from different jurisdictions cannot help but be of interest, stimulating, and helpful in solving problems of mutual interest which require thoughtful consideration and which demand solution. I do not ask that you agree with the thoughts that I express. I do hope for a certain amount of receptivity and objective consideration on your part.

I might point out to you that after all we are all cut from the same mold, but we do learn from experience, and some of us get more of it than others.

Now, John and I are very good friends, and have been through this before. He will get anxious for me to sit down, and make every effort for me to cut this short, but I assure him I will sit down in plenty of time for him to have, oh, five or ten minutes of comment. I find that generally the defendants can't give you much more time than that without repeating themselves. (Laughter)

I suggest to you that in the history of our profession we have been grossly derelict in our failure to train members of our profession to understand the problems involved in the handling of personal injury cases. I don't think there will be any disagreement with the proposition that in law school and out of law school, the emphasis has always been placed on property values. We teach our law students how to determine damages, to property; damages to machinery and equipment, replacement, depreciation, loss of use, productive capacity decrease, cost of production, overhead, markup, sales—all those things we teach our men. But who teaches the lawyer, whether he be young or old, about human values? Who teaches him that the working man's capital, his inventory, his equipment, is a strong body and a sound mind. A machine can be replaced, A man can't. Oh, I know there are people who say you can always get another man. None of us are indispensable. However, if our principles and our beliefs are correct, and I think they are, an irreplaceable loss has been suffered by society, by the community, by the family, and the man, when a man has been put out of business, has been prevented from earning his living, or his earning capacity has been reduced.

Today the personal injury case constitutes the vast bulk of our litigation. We are living in a mechanized civilization. Millions of potential claims arise yearly. We have seen the development of mammoth insurance enterprizes, owning millions of dollars of buildings, with million-dollar advertising programs, and many hundreds of thousands of jobs in that industry. Much of the investment capital available in these United States today is in the hands of our insurance companies. They have been outstandingly successful, and may they always be. I always like them to be able to pay our verdicts. I think the success of our country, the financial well-being of our country, is irrevocably interwoven in the success of our insurance industry, and I want them to be successful. Yet they are answerable to the public as fiduciaries handling funds affected by a public trust, funds which are ear-marked for a specific purpose. The premiums that you and I pay for insurance coverage aggregate a huge fund, and it is paid not only for the protection of the assured, but is paid for the protection of the injured victim of our industrial technology.

If this be regarded as heresy, If I be charged with being a radical or subversive because I make these statements, let me point out to you that the insurance companies themselves, at long last, have begun to recognize their obligation to the public. In the Insurance Law Journal, the bible of the insurance industry, in a recent issue of that publication, in an article by a gentleman in charge of liability claims in the West Coast—at least he was in charge before he wrote this article—he said, in part, "The insurance companies operate on the laws of great numbers, and base their operations on the averages resulting therefrom. They collect from many to pay the unfortunate few. This makes the insurance companies trustees of the funds of their policy holders."

They are trustees, and they have an obligation to see that people who are hurt,

who are victims and casualties of this mechanized, advanced civilization of ours, by which we have attained the high standard of living which we enjoy, are reasonably compensated.

In a book which was written by an outstanding casualty company man, Patrick MacGerrick, a book on how to handle casualty claims, how to investigate them—not a law book, but really a service book and a very good one—he sets forth many principles for agents to follow. That book was reviewed by the New York County Bar Bulletin, which review stated, "This book maintains the thesis that the prime objective of casualty companies is promptly to arrange a fair settlement of just claims to effect a compromise of questionable liability cases, and to avoid costly litigation with its uncertain results."

These are comments of people on the insurance side, and I am glad they have come to realize their public responsibilities.

There is also another practical consideration. Whenever a man is hurt, there is damage to his productive capacity, and somebody has to pay the bill. It can be society, the community. It suffered a loss in its productive facilities. There are medical bills, maintenance of the family, and who is going to pay that bill? Is it going to be by relief from tax money you and I pay for governmental functious, or is it going to be paid by the tort-feasor from the fund which has been established for that purpose? Think it over, and see if fairness, logie, and reason don't require that this man be adequately compensated from these funds which were created for that specific purpose.

The attorney who represents clients with personal injury claims has to be a very diverse individual. I would like to say to you gentlemen who are on the defendant's side, not to look unkindly upon us. We are necessary—mayhe a necessary evil, you may believe. If it be evil to have helped establish your worth, to have helped to increase your income, then we are a necessary evil. If it be evil to have helped to liberalize the law, and to have helped to increase our standard of living and our standard of values, we are a necessary evil. I say to you that there are many communities in these United States in which there is no vigorous, aggressive, plaintiff's lawyer, in which defendant's counsel are regarded by their clients, the underwriters, the insurance companies, as necessary evils because they have to have legal representation, and as not worth a fair fee. We are helping to overcome that belief on the part of the insurance companies, because if they get clipped two or three times by substantial verdicts, they come to realize that it is desirable to have good, competent, efficient, vigorous men as company's counsel, and they find that good men cost money, and it pays them to pay good fees to men who give them good representation, if they need good representation. They do not need good representation if you do not have an aggressive plaintiff's bar. Justice is obtained uuder our system hy having vigorous, competent arguments on both sides, and we do a disservice to the community and to our couutry and to our system of law if there is an overbalance on one side or the other.

The plaintiff's attorney has to be a man who is dedicated, a man who is intense, a man who has a relish for the ordeal of combat, and who doesn't shrink from rolling around in the gutter of the law, if it he conducted on that low level, and if it be necessary. He must be a man who has an appreciation of human values, a sensitivity, a recognition that the greatest natural resource of these United States is our hunan beings, without which all the other elemental resources of nature would be of little value. He has to be a man of intellectual integrity, a

man whose desire to win a case must not becloud the basic proposition that our system of government by law requires the establishment and development of principles of wide application which will result in the most good for the greatest number of people. He has to help maintain confidence in and respect for our system of law, and our judges. He has to know the law, the procedural rules, regarding the application of the law and the development of facts. He has to be untiring in his energy and his willingness to work to seek out the facts and to research the law. He has to have the kind of guts that keeps him going when year after year he is frustrated by judges living in the 18th and 19th century, many of whom regard the 20th century as unconstitutional. He must be willing to stay in there and fight for what he thinks is good and right. He has to be an advocate.

He has to resolve all doubts in favor of his client. His purpose is to secure the maximum favorable result for his client, which the facts will allow and support. If the law be wrong, and justice and equity indicate the law should be changed, he has to take that case and try to change the law. In short, he has to be a realist and yet a visionary. He must be an idealist with a sense of practical values. He has to be a vigorous proponent and an aggressive fighter, willing to compromise, except on principle.

If you are wise, when summing up to a jury, you don't start talking about the facts of your case right away, unless it is an open and shut proposition, in which ease it would probably be settled. You have to condition the court and the jury, so that they view your remarks in the light in which you want them to view the remarks. I will admit that my remarks thus far have been to condition your minds. Now I will get down to what we are going to talk about this afternoon.

We are talking about evaluating a personal injury casc, and the negotiations for settlement of that case. May I say to you that the comments I am going to make are applicable whether we are talking about a case worth a thousand dollars or a hundred thousand dollars.

I think it unfortunate that the program is arranged so that the members of the judiciary are engaged in another portion of the program at some other place. It has been my experience that the judges have at least as much to learn as we practicing members of the Bar, and sometimes more. It has been my unfortunate experience to learn that on many occasions the elevation to the bench carries with it a set of blinders which prevent the judges from looking at any cases other thau those decided 50 years ago, and that the word remittitur is a nice word and the word additur is a dirty word, and the word money, especially if the verdict is much above what they make each year, has an astonishing effect on their consideration of legal principles.

When we are together, in private session, talking shop, I think we should talk to our judiciary the way we talk to each other. We don't have to have grievance committees to take gripes to the court. We have to do our fighting on a high, educational level, and a high equitable level when we are in court, but there is no reason why in an intimate discussion wc shouldn't try to educate our judiciary just as we try to educate ourselves. There is no committee on continuing legal education of the judges. We operate under the peculiar proposition that once you get to be a judge it is assumed that you know everything that every lawyer should ever know, and you don't have to learn anything else. As a matter of fact, you can forget everything you ever knew, because the lawyers will tell you what the law is, and you can either accept it or reject it, whichever you please.

There are three general classifications of types of values in personal injury cases. One is the pure value, which involves only a calculation of the damage which your client has sustained, without any other consideration. A man is hurt. He loses so much time from work. You are able to calculate a percentage of damage, of impairment in the future. You know from reviewing records and talking to doctors and to your client, and intimate members of his family, the extent of the pain he has suffered. You know from your analysis of your client, having talked to him, what his pain threshhold is, and whether that suffering to him has been intense or minimal. You can determine by pure arithmetical calculations what the pure value of that case is.

The second classification is the formal value. These are simply arbitrary designations which I have created. The formal value relates to an objective application to the facts of your case, the law which is applicable, which indicates from a legal point of view, with the facts available, what the value of that case is. It takes into the question liability, difficulties of proof, and other considerations.

The third type of value is the practical value. How much do you really think you can get for your client? How much can you get and how much can you hold, in view of the different personalities involved, both of parties and counsel, the attitude of the court and jury, and the many intangibles that go into the resolution by a jury of the value of a case presented to them.

I might say to you that I can see no reason for the wide disparity based on geographical differences that we see in our reported cases throughout the United States. We have it in Pennsylvania. We can get $25,000 for a case in Philadelphia for which we will be fortunate to get $10,000 in one of our adjoining counties, which are classed as rural, or quasi-rural. Probably we would get no more than $5,000 in a truly rural county. That is wrong. The cost of living in Idaho is not appreciably different than the cost of living in Pennsylvania. Your clothes cost the same. Your food costs the same. You pay about the same for gasoline and oil. Your interest on loans and mortgages is the same. An arm off in Idaho is just as disabling as an arm off in Pennsylvania. A man who can't earn a living for his family because he suffered a ruptured disc is in just as bad shape as the same individual in Pennsylvauia. He has the same problems economically, and it is worth the same amount of money. There will be differences based on differences in thinking and philosophy in different areas of the country, but they shouldn't be as substantial as they are. A case that is worth $50,000 in Philadelphia, maybe you could only get $35,000 in Idaho, but you should get that much.

The elements of values in personal injury cases are not difficult to calculate. I am not going to go into them in detail. You have them on the outline which I prepared.

EVALUATION OF A PERSONAL INJURY CASE AND SETTLEMENT NEGOTIATIONS

A. Evaluation

1. *Elements of value*
   - (a) Loss of earnings
   - (b) Medical expense
   - (c) Property damage
   - (d) Impairment of future earning power
   - (e) Pain and suffering—past, present and future
   - (f) Disfigurement and cosmetic impairment

   - (g) Embarrassment, humiliation, inconvenience and deprivation of life's pleasures
   - (h) Loss of consortium

2. *Determination of value*
   - (a) Preparation sufficient to ascertain fullest possible extent of injuries and damage.
   - (b) Extract complete and detailed information from client.
   - (c) Secure witnesses' statements, supporting or neutralizing.
   - (d) Photographs of client, vehicles, equipment, scene.
   - (e) Examination of hospital records and medical review.
   - (f) Reports from technical experts.

3. *Inter-related nature of liability and injuries as affecting value.*
   - (a) Absolute liability
   - (b) Jury question on negligence and contributory negligence
   - (c) Danger of non-suit or directed verdict
   - (d) Effect of nature and extent of injuries and disability as related to (a), (b), and (c).

4. *General considerations affecting value*
   - (a) Identity and appearance of counsel and parties
   - (b) Attitude of court
   - (c) Corporate or individual defendant
   - (d) Policy limits and financial responsibility of defendant
   - (e) Selection of forum and community attitudes (type of jurors).

5. *Relationship of special damages to value*
   - (a) Is there an evaluation formula such as "3x special damages"
   - (b) If so, has such formula any validity or justification in logic, fairness or law.

6. *Effect of suit*
   - (a) Start suit at earliest practicable time
   - (b) Permits discovery procedures which should be used promptly and extensively
   - (c) Maintain initiative—keep pressure on

7. *Effect of awards or settlements in comparable cases*
   - (a) Figures in other cases in no way controlling
   - (b) Each case must rest on its own facts, circumstances and personalities
   - (c) Do not accept ceiling values

B. Negotiations

1. *Best time to initiate settlement discussion*
   - (a) Before suit
   - (b) After suit and awaiting trial
   - (c) At pre-trial conference
   - (d) On court house steps or during trial

2. *Best approach to start settlement discussion*
   - (a) Direct overture
   - (b) Earliest practicable and appropriate occasion
   - (c) Differences in dealing with counsel or insurance representatives.

3. *Conduct of the settlement conference*
   (a) Know your case and be completely prepared
   (b) Dominate the situation—be intense and vigorous
   (c) Discussion of theories
   (d) Disclosure—factual material, medical reports
   (e) Who broaches figure first—and in what amount
   (f) Use of brochure presentation
   (g) Follow-up of original discussion

4. *Settlement during trial or after verdict*
   (a) Effect of collapse of your case—or opponent's
   (b) Fluctuating values

The only two that I would like to mention in passing are the elements of impairment of future earning power, and the following one, pain and suffering, past, present, and future.

Most of the big verdicts in cases come from impairment of future earning power. It is a difficult proposition to calculate, sometimes. Let me put it to you simply. If a man has been working and making $100 a week, and he suffers an injury and after he has been treated, and it is found he can return to work, he is disabled to the extent where he can get $50 a week when he goes back, perhaps to a job of lesser importance, and where he has been working at that job for a year or two by the time your case comes to trial, you can with justification point out to the court and jury, or opposing counsel, that this man has suffered a permanent damage of 50% of his earning power, and transposing that into dollars and cents, his earning power at that level, without considering increases in standards of living and raises in salaries, his earning power has been $5,000 a year and now he can only make $2500. He has suffered an impairment of $2500 a year for the rest of his life, assuming also that your doctor will testify that this is a permanent condition. Then it becomes a matter of simple arithmetic. If a man is 40 years old, he has a life expectancy of about 35 years, a working expectancy of at least 25 to 30 years, and that is being conservative. If we accept only for the purpose of argument the insurance statement that everybody is going to stop working when they get social security, which is ridiculous—but if we accept the argument that he has 25 years' working expectancy and he suffered a loss of $2500 a year, you multiply that out, and you come out to something like $67,000 or $68,000. You look at your tables on present value, and you find that present value over a period of 25 years would reduce it by about 30%, so you take 30% off and you come down to about $40,000 as his damage for impairment of earning power in the future. There is no way on earth the defendant can refute that except by bringing in a doctor saying this man is better off than he was before, and there is nothing wrong with him. There is no conceivable way they can refute the record testimony that since the time of the accident the man hasn't been able to earn more than half of what he made before.

With regard to pain and suffering, that is always a substantial and significant element of damages, if there is substantial and significant pain and suffering. The Court of Appeal in the Second Circuit, a few years ago found that it did not shock their conscience that a man who had lived for ten hours after the accident before he died had earned for his estate or his personal representative an award for pain and suffering of $40,000. It didn't shock their conscience. There was a lot of pain and suffering. There is nobody who has a crystal ball who can state categorically that one is fair and one is unfair.

I am happy to have learned from my experience in a variety of courts that frequently jurors have a much more substantial sense of human values than do counsel, or the court. The jurors, having heard the pain the man experienced and having seen the disfigurement and having realized the man has been deprived substantially of life's pleasures in the future, will put a substantial value on that element.

With regard to determining the value of your case, it requires that you engage in preparation and complete preparation sufficiently to ascertain, for you, the fullest possible extent of your client's injuries and damages. That will involve mostly a knowledge of the medical aspect of your case, finding out from the treating doctors and reviewing the hospital records to learn what your client has experienced, what the diagnosis of his condition may be, what course of treatment he underwent, what the prognosis is, what he has to look forward to in the future.

As soon as you get all of that information and as soon as you have found out to your own satisfaction that you know all there is about the physical, emotional, economic injury that your client has suffered, you are able to determine the value of that case. It will be the pure value. It may not be the formal or the practical value; however, for the purpose of discussion, all you need to know is the pure value.

Of course, I suggest that before you engage in that discussion you have extended your activities to spike the defendant's guns, to have neutralized his witnesses, done everything you can to make sure that the things you are talking about you can prove. You must always have in mind when you are working to determine value that this is a case that is going to be tried; and it is going to be tried unless you can get for your client a fair result.

It is helpful in determining the value with regard to the practical value which you will put on your case, to know all the other information you can about your client—other accidents he has had, his past physical condition, kind of person he has been, the future he had before this accident from a job point of view. It is important that you get witnesses' statements in support of your client's position, or if they won't support it, that you try to get statements that will neutralize them so they are worthless to the defendant's case. It is important that you get whatever photographs you have. If your client has a bad injury, all bandaged up, black and blue, get color photographs taken. They are very persuasive when the home office sees them, these hideous scars and black and blue marks. Even if the defense counsel says, "Don't worry about these pictures, the guy doesn't look like that anymore," the jury is going to see that is the way he looked after the thing happened, and from the start they know that those things won't help to reduce the verdict.

It is important that you get reports from your technical experts, if expert testimony is indicated in the case. You must have a full file to support your position.

With regard to the question of liability as related to damages, that question only enters into your consideration in evaluating a case in your efforts to determine the spread between possible jury verdict you might get, and the figure you will recommend to your client. The more clear the liability in the case, the narrower should be the separation between the formal value of your case and the practical value of your case. If you have a clear liability case, then you should determine to the fullest possible extent all of the damages that your client has suffered, and

that's what you ought to get for your client, with maybe a few bucks off to save the cost of trial, but not much.

For a number of general considerations: I am not sure whether in this state you have the horrible proposition of contributory negligence destroying the plaintiff's case. You do? You are just as benighted as we are in Pennsylvania. Someday you will have the rule of comparative negligence. We have had it before the legislature. We are in the fortunate position where our legislature has a great number of lawyers in it. Sometimes the lawyers win and sometimes the farmers win. Up to now, on that principle, the farmers have won. I hope that within the next couple of years the lawyers win and we get the principle of comparative negligence, which is a necessary liberalization of the law, and which is consonant with equity and justice and fairness.

In determining the value of your case for the purpose of discussing it with your opponent or making a recommendation to your client, you will consider the question of contributory negligence on the part of your client, the danger of a non-suit or directed verdict. That may cause a reduction of the practical value in the case. It should not enter into your discussions, as we will hear later.

The general considerations affecting value relate to the tangibles and intangibles in the case—the appearance of counsel, the conduct of counsel, the ability of counsel. You know, from your experience, whether the man on the other side is good, mediocre, or poor. You know from talking to your own client whether he is an articulate, persuasive kind of person, or a fellow who looks like you dragged him out of the gutter, gave him a shave and put a new suit on him so he could come to court. I might point out to you that if you have a client that looks like Marilyn Monroe, your case is worth substantially more than if you have somebody like the individual I mentioned before. Appearances do make a difference, especially when jurors are human and are snsceptive to those influences.

The appearance of counsel is important. Yonr conduct in court, your attitude toward the judge, your indication of the knowledge of your case and the knowledge of the law applicable, because that influences the jury. To the same extent, your impression of the ability of opposing counsel on those aspects of the case is important. If he is a top-notch shot, you better be willing to take a few less bucks, because he will do a job on you in court. However, if he is a run-of-the-mill, cheaply-paid insnrance lawyer, go give him a lacing and get $25,000 for the case they should have settled for $7500—it will teach him a lesson.

If your client is a poor individual and the defendant is a corporation, you are in much better shape than if the person defending has maybe $300,000 limits but comes into court with the help of his counsel looking like an individual who just got off relief or hopes to get on relief next week.

Policy limits are important. It is desirable to find out what the policy limits are, if you are going to invest a lot of time, energy, and money into the case. If you have a case of very serious injury and hope to get $100,000 on the verdict, or a $60,000 or $70,000 settlement, and the defendant has a $10,000 policy and is financially irresponsible, you are going to waste a lot of time and money in getting a verdict that is worthless because you can only collect $10,000 anyway. It is desirable to find out about that at as early a date as you can.

The selection of the forum is important. I don't know how important it is out here. It is important in our jurisdiction. It is important here, too, because you have discovery in the Federal rules and you don't have it yet in your state rules.

You will find out that John and I are not very much in disagreement on the value of the discovery rules. It has been proven to be of tremendous value to both sides. I have come to believe—and my office was one of the early proponents of discovery rules, and got ourselves kicked around a little bit until we got the discovery rules in the situation where they should be, although they are still too much limited—but in our late experience, that discovery is more helpful to the defendant than it is to the plaintiff.

In our cases, as soon as the complaint is filed, with the answer comes a notice for an oral examination of our client. They find out everything they can about our case before we have a chance to go to work on them. It is good that they do it. It is good, too, that we find out if we have a case or haven't. I hope someday you will have discovery. As long as you have it in the Federal courts, that is the more desirable forum.

With regard to the relationship of special damages to value, such as medical bills, damage to property, things of that nature, actual loss of earnings, as demonstrated in the past, there used to be, when I first started practice, an insurance company formula. The insurance company representative used to say, "What are your specials?" We would say, "$100." He would say, "O.K., we will give you 400 bucks." "How do you arrive at that?" "Well, we multiply the specials by 3 and add that to the specials and that's the value of the case." Some of them multiplied by 3 and wouldn't add it to the specials. That formula proposition, whether it be 3 times, 4, 5, or 10 times, has never been valid and is not valid today. I believe it was accepted and used as an easy way out for arriving at the value of the pain and suffering that the victim had experienced. I point ont that you can have a man who has received an amputation with only $500 worth of special damages, and yet the case may be worth $50,000, on verdict or in settlement. You can have a case which involves a destruction of expensive oral bridgework to a man who is in a high-income bracket, and who can afford to pay a thousand dollars for a bridge that you or I might pay a hundred bucks for, because the dentist treated him with loving hands and had a high standard of living himself. So you had a thousand dollars for the replacement of that bridge, and the case might only be worth 2,000 bucks. So, special damages have no relation, necessarily, to the value of your case.

I suggest that suit should be started at the earliest practicable time—as soon as you have enough information which enables you to file an intelligent complaint. Of eourse, in the Federal proceedings your complaints are only notice proceedings. You should start suit. It enables you to get in quickly with discovery procedures. It enables you to maintain the initiative, which you should maintain at all times. Also, it enables you to bring your case much more quickly to trial if you can't do anything in the way of settlement. Your client is entitled to that kind of aggressive handling of his case.

It is a fair proposition in the East, South, Middle-West, where I try cases, and I suppose also in the Far West, for the defendant's representatives to laugh when you come in with a proposition involving a broken arm asking for $7500, laugh, mind you, and say, "Let's talk about this thing sensibly. You know that broken arms are only worth 2750 bucks here." I don't know where they get this statistical chart that puts a fixed value on broken arms, fractured skulls, discs, ruptures, and the like. There is no other case which can be controlling on the case you are discussing. Each case must rest on the circumstances of that case, and the personalities involved. Obviously, there would never be any change if that weren't so. We would still be settling cases and getting verdicts predicted on

what cases were found to be worth in 1825. It is ridiculous. Each case is worth what you have determined from your investagation, from your analysis, from the various factors in the case--not what some other case last year or last month produced. In that case you might have had inexperienced counsel who in ignorance sold his client down the river and only got $2750 for a ease that was worth $15,000.

With regard to negotiations, as Winchell and the other boys on the radio say, "We have 30 seconds to beat the cloek," but I will take a little more than that. Settlement negotiations should be initiated as early, as soon as you are in a position to make a proper evaluation of your case, and have done what is necessary to get your case rolling. It is important to start those negotiations early, because it takes quite awhile for the defendant, whether it be a self-insured, corporate defendant, or an underwriter, an insurance company, to get conditioned to what they are facing to determine what kind of reserve they have to put on it. If they are wise enough to do it, they might want to discuss the case with their counsel. It has been our experience that as the case develops, it increases in value. A case that we might be willing to settle one month after we receive it for $5000, after further investagation and development very often we find it is more properly worth $7500 or $10,000. There is also the very practical consideration that the more work counsel puts into the case, the more money he is entitled to get out of it. If the insurance companies think that is heresy, that's just too bad. It is a practical statement, a practical fact of life, that if you work harder you are entitled to more recompense. If they make you prove more facts in your case, that makes your case more valuable, and make sure they pay for it. It takcs the insurance company twice as long to learn the facts of life as it docs an ordinary human being.

The best approach is the direct approach. The only thing which can weaken your approach is to bc inadequately prepared or adopt a defensive attitude or an attitude of retreat. If you have a case which you think is worth money, the only way you can get money is to ask for it. It is appropriate that you call defendant's counsel, and should have your discussion with defense counsel himself, and say, "Say, John, how about sitting down and kicking this case around. Let's explore a little bit and see if we can't arrive at some mutual level on which damages might be considered."

You have to know your man. All of you, as you work in your jurisdiction, get to know the men with whom you have to deal. If you deal with insurance company representatives, you will get to know them. You will get to know if they are one of the old, traditional hardheads, or if they are men with practical, realistic minds realizing what the companies are faced with today. Generally, I find it much better to deal with counsel, although we know a very great many fine, outstanding insurance company representatives. Counsel, by and large, are much more in touch with the realities of the situation. They know what they are faced with in court. They know what might happen to their client. They also know what might happen to themselves if their client is upset in having been hit with a big verdict, because there may be other defense counsel that might like to represent that same client--they have that in mind, too. You will learn your man, his personality, competency, ability, and the same for the others in your jurisdiction. You will handle them in different ways, depending on how you rate them and evaluate them.

At the settlement conference you have to be completely prepared. You can't go in off the cuff and expect to do a job. You have to know your case. You have to know the law relating to the case. You should dominate the situation. You

should be intensely vigorous. You believe in your client. You believe in his case, and you believe he is entitled to the sum you are going to ask for. I wouldn't suggest that you discuss theories of law. It is not necessary for you to do it. Your opponent is going to do it. When you get in there, sitting down with your opponent, you say, "Here's the situation, John. I have a man who has two fractures up in the cervical area, who has a ruptured disc in the lumbar area, lost six months from work, has medical bills of so much, hospital, loss of earnings so much, went back to work seven months later, two years later, whatever it may be, can't make the money he made before, has a permanent partial impairment of so mueh, went through a lot of misery in the hospital and at home. I estimate his pain and suffering in this case is worth conservatively $25,000, and the other damages, past, future impairment, reduced to present values brings it up to $97,500. What are you folks willing to pay?"

You have done what you have to do. You have given him your value of the case, and you have broken it down, so he can determine whether the value you put on it is realistic and fair.

Now, he is going to come back to you and say it is ridiculous. "What are we doing, talking about the war debt, or the national economic picture, or are we talking about this case." Be calm. Don't let him get you ruffled. I don't know if defense counsel go through this, but I am sure insurance company representatives have a school in some cafe in some part of the United States where they receive these secret instructions on how to handle plaintiff's counsel. You must laugh uproariously at certain times. You must have certain expressions, like, "Come down out of the sky." Certain key words you have to use on plaintiff's counsel to hring him down to realistic levels. Don't worry about them. We have our sehools, too.

You give him what you think the value of the case is, fairly and properly. Say to him, "This is it. Now, what are you willing to pay." If he says, "We are not going to tell you. We are not willing to pay anything until we find out that you have been restored to a normal state of mind and willing to talk about sensible figures," you say, "O. K., I will see you in court." He will call you up, because if you are right, he knows that he is facing a possible verdict of $97,500, and he also knows that you, being a practical man of experience, and having bills to meet, too, and having a client who wants money and doesn't want law, will take a lot less than $97,500. But, the only way he can find out what you will take is to tell you what he thinks the value of the case is. Some day, before trial, he will tell you what they are willing to pay--and if he doesn't, try the case and get $97,500, or get $125,000, and then you won't go through that ordeal next time--or maybe the third time, if he is like a lot of insurance adjusters.

Again, you must know your man. If you know your man, you can disclose everything in your file, which doesn't hurt you--everything, like statements, medical reports, photographs, whatever I have that will support my case. I will show him everything. I also ask him to show me what he has to support his case. By and large, he will do it. Of course, not anything that will demolish him. I wouldn't expect him to. If you know your man, and you are both fair and reasonable people, operating on a reasonable and practical level, realistic level, you should get along very well together, by engaging in a practical discovery operation, giving each other what you have to support your position.

He is going to want to talk about law, and if you have a clear liability case don't hesitate to talk about law. The weaker your case on liability, the less you should he interested in talking abont law. That relates to dominating the confer-

ence, to handling the man in whatever way you know he can best be handled. Of course, if your case is a stinker and the liability is bad, it may not be sensible to discuss settlement at all. It may be sensible to go ahead and try it.

If it is a case in which the law is dead set against you, unless you have an opponent who knows that he is facing the dangerous possibility that you might succeed in getting the law changed, there would be no sense in discussing it. If he is that kind of intelligent, appreciative individual who knows that the law might be changed, and a few new principles must he developed or a change in existing law that would cost his company and another company several million dollars every year, then he will want to talk to you about it, because he will know that you have done it before, and he doesn't want you to do it again at his expense, because it is a hard thing for defense counsel to live down.

In a large case, worth $50,000 to $100,000, it is frequently desirable to prepare a brochure. Prepare a nice, neat booklet with pictures of your client, pictures of the scene, a short memorandum of law, indicating why your position is sonnd, a statement like an accountant's statement, a financial statement, showing the damage which brings you out to a figure of $137,500. Give your opponent two copies of that. One he will have to send to the home office. They will get a look at that thing, and if it is done properly, and is a supportable, justifiable brochure, that home office is going to he worried, because they will know that they are facing that possihility, and they will know that that is a case they should settle.

My last comment is with regard to whether you should settle a case during the trial or after a verdict. It is a matter of personal observation. I find it awfully hard to settle a case during the trial. By the time we arrive at trial and I have worked on the case and I have gotten myself steamed up, and fully in accord with my client's belief, believing, as a matter of fact, more than he does that he is entitled to recover, and I am really enthusiastic about it, figuring my wife will be able to get that mink coat now that she has been wanting these many years, I am not interested in taking half what I think the case is now worth. I have to put it to my client, and if that fool wants to take it, I have to take it, bnt if the evidence is there, I would like to have the jury put the value on it.

Of course, I would never settle the case after a verdict unless the verdict was for the defendant—then I am very happy to settlc. If the verdict is for the plaintiff, and the defendant says, after he has filed his motion for a new trial and all that, "Now, wc are going to get a new trial. You have this stuff in there and that should not have becn in there, and if we don't get a new trial the judgc is going to cut it in half, and then when we appeal from the supreme court is going to cut it in half again, how about taking 50% of the verdict?" Our verdict is, uniformly, that we want the verdict given in court, with interest and costs, and if you can find anything else there, we want that, too. If you maintain that position, and being a lawyer requires that you be a businessman, too, you will get a reputation for being that kind of a hard-headed so and so ,that once you get a verdict you want everything that verdict entitles you to, it will help you in settlements, it will help you in getting the amount you recover in verdicts, and help your own wallets.

May I say now, ladies and gentlemen, that if you put proper values on your cases, and if you get for your clients in settlement conferences a fair return for the damage that they suffered, you will not only be meeting your obligations as a member of this profession, to society, to your community, and to your client, but you will make a darned good living.

Thank you very much. (Applause)

MR. JOHN J. McDEVITT, 3rd: Mr. Chairman, Mr. President, Members of the Bar, and at least one Lady. You always learn something even from your good friends. Something about the air out here has made Bill a little bit modest when he talks about being frustrated. I can't imagine Bill being frustrated. That would be about the last thing with him. He does put out a beautiful job of propaganda, salesmanship, which is a very proper thing, because we both want you to hear our views and give you an opportunity to pass judgment on us.

I wonder if basically the ohjective isn't a just determination of the rights of the parties. If I have any sensitivity at all about the handling of claims, and what are proper values, it arises from tossing in this little piece of dynamite, a little firecracker, or nsing that needle, because actually if we are in favor of substantial justice, if we believe that there should be an adeqnate award, or whatever term might be used, then it should pre-suppose that we are proceeding on a fair basis, with no build-up, and that there is not going to be this repeated use of corporations as though they were iniquitous bodies of some type, or some particular attack upon the personality of the person who has the misfortune of being a defendant. Those things unquestionably inflnence the end result, and it is certainly proper practice. Where does the defendant's attorney come in in meeting this situation?

We find every year, as I know you do, new terms, as "adequate award." I think Melvin Belli out in California wrote an article for one of the magazines using that term, which wasn't the first time it had been used, but it caused some comment. We made some cracks about it. Nevertheless, an adequate award means a fair award, and it is a perfectly proper thing.

Another term is "liability without fault," which again isn't new, and perhaps that's a perfectly just, modern, and liberal approach to this type of unfortunate situation, where somebody has been injured. Comparative negligence has been mentioned. I make a practice of going to every meeting I can, and I have been at N.A.C.C.A. meetings. I figure I can't learn too much, and I am continually aware of the fact that I don't know enough. I heard quite a discussion on comparative negligence, and if there is anything, it is not the uniformity of agreement among plaintiffs as to whether they are hetter off as is, or better off with some one of the several comparative negligence procedures.

If it is going to be the law of the state, then we are going to handle matters in that way. So, I don't become at all npset on the nse of any term, or the suggestion of any new type of doctrine, providing that is the law and everybody knows it. If the insurance companies know it, they have a ehance to set up their organization so they can meet it head-on, and treat it properly and fairly.

Now, this idea is a little bit new, that Bill has in his article on handling settlement negotiations, that the insnrance company is a sort of trustee of its insurance funds. He pnts it on the basis as though they were trustees of public funds, and it is dirty pool to turn somebody down on a claim. You are a pain killer, and onght to pass it out. That I can't agree with at all. It doesn't make sense.

I think the insurance company, with all the things that may be said for and against it—and after all I am not going to stand here and sell insurance companies as being some type of corporate body which operates on a very high level and are above criticism—I don't have any such feeling about them at all. Bnt, I know it to be a fact that the insurance company collects a preminm based upon experience of a particular area, and at the end of the year they attempt to establish an experience rate. They may have made money, and they may have lost money

because of the number of claims they had to pay, the amount they had to pay, the amount they had to pay in handling elaims. Perhaps they didn't handle them too well. Although that's aside from the point, if they are losing money, they are going to charge you more premiums.

If it is in the eommunity interest that a person should be adequately compensated for an injury to the extent that he should be generously and almost to the point of excessively compensated, if it is possible to have such a situation, then let's have it that way, and we simply pay a sufficient premium to cover it.

There is one interesting thing that Bill didn't cover today, although he sort of insinuated it. It's in his article. Strangely enough, I believe in law schools today, from what I have heard from the younger fellows that come into our office, there has developed a line of thought that the insurance company is really a pretty nasty person who is interfering with a young attorney and even more experienced attorneys earning their livelihood. I don't think it is a fair thing at all. I don't believe that defense attorneys are cynical, or without proper community spirit. I am going to try to give you an idea that might be a little bit different from the old-timer's experience. I wonder if we can't arrive at some very competent, fair, and community-wise favorable approach to the claim business, if we do it this way.

I am not going to go over the things that Bill Lorry referred to about preparation for trial and things of that type, because both sides ought to do the same thing. I would like you to feel that I am aware of your local situation in the State of Idaho. I know you have small county bars. I suspect that in dealing with all types of negotiations, there is an informality almost to the point of oversimplification. You perhaps have a hesitancy to take the aggressive attitude that Bill Lorry takes in discussing a case, which is to be expected in a larger metropolitan area. You perhaps feel that some of your best friends may think that you are getting a little too aggressive, and you are pressing too much, so there is going to be some talk about it. Perhaps you hesitate to do it. You know that you have an opponent that has to live in the same small community with you, who is going to lose faee if there is an adverse result, and that he is never going to forget it, probably.

But again, getting back to Bill Lorry's attitude, whether you are for the plaintiff or the defendant, you still have to bear in mind that you are representing a client, and that you have a sworn duty, a professional duty to represent that client to the best of your ability. So, as I suggested earlier, it comes back to, how do you arrive at the same end without making too many bad friends?

Should settlement be discussed? I am going to skip over some of these pretty quickly. There is an old-fashioned idea that still persists to a certain extent that you play all your cards close to your vest, nobody makes a move, and that you have to look for an opportunity, where through some mutual friend you drop some very light suggestion, or indirect suggestion, that you might possibly be interested in talking about the case. I think we have all reached the point, whether it is in Idaho, in a rural section or in Boise, where there is an advantage in getting things done. Certainly a settlement is something that should be discussed. Every case has some value, if it is one or a million dollars. If anything has a value, there is something to talk about, whether you arrive at a conclusion or not. I think you always have to bear in mind that a settlement is a serviee to your client, and certainly your client should be the one most in your views at all times, not somewhere in the background until some time when the case is concluded.

I say that very seriously, because I don't believe you can represent a client

adequately if you have two eyes on the fee and perhaps no eye at all on the best interests of the client. You and I don't practice law that way.

It is a real service to the client, if you can save expense, time, and concern. Doesn't he have anxiety? It has beeome an entire subject of eonversation as far as his friends are concerned that he has a case pending or he has been sued. Isn't there a real advantage to everyone if you can get down to business, at an early date, and if you don't settle it, then decide whether a settlement is completely out of the picture, and then forget about it from then on.

The same thing is covered when you talk about when and how. Again I say, any stage is an appropriate stage. The earlier the better could very well be a strong guide on both sides. Bill Lorry says that frequently he finds a $5,000 case is worth $10,000. I bet there are just as many times that they find that a $10,000 case is worth $5,000. There is a risk on both sides, and they level off. I can stand up here and state that almost all the statements he made can apply just as directly and effectively to the defense attorney.

The best time to talk about a case is when you know something about it; not when you just know something about it, but when you know everything about it. At the stage when plaintiff and defendant, whether it be early or late, have a full file that shows what the medical is, what the law is, all the facts applicable to the case, they ought to be in as good shape to talk about it at that time as six months later, or two years later, whatever it might be.

How do you determine the value of a case? Bill Lorry ran through that, and I am just going to list some things that definitely have some bearing on it. There is the type of accident. I believe there is a real difference in the value of the identical injury in the several types of accidents. We find, for example, that a person can have a fall on a negligently maintained sidewalk. Whether it is a defective sidewalk, or if it is not sanded when icy, whether it has hills and ridges that have been obviously neglected, the case of a person injured for such reason does not have the same worth as the case of a passenger in an automobile, or a seaman on a ship, or a railroad employee, or a person knocked down ou a crossing. You can't just say that a person has a fractured leg, with so much expense, a period of disability, and some personal situation as a result. There is more to it than that. The type of accident, the appeal it is going to have to the individuals on the jury, has a direct bearing.

When you have a complete investigation, your full medieal and your discoveries, when you size up the type of lawyer you are dealing with—and I am not going to go into detail on that. You know exactly what I mean. It is not only what he looks like, how he dresses; unfortunately his color enters into it; every community angle enters into it.

A lot of the women on the jury wouldn't like Marilyn Monroe, so I am not so sure that it is a good example. I don't know whether I like her so much myself. I might like a different type. But, everything is said as illustrative, and so give it some thought.

The personality of the person injured is material. The defendant, particularly, is in an unfortunate position unless he has an opportunity to see the driver, or his assured, or whoever is the person that is alleged to have been responsible for that partieular occurrence. You can have a beautiful statement in your file, from the person who was in charge of the operation of that automobile, and then when they come in and talk to you, you find out that the beautiful statement is due to

the probing and the imagination of a very competent investigator. Sometimes it is just the reverse. There is a weakness in the statement, or you have an opinion that your defense isn't so good. Here a fine, honest, straightforward looking fellow comes in, whether a truck driver or a business man, and right away you feel that here is a man who can actually sell a bill of goods to that jury no matter how seriously the claim might be that the plaintiff puts forth, no matter what the plaintiff maintains as being the situation surrounding the accident. So, I think we are badly handicapped if we handle a file for six months or a year or two until a case comes to trial, and we haven't the slightest idea what our plaintiff or our witnesses look like. Yet we are trying to put values on our case, and trying to settle them, and trying to argue about face values and so forth.

I think discovery has much to do with it, as in the course of discoveries the parties are brought in for examination, and both sides talk to their people there at the examination. Both sides learn early the personalities of the persons who are going to try to give you the business at the trial.

The professional status, employment of the person, type of injury, extent and character of the disability, all play a part. Certainly the extent of disability varies. A 50% disability could be largely unimportant from a functional standpoint, whereas a 10% disability of a different type or a different occupation could be a very, very serious thing. Again, the mere fact that there is a certain percentage of disability isn't the establishing factor just in itself.

Again, who is counsel? I don't have to tell you or any group of lawyers that who the attorney is in the case makes a terrific amount of difference. You know everything about him, whether he has any ability, whether he will try a case, and if be tries the case, how well will he do? Is he sloppy? Is he interested? Does he do a bang-up job? Does he fight hard? Does he want to get right into the case? Does he have a commercial practice with just a few accident cases? All sorts of things like that figure in. If you know your man, just as Bill Lorry said on his side, it has some pereentage value or some percentage effect upon the value of the case, and is something that we automatically take into consideration when we try to arrive at a figure and advise our clients.

Who is your defendant? That gets pretty much into what we have said already. There is this corporate business. There is the appearanee, apparent station in life, etc.

When you get down to value, the elements of value have been set forth in some detail to you. What every defendant's attorney does is consider the various elements in a general sense, the liability, the speeial damages, the disability, past, present, and future; how mueh do you have to concede on liability and disability, and how much strength is there to your defense on the medical end of the case when it comes to that.

Now, don't get the wrong idea. We are both talking about a case as if every case ought to be settled for a fairly substantial figure, but the subjeet here is settlement. We are simply stating that a case is worth a hundred cents on the dollar, according to Bill's view or my view of it—or is it worth something down to 11%. So, we are just talking about what figure does the defense calculate is the full or outside value of the claim.

That's what Bill Lorry did when he added up what he took as all the individual elements and put a figure on each one, reduced it to its present value, and so forth. That might be considered the full or outside value of the case. Then, how

much are you going to discount it for liability and medical defenses, and no matter what is said about various yardsticks or rules of thumb, there is always some standard in your community, in the court in which the case is to be tried, in the minds of the jurors, whether realistic or unrealistic, that has a direct effect and may cause you to put one figure on a case one week and perhaps a different figure, higher or lower, on a seeond or third week.

Are there any pressure points in a case? Are there any future weaknesses or soft spots? These are all tangibles and intangibles, and I think a competent attorney engaged in handling litigation, whether it is a contract or tort, can pretty well break that thing down to the best of his ability so he can hit on something that falls within an average experience in his community.

If you are for the plaintiff, you want to eliminate anything which seems to have some control over the amount of money you can get for a particular type of case. I never thought that a 3 times or 4 times or 5 times specials was necessarily a good guide, but it is something that both plaintiffs and defendants use indiscriminately, particularly in smaller cases. They use it if it is an advantage, and say it is no good if it is a disadvantage. It is there, and perhaps it has some basis in common sense.

For example, if you have a small case, a hundred dollars specials and a man lost a eouple days' work, how do you put a value on a case like that? Do you take some vague and completely iutangible approach, such as Bill Lorry suggested, for that type of case? Or, do you get down to some practical view of it, and say to yourself, "John Smith is $100 out-of-pocket. He has a good case. He is certainly going to insist on getting the $100 back. His attorney is entitled to a fee, and John Smith isn't going to give him a fee out of that $100." Now, if you are going to use the 3 times theory, for example, it has this effect: it gives the defendant some way of evaluating the case. It means $100 for the man who is to be repaid for his expenses. It means $50 or $100 for pain and suffering, and it means $100 for the attorney.

Perhaps there is no sense in it at all, but it is as good as any other approach to that type of case. It isn't any good if you have a man who earns $175 a week, as a great many workers do today, who are in some specialized construction work, or train operators. That same fellow loses a week from work, and he has some medical, and he has the same pain and suffering as the other fellow, and you are asked to make the same application. He has about $900 or $1500 in property damage thrown in as well, and it just doesn't work.

I have seen a point system set up, and I don't have a chance to read the article, but it is just another one of those things that might be of some help in trying to hit on some sort of uniform aproach to the value of a particular type of case. You give 50 points for this, 25 points for that, or some such arrangement like that.

What value do you put on pain and suffering? As you know, that is necessarily a problem for lawyers as well as for jurors. I don't think you can say that a fracture in a man's arm, about which Bill Lorry is talking to me, for example, is as serious as he claims. He says "John, Smith doesn't have too bad an injury, but his doctor says that he has a low pain threshhold." How am I going to tell the insurance company anything like that?

If a man is bruised and out of work four or five days, he has a disability, and certainly had some pain and suffering. I try to hit on some formula in a

settlement talk, at least, that can compensate him for it. I have seen judges use anywhere from $50 to $100 a week in computing what pain and suffering should be worth. Now "worth" is talking about total disability, the period of total disability, and necessarily, beyond that, if there is a declining pain and suffering, it should be less.

Who can say that anybody's pain and suffering is worth $5 or $50 or $100, but you do try to get some sort of a formula that all know of, whether we believe in it or not, and use that in arriving at a settlement figure.

The other subject seems to be, "When and how should a discussion be opened?" I have already made some reference to that, and I don't believe this cat-and-mouse approach is worth anything. I don't think it is used very frequently, because the insurance companies have perhaps eliminated that approach by stepping in immedately and following up very strongly on what are your specials, the breakdown, and what do you want. That is done immediately. If that is their attitude, what's the sense of the plaintiff sitting back and being coy and waiting for somebody to call him up. As Bill Lorry said here, or has said before, there is no lack of interest on their part to discuss claims, because that's their job. The same insurance companies' boys try to work out what is, from their standpoint, the best end result that can be obtained. That's as I said before, it should be early.

Who should make the first move? You may find out, on the first approach, that you are dealing with a man who is dedicated to his case, and he just sounds so convinced to you that perhaps there is not much sense in talking further about it, so it might be a good idea to let him sit back in the corner with his very fine case and wait until some later date to talk about it. I don't believe it is a sign of weakness to be the first one to broach the subject of settlement, and I certainly don't think you have to do it through an intermediary or wait for some propitious moment to bring it up out of the blue, as by saying, "Oh, by the way, you have such and such a case." I think it is a lot of nonsense.

You can't give the impression of being weak or overly anxious to settle if your office has the reputation of trying cases. I know that's what we try to do in our office. We try to be just as courteous and considerate as we possibly can, but we know that we have four fellows who can try cases very well, that we get paid for trying cases—we can't try all our cases any more than plaintiff's lawyers can try all theirs, so you ought to kill this idea that you weaken your position by bringing it up. What we try to do is tell the attorney, if he doesn't know it already, that we would like to have the information, that we have to write an opinion, or we have to talk to our client about the case. That's absolutely 100% true. We try to get, as early as possible, all the information we can about the case.

Bill Lorry or any other plaintiff's lawyer ought to know that what he thinks about the case should be a very important part of the complete material that I get together in an effort to evaluate for my client as accurately as possible that particular case. I think most of them know it, and most of them are pretty cooperative, although I find that in Philadelphia, certain offices don't want to be bothered with going over a case so far in advance of trial, so we do have to wait until shortly before trial before we get it. That's their responsibility if they want to do business that way.

Here is a thing that may come up out here, and it probably does. Some fellow calls up on the phone and tells you all about his case and how good it is, and

he is either too busy or he has a commercial practice, or the case is too big for him to handle, and he is going to turn it over to Freedman, Landy and Lorry. That puts you in a rather peculiar position. It may be a form of blackmail. Certainly without Bill Lorry's authority he is treading on the name of their office—or he may be entirely honest about it. You have to proceed very cautiously about it. I would suggest, if you find yourself in that position, that you try to make certain not only what he is going to do, but what he thinks you ought to do about his case, because if he gets you in a position where you get real eager and figure that here's a chance to make a good settlement, and you make him an offer, that's the starting point when reference counsel comes in the case.

On the other hand, I know of a case that was settled very recently, where a doctor had a severe injury. He was a full-time medical examiner for the insurance company. The office counsel of the insurance company, who is a good lawyer, was handling it in the negotiation stage, but he said that for several reasons, which are perfectly obvious, he didn't want the responsibility of trying that case in court, so he was going to refer it to so-and-so. They called me up, and I said I think it makes sense. He is a company employee himself. The case is a pretty good one from a liability standpoint, but there is no certainty that the doctor is going to get every nickel he thinks he should Furthermore, that lawyer is going to have some difficulty in getting a fee. He is getting a substantial fee for doing a good job. So, I felt pretty sure he would refer that case to somebody else. We got a break on that case, and you frequently can, in that the attorney, because of his position, didn't sell his client down the river at all. He got his client just about everything he was entitled to and by reason of the circumtances of the situation, he took a reduction in his fee. There we guessed the situation correctly, and everybody came out whole. So, it can work both ways, and it can be advantageous to everybody.

The fellows in my office all have assignments of cases, and I think that is done pretty generally. We call up on every single case, go over the case fully. We try to find out where we are going on settlement, if it can be settled, and that helps, too, to prevent surprise. I think the defendant's attorney is very, very foolish to lay back and be coy about the thing, and unwilling to step out into the open. It is not unusual to call up and get quite a surprise. No matter how good your file is, perhaps it has been sitting there for six months and you find a lot of situations have developed, such as the plaintiff being back in the hospital. If you are conscientious about your job, you would feel pretty silly if that came out in court, and the insurance company representative says, "You didn't tell us anything about that!" You can't say, "Well, I didn't ask," because you should have asked him about that.

I think that shows we ought to put all our cards on the table, as far as we can, and try to treat each other fairly. We stand thus to do a lot better job for our clients in the end.

You know people in your community, and all the lawyers. I don't think a lawyer ought to take a standoff attitude with another member of the Bar that he doesn't have time, etc., or, "You won't pay me what I want," or some other excuse to avoid some disclosure of what he has and what he really wants. If you are active at all, you are in a pretty good position to say, "Now, look here. These positions are going to be reversed some day, and I am not a vindictive person, but I have a client to represent also, and I have a job to do." You can usually wheedle it out of him, and you are right back in position where you should be, at settlement considerations.

Bill Lorry tells me that down in Atlanta, John MacDonald and he were putting on this discussion, and Bill was saying that you have to dominate the situation, have to be aggressive. John MacDonald got up and said more or less the same thing, and somebody in the audience wondered what happened when both got up and start acting that way. But nevertheless, try to hold your own, be businesslike about it, and try to keep your thinking on some sort of a sensible basis.

There was a reference to who is buying and who is selling. That's something I can never understand. I know one company that tells its claims managers when they come down for a convention that you are selling money. I have asked a couple of times what he means when he says that you are selling money. I always thought the better position was that you were a buyer of the case. But whichever one it is, it is a negotiating proposition, whether the plaintiff is selling or the plaintiff is buying.

One of the most important things in a settlement negotiation is to try to keep the subject open. It is awfully easy to receive a low offer if you are for the plaintiff, or an unreasonably high demand if you are for the defendant. At least, you think it is. You get angry or say something that ends the discussion right then and there. I don't believe it is good business, and I don't think it is a good job for your client to act in that fashion. You ought to handle it the same as you would any other business transaction. Suppose it is a real estate deal. The chances are you wouldn't walk out on a man if you wanted to buy the property. If you had some mild interest in it you would try to keep the thing open and say, "Well, we will come back another day and talk about it further."

I know that even today in Philadelphia, and it is probably standard all over the country, the situation does exist that Bill Lorry refers to. You give a claims manager a figure, and he either whistles or he uses the expressions that have been referred to, and the first thing you know, you are talking about thieves and fakers and what not, and it is just a common line of chatter that I don't think belongs in the business. We certainly try to keep it out of the conversations in our office. We disagree mildly. We suggest that it is way beyond what we thought it was worth, but we keep the thing open, and keep working away at it particularly if it is a case that we do want to settle.

Finally on the conduct of settlement negotiations. Bill Lorry gives you a figure of $75,000. He has a breakdown. As I said before, that's his top figure. If you are for the defendant, it's probably a hundred to one that you shouldn't make an offer against that figure. Now, the idea is to try to get some more reasonable approach, at least from your point of view, toward a settlement. So what do you say to the plaintiff's attorney in order to do it? You know in the first place that that's the top figure on the case. He has exhausted his ingenuity and imagination in order to get at it. It is perfectly reasonable to say, "Well, that's a nice, round figure, and maybe someday juries will give figures like that, but we are talking settlement. What do you think is a fair figure from a settlement standpoint?" You don't ask him for his rock-bottom figure. A fellow gives you a rock-bottom figure, and you know it is not a rock-bottom figure. It embarrasses him to try to get him lower after that. You try to get him down to a more reasonable approach.

On that first occasion you try to get him down to a more reasonable basis, if that is possible, and then you tell him you will talk to him later. The plaintiff and the defendant attorneys should have a plan of negotiation. In other words, you don't shoot the works—none of us do. When you are talking about a case, you have a plan. You have some strong points. if you are representing the defendant, and you use them as a card player, bringing them out and trying to get the figure down to somewhere near where you think the case merits. You have the problem of whether to make him an offer. If there seems to be some chance of settling the case, then, of course, you should.

The thing you have to avoid is having a set routine which everybody knows. In other words, if you talk to me or I talk to you, and you give me the same line of talk every time, you have an obviously set line for handling cases, then it takes all the fun out of it, because you know where all the cards are before you start. Try to shake it up, have a general conversation, try to use a little different approach each time.

I know one man who won't make an offer until the plaintiff's demand figure is within 1½ times what he intends to pay, or believes the value of the case to be. I would hate my friends to know that when they come down to $7500 and I make an offer, I am going to pay $5000. I don't believe the game has to be that oversimplified. I don't believe you can get away with this one-offer practice.

Probably you know attorneys that say, "Oh, this business, we know what it is all about. I ask one figure, I give one figure, and that's it." Well, maybe it should be that way, but we all like to talk about a case. We like to negotiate. We like to gamble a bit. Furthermore, I think it is a little insulting for either attorney in the course of negotiations—it certainly causes friction—to say, "You want too much money, and that's the first and last offer. I will give you $500 and that's all." That's the way the thing starts off, and that's about the way it is bound to end.

Certainly a defendant's attorney shouldn't be in a position of working toward a split. John MacDonald has the figures, showing how one party would start at 50 and the other start at 10, and all of a sudden defendant finds he has ended up right in the middle, and beyond the point he should have gone. That's something that you decide on in a particular case. The split is freqently advantageous to one side or to the other side, so it is just a matter of arriving at your negotiations.

An interesting thing I heard recently was this business of offering odd figures on eases. I am dumb enough not to have realized it before. That would seem to be advantageous from the defendant's standpoint to offer even numbers, $200, not $250, or $2000, not $2500, because the figure you are offering isn't the final figure. You are going to have to increase it, so why do it the hard way and already have the hundred dollars split up. So, we have tried to follow a policy of offering even numbers, up to some final point, where as a face-saving gesture or as a necessary sum of money in order to cover expenses in the case, or for any reason that might seem advantageous at the time, you want to throw in an extra $250 or $500 or whatever it might be. I think it is a perfectly fair approach, and that there is some sense in using it.

There is no formula in determining the value of a case which is any more important or valuable than your own good judgment, and that is the thing you are going to use in the final analysis. There are lots of problems in negotiating settlements. Sometimes the plaintiff's counsel has a problem with his client. I have heard from experienced men on the plaintiff's side, which I know to be true, that the plaintiff's attorney fights like the dickens to get the top dollar or get the figure that he thinks is a reasonable figure, and then he has to turn right around and in some cases, and in a lot of eases, to sell it to his clients. That is a double

fight and something we have to have in mind when we are settling cases. Perhaps both sides may need the help of the court. I have an insurance company that won't follow my judgment; the plaintiff won't follow that of his attorney. It is possible that the court can be a real aid in determining that disagreement which both sides can't straighten out by themselves.

There are cases, of course, where there is a disagreement which is honest and friendly, but so fixed that nothing can be done about it without going to trial. I am never impressed by Bill Lorry's statement that you become so wrapped up in a case that you just hate like the dickens to let go of it. It looks good, and what not. There has never been a case that—very few cases, let's say it that way—that are that good. I don't think that Bill Lorry or myself can forget that a trial isn't for the purpose of demonstrating our professional ability, or getting some advertising, making ourselves a bigshot with the Bar, or anything else. We are in there representing our clients. If something that occurs at any stage, whether on the eve of trial or while the jury is out deliberating, that dictates that there should be some change in position, it ought to be given the same consideration that would be given before trial. I don't see how it can work any differently. Frequently a case goes to trial before one side can demonstrate to the other that there are certain strengths or weaknesses in the case, so again I say it serves no useful purpose, if that position has changed, to go ahead and take the court's time, your own time, and still subject your client to that risk that always exists in the trial of cases before juries. As sensible, practical, well-trained attorneys, you have to look at the figures each time they come up.

One final thing. You exchange information, under our practice. You get statements. You get medical reports. You may get a complete brochure. It is very interesting. Let's take an unusual case, because sometimes we talk about these cases for illustration only, because I know those big cases are uncommon in Philadelphia and they are uncommon here. Assume that you have a case where a family doctor, some hospitalization, and some specialists are involved. The plaintiff has perhaps gotten one or two additional specialists. There are written reports from all of them. On my side I have had two or three examinations. There is all that information. Bill Lorry's report shows that this man has a total, permanent disability. Let's assume it is a type of injury and condition which lends itself to some difference of opinion among the medical fraternity. I have reports by equally competent persons which gives some modified view of it. That might look like a stalemate or it might look like you just discount the thing on some basis. I believe you can feel sure in your mind, however, that the competent plaintiff's attorney has talked to the doctors, that he has told them what he needs the report for, that he has suggested that they don't pull their punches, and he has gotten the most favorable view of the case that can be obtained. Now, I think a doctor that represents a plaintiff should give that plaintiff every reasonable break where there is an even weighing of the opinion to be given. I think it is perfectly fair, and the defendant's doctor would be doing the same thing. So, you don't have a barrier there which causes the two ends of the world to stay just where they are.

I have often said, not with a sneering laugh, but with a more or less factitious look, "I have seen your neurologist Joe Yett's reports for 25 years. I think he is the most practical man in the neuropsychiatric field. He knows just exactly what this report was for. You go back and tell him that so and so, my expert, said this, that, or the other thing, and have a little heart-to-heart talk, if you haven't done it already, and find out just how strong it is, or just what is the absolute, unvarnished fact, as far as this man's prognosis is concerned." It is a real aid for a settlement, because sometimes you have to help that fellow along a bit himself, or encourage him to be a little bit more reasonable about it.

I think plaintiff's and defendant's attorneys sell each other a bill of goods to a certain extent. They are able to, by discussion, get each other to take a more realistic view of the case.

I agree with Bill Lorry when he talks about crystal balls, when he talks about the community view of the case and when he talks about inadequate awards. I guess he thinks that $40,000 for 10 hours' pain and suffering is a common, everyday, adequate award. It is unusual. No doubt about it. I have no feeling that the present approach should be continued, but it is what we are going to have to use until there is a better system devised, and I am almost certain it is not going to be by community-interested trusteeships on the part of insurance companies. Whether it is going to be some form of compensation, whether it is going to be a form of evaluating certain types of injuries—now, don't quote me on this, but if you are interested, it is worth checking with our law school friend here, I understand that in Sweden there have been tables prepared which are a basis to evaluating the period of disability connected with certain of the more common type of injuries. Perhaps that would be a more just approach to the evaluation and handling of a personal injury case.

In New York City they have an arrangement with the medical association so that the association furnishes panels of experts in the various fields, and the court can appoint an impartial doctor, or an impartial panel of doctors, in the fields where their knowledge applies to the particular injury. I have read a book on it in which it is claimed that it gets very, very satisfactory results. Nobody is bound by it, but both plaintiff and defendant should realize that this man has been designated by the local medical association to look at everything that is known about the man in the way of prior reports, has thoroughly examined him, made any special examinations that are needed, and furnished an impartial report and evaluation of that man's condition. They claim excellent results. Nobody is bound by it, and you can still try the case. Plaintiff or defendant can call the impartial doctor. Both can leave him out of the case. It doesn't make any difference. Perhaps that's a fairer approach.

It may be that some form of arbitration is best. It may be a pretrial conference held by a judge who realizes he is there as an arbitrator, and would hear the two sides out, both attorneys in full; actually look at the reports, and then not put a finger on the case, because that creates a problem in itself, but suggest that one is high and the other is low, and be the negotiator and try to get them together. Not everyone of us is temperamentally fitted for a job like that. It could serve a very useful purpose in getting some of this litigation out of the courts, getting the cases disposed of promptly, save everybody a lot of wasted time, and see that a badly injured party is compensated at an early date.

Now, we are going to be on the program tomorrow, and I will say farewell at this time. It has been a pleasure to be here. I certainly mean that, as the people we have met so far I find just the same as the people we know back home. The remark by our friend here that this is his first time West is not my situation. I remember about ten years ago driving from Pittsburgh to Chicago. I remember a young fellow in the bar who was a chemist with the DuPont Company. He said, "These people in Pittsburgh look the same as people back home in Wilmington." I thought he was kidding me, or needling me. We talked a little

further, and he wanted to know about Chicago and the Middle-West. I began to realize after awhile that he wasn't pulling my leg, that he was going to the Middle-West, and he was astounded by the time he got to Pittsburgh and he hadn't seen any change in the people.

When I came out here I realized that you have just as good lawyers as we have in Philadelphia, that you are doing just as good job for your clients, and the only purpose of coming out here is to exchange ideas. I go to N.A.C.C.A. meetings, practically all the institute courses, and I go to any seminar they have in Philadelphia. Sometimes you learn something and sometimes you learn nothing, but it does stimulate your thought. While these fellows are talking you begin to think about your own experiences, and you realize he is not telling you anything new, but things you have forgotten. So if these meetings have stimulated your interest, perhaps given you a new assertiveness, set some new goal, such as that $50,000 verdict everyone is always talking about, then I feel it was a worthwhile job to come out here and talk to you. (Applause)

MR. LORRY: I am not going to take your time by making a rebuttal, although the plaintiff is usually entitled to a rebuttal. I think you have learned from hearing John that we don't have too much trouble. John is the unusual type of defendant's attorney. We don't get many good, big verdicts against John, because he is smart enough to settle his cases, and we know we try to settle those in which we know he will knock our brains out.

You have been given mimeographed material containing three hypothetical cases. I wish that tonight you will read that over, and arrive at some tentative evaluation yourself. Tomorrow John and I are going to give you our ideas of the value of those three cases.

I did want to mention that a member of the judiciary came in while John was talking. I didn't think the word would get out to them so quickly that comments were made about them and they had better send a spy to see what these Philadelphia lawyers say about judges. I can assure you, Judge, it was all complimentary

(Laughter)

—and anything that was not entirely favorable did not relate to the judiciary in this jurisdiction, even though they are completely wrong on their ideas on remittiturs.

I don't know if you have a large volume of personal injury cases, but to those of you who do I would like to suggest that in offices where we handle a large number of them we have found it highly desirable to use forms for different parts of the case. For instance, we use a form for original interviews, designed so that the lawyer who is interviewing a client will not overlook some necessary piece of information he wishes he had gotten. We have forms for arriving at settlement calculations. Many of defendant's firms in Philadelphia have our forms, because we have no hesitation with men like John McDevitt in saying, "Here's the form, and here's the way we arrived at the figures." The forms are very helpful if you have a large volume of work.

I did want to say, not in the nature of defense, but in the way of explanation, that I may have indicated to you that I have a slightly astigmatic view of insurance companies. I did point out to you that they are good institutions. Thank God they are successful, and they can pay verdicts.

I do get somewhat steamed up on occasion at the actions of the insurance

companies, and their efforts to influence results in these cases by extra-legal methods. I mention that because we have had at least two cases in the recent past, one an insurance advertising campaign, initiated by some companies (I think) in St. Louis, in which they took full pages in national magazines, such as Look, Colliers, and Post, and tried to point out to the citizens, the potential jurors, that big verdicts would cost them money; that even if they did not have insurance or did not have a car, it would mean an increase in rent and food and clothing and the cost of their child's education. What the insurance company was trying to do improperly was to convince every potential juror that he had an interest in the case he was sitting on. Of course, we know as a fundamental proposition that a person on a jury cannot and should not be on a jury if he has an interest in the case. It was only after the matter was brought to the attention of the courts in various jurisdictions that we had any success in stopping this activity. We had a case in Philadelphia, brought suit against the companies, tried to have them held in contempt of court, and although we didn't succeed in having them held in contempt, we did have success in having them stop their campaign forthwith.

Another indication of their efforts has been their "Invest in America" campaign, their desire to get every wage earner, every worker, to buy even two or three shares of stock, with the hope that he being a stockholder and getting on a jury would feel that his investment in this company, if it happened to be a company in suit, a party litigant, would influence him at arriving at a decision, which would not be a fair and just one.

If any of you want to stay and ask questions of John and me, we would welcome you. We have only been able to cover the highlights. If you would like to ask questions on any of the items we have covered, we would be happy to stay here. We are lawyers, just as you. We like to talk. More than that, we like to give you what we think may be answers to some of the problems you have.

Tomorrow we will give you what we think are the figures on the cases you have. These outlines about our talk are not designed to give you much help, but only an idea of what we were going to talk about.

(Announcements by Mr. Randall)

MR. HUGH MAGUIRE: I noticed in these hypothetical questions that they are all males referred to. If your injured is a housewife, how do you approach that when they don't have any specific earning power?

MR. LORRY: I think one of the persons in the cases is a girl. They are, of course, entitled to different considerations, especially a housewife who has not been an income producer. It is a serious consideration for plaintiff's counsel if you have a woman who has been married 25 years and hasn't worked for money. There are a number of cases on the books which indicate, clearly, that every person has an earning potential. The difficulty comes in being able to present acceptable evidence to determine what the earning potential may be. If the lady has not worked for 25 years at an income-producing job, you can't bring in evidence to show what she could earn. If she has certain competencies, hobbies, has been a secretary of a club and as such done some secretarial work, some courts will let you introduce evidence of what people with her competency in your area can earn. Most courts won't. Why they won't, I wouldn't know, except that it is traditional conservatism with which many courts are afflicted. You still ought to try. In doing a job for your client, you still ought to try to introduce evidence of every fact which may indicate the earning potential of your client.

John, do you have any comments on that with regard to how little money you pay a housewife? (Laughter)

MR. McDEVITT: I agree with Bill, it is a problem.

MR. LORRY: I do want to make this comment to you. John made a statement about excessive awards. There is no such thing as an excessive award returned by a jury, if the judge has done his job, and if trial counsel has done a good job, because if counsel has produced evidence which is properly admissible, and if the judge has ruled out evidence which would not be properly admissible, then under our system of law, the jury, as finders of the facts, has the right to determine what facts should be accepted and what facts should be rejected. The jury, having no more of a crystal ball than either counsel or the judiciary, is the body required to place values on intangibles such as pain and suffering.

I do say that as a practical matter, if you don't pay your judges enough money. and you don't in Idaho, you cannot criticize the court for having their economic thinking on a low level, because you have made it so as a necessary result from not paying them enough money.

I have heard judges say in pretrial discussions, where our judges in Philadelphia try to settle cases if it can be done, "By golly, you are asking $60,000 for a man that makes $75 a week. Do you know I have to work for five years to make $60,000?" That indicates what influences that judge's thinking.

Judges are no less human (I hope) than we lawyers, and they will be influenced by those considerations. If the trial judge has done his job, and counsel have tried the case properly, the return the jury makes is not an excessive award, and the courts have no right, no propriety, in reducing that award, unless they find that the trial judge erred in admitting evidence or failing to do something that should have been done if counsel went off the deep end in an appeal to sympathy, passion, or some other matter.

MR. RANDALL: Any other questions that you would like to ask either one of these gentlemen? If not, thank you, Mr. Lorry and Mr. McDevitt. We will see you tomorrow. The meeting is adjourned. (Applause)

JULY 13, 1956

PRESIDENT RANDALL: As announced yesterday, we are going to have a drawing for a prize. We are going to offer this morning a three-volume set of Cowdery's Forms, Legal and Business. I am going to ask Ina Mae Wheeler if she will come up and draw the lucky number. No. 33. No. 63. Emerson Stickels is the winner of our first prize.

Mr. Lorry and Mr. McDevitt were both introduced to you yesterday, and I am not going to take the time to again have them introduced. I am going to turn the meeting over again to Mr. Lorry.

MR. LORRY: Good morning. I am glad to see that the virile, western, outdoor members of the Idaho Bar are just as seriously affected by late hours as we from the East! We had to get up.

We are going to victimize you this morning by subjecting you to our comments with regard to preparation and trial of a civil action. I should like to make a few general comments first, to submit to you my feeling with regard to some of the problems you have presented to you when you represent a plaintiff in a personal injury action.

Plaintiff's counsel is in a completely different position from that of defendant's counsel representing the underwriter. In the first place, plaintiff's counsel has a more direct and intimate relationship with his client. He sees his client, gets to know him very, very well. John McDevitt suggested to you yesterday that it was most undesirable for counsel representing underwriters to have nothing but a file with investigator's reports, not even to see the driver of the vehicle or the tort-feasor. I suppose that is a serious disability which defendant's counsel has.

Plaintiff's attorney does see his client from the very first time the client comes in and retains counsel.

It is important that from the very beginning counsel establish the proper relationship of attorney and client; that he develops in his client the complete confidence, as well as the respect, which you must have if you are going to do the job that you should do. It is important that you condition your client, that you recognize his state of mind, and that you be realistic with him. If he has a case in which the injuries are bad, and he has been seriously disabled, but from the liability point of view it is a difficult case, the law may seem to be against you or at least the facts don't indicate that you have too good of a chance, it is important that your client realize that, and yet you have to so present it to him that you don't dull his enthusiasm for his case, that you don't develop in him a defeatist attitude.

You have to develop in him the idea that he will not do anything with regard to this case unless he has cleared it with you.

There is a real, basic need that on both sides of the case there be competent and effective counsel. I think that a great deal of damage results both to the case and the parties, and to the community and our system of law if there is a preponderance either of ability or effectiveness on one side or the other. Only by having a competent and effective counsel on both sides do we not only develop the respect for the law that we must have in the community, but also develop the law and its interpretation as it should be.

Most people get their impression of law and of our system of law from trial procedures. As a matter of fact, many young men enter the law because they have been influenced by court proceedings they have seen, either actually, or in the movies, or in the theater. With regard to the general public, their impression of law is what happens in the court.

As plaintiff's counsel, we have to realize, as I suggested to you yesterday, that in every one of these situations, somebody is going to pay for the damage. It is neither right nor proper that the community in general should be charged with the bill, or that any public or private relief agency should have to meet the charges. It is only right that the tort-feasor and the fund that has been created for this purpose take care of these charges.

The obligation as plaintiff's counsel is to secure the maximum favorable result you can for your client, in accordance with the facts as they develop and the law as it is or should be. I have always felt there is an obligation on the part of plaintiff's counsel to take any kind of a case in which a man is injured, where there is any possibility that there may be recovery. Counsel have no right to be selective to the extent that they will only take cases that are easy, lucrative. There is an obligation as a member of this noble and learned profession that people have the representation which they can best afford to get, or which is best, whether they can afford it or not. If you have a state of law in your jurisdiction which to you

seems to be inequitable—if your courts are still guided and influenced by either procedural requirements or substantive law, which was good a hundred years ago but which should have no application today, it is your responsibility to try to effect a change.

I know that in most instances it has to be done through the legislature, and you folks have the unfortunate situation of having in the main a farmer legislature. Of course, that should be the subject for another private discussion among you, because I think it is most unfortunate for a state, for any community, if there aren't a great number of members of the bar in the legislature to give them the benefit of their experience, training, advice.

There are many changes that should be made in all our states, and they will never come about unless counsel develop the need, show the public the need for those changes, and create the atmosphere so that legislators will be receptive and know what should be done.

It is the trial lawyer, ladies and gentlemen, who hammers out the law, both on the defendant's and plaintiff's side. Until recent years I believe trial lawyers were generally regarded as on the lower echelon of respect in the profession. They were the ditch diggers of the profession, the fellows who struggled in the gutter, the men who brawled, the men who didn't completely act as lawyers should act, because sometimes they yelled at each other, and sometimes they were nasty and mean. Those lawyers who either through fear of entering the arena, or desired not to have their hands dirtied, but had a nice office practice, maybe because they had inherited a nice office practice and their fathers or uncles were on the boards of several industrial concerns or owned a couple of banks, didn't have to go to court, and used to give the impression that trial lawyers didn't deserve the kind of respect that the top grade office men did. I think that is changed, and it is us trial lawyers, by and large, who develop the law and make possible for the man in the office to advise his client as to what the law is and is not, and this is what you should do in this situation. We have no idea what a law that is passed means until it is tested in the courts by trial lawyers.

It is necessary for the trial lawyer, plaintiff's and defendant's, to know what he is talking about, know the rules, and have available to him the tools of the trade. He has to know procedural rules. He has to know the substantive law. It is one of the hardest jobs at the bar, and yet it is one of the most rewarding jobs, both from the intellectual point of view and from the monetary point of view.

Let's consider what the plaintiff's problem is. You will hear from time to time the plaintiff's lawyer has a very easy job. Why? He is dealing with human beings, and he is dealing with humans about the humans he represents, and by and large people are sympathetic for somebody who has been hurt. Defendants are quick to tell you that you have the best side of the case, because you have all of the emotional appeal. You do have some of that emotional appeal, some of that natural human sympathy, but that only helps a little bit toward evening the balance.

They talk about the burden of proof that the plaintiff has, that it is the plaintiff's burden to prove by a preponderance of the evidence the charges he makes. The burden of proof is much, mueh more difficult than that general proposition in the law. Plaintiff's counsel has the burden of reconstructing a situation that has happened a year or two years or three years ago, before twelve sometimes disinterested people who are annoyed because they are taken away from the jobs that they feel they have to do. He has to reconstruct this situation which

may be somewhat complicated, and may not be something that the jurors meet with in the course of their regular daily activities. He has to reconstruct that situation by the use of words alone, and whatever visual aids, demonstrative evidence, his ingenuity can develop.

We get into the field of semantics. That word means one thing to me, and it may mean something completely different to you, based on your background, your condition, and the influences that motivate your thinking. His problem is aggravated and it is progressively multiplied by the fact that he has witnesses and a client that may not be too articulate, whose vocabulary may not be very good. A man may not have much formal education. It is plaintiff's problem, recognizing all those difficulties, to reconstruct that factual situation, so he places the jury in the frame of mind to be receptive, to consider the situation as it happened at the time, in the atmosphere that existed at the time, and to make their decision in the frame of mind he paints for them. It is a tough burden.

It is a very difficult burden. Whatever little aids plaintiff's counsel has on the side of emotional appeal and human sympathy do not equate the situation at all. They do not make it an even balance. They just help to make the burden a little less difficult.

With regard to members of the judiciary, I made some remarks yesterday, some of them serious, and some of them in jest. I would like to make a few seriously now.

The fact that one of us has been touched with the golden wand and elevated to the bench, the fact that a lawyer is now cloaked with a black nightgown and sits above, does not mean he is any different kind of person when he sits up there with a robe than he was when he sat down with you. If he was a capable, a knowledgeable, and effective attorney, he will be a capable, a knowledgeable, and effective judge. If he was inept, inadequate in his knowledge, or his ability, cantankerous, irritable, with an unfortunate personality, all of those deficiencies will be accentuated now that he is on the bench and has the authority and position that the office holds.

We know it, and he knows it, but we can't let the public know it. It's the responsibility of counsel to make the judge look good, and it will always be our responsibility to do that if we are going to maintain the respect for law, and the respect for our system of law, which is one of our responsibilities. You have to make the judge look good. You will know, having practiced in the jurisdiction, about the judge who is going to sit on your case, and the more that you feel that the appointment or the election was an unfortunate incident, the more your responsibility is to make him look good.

I am not talking about your jurisdiction. The judges I have met here, as far as the brief meetings that I have had with them, have impressed me very, very well. I am talking about the situation in which you happen to get in another jurisdiction, and you meet up with that kind of man. It is your responsibility to see that that judge is equipped with all of the memoranda of law, the trial briefs, the research you have done, so that he can be learned about your case, so that his decisions will be proper, his rulings correct, so that he will look to the people in the audience, including your client and the witnesses in your case, as though he is the kind of man who symbolizes good law and a good system, and who maintains the respect they have and should have for the system.

You have to assist the court in understanding the procedural problems, the

legal problems. You can anticipate the problems in your case. You have lived with it for a year or two. You know what your case is. You know what problems the judge will be faced with. So, in anticipating those problems, you should prepare memoranda of law, trial briefs, whatever may be required, and give them to the judge sufficiently in advance so that he can read them and absorb them; and selfishly, it will be a good thing for you, because having enabled the judge to be comfortable in handling the rulings he must make in that case, he will certainly feel a sense of obligation. Of course, you will interpret the law as it best suits the purposes of your case. You will interpret the cases that you submit to the court, and select the cases which best suit your purposes.

I don't mean that you will fool the judge, or mislead him, or that if there is a case which rules directly the opposite way you just hide that case and not give it to him. No. I think one of the worst things counsel can do is to endeavor to mislead a judge or to distort the law or to misinterpret the law.

You will give him the picture, interpreted for your best purposes. You will influence his thinking in a favorable way for you. You will also develop in him a feeling of obligation and gratitude to you for having made his job easier, for having enabled him to present a case which will be error free. You will thus get rulings that are favorable to you.

As you all know, a judge in his charge, by the inflections in his voice, by the look on his face, by many of the things that do not appear in the record, can suggest to the jury that this is the way the case should go. Those of us who have been in court many times know that juries are greatly influenced by what they think the judge would like to have as the conclusion or result of the case.

Now we go to the preparation of the case, The original meeting with your client is probably the most important thing that happens before you get into court. It is his first meeting with you and yours with him, unless he is one of your regular clients, or one of your regular witnesses you use in all of your cases. You will try to learn everything you can from your client about your client. You will develop, as he is talking to you, your own conclusions as to his personality. Is he the kind of personable, articulate individual who can put his case across? Is he the kind of salesman who can sell the court and the jury on the statement of fact he is going to give? Is he the kind of man who can demonstrate the misery he suffered, the pain that he experienced during the two years previous to trial? It is going to influence you in your thinking on the value of your case. It is going to influence you in deciding whether or not you should settle, or you are ready, able, and anxious to try this situation out.

You will not only learn about his personality, but you will learn about his weaknesses. You will learn about his past conduct, his previous health, whether or not he ever had any accidents, and you will develop in him, as you go along in that first interview, the confidence the client must have for counsel. You will become his confidant, his advisor, his guide. As he talks to you, and the facts unfold, you will, as an attorney who has had experience and learning in the law, develop a tentative theory of liability. That will in all likelihood change as facts develop. However, you will be thinking out theories of liability as he talks to you. You will have a recognition of the problems involved from the very beginning.

There should be a certain amount of realistic approach between attorney and client. If he has a bad case, you should tell him about it. As I said before, you must tell him in a way so as not to develop a defeatist attitude. You must develop in him the feeling that you and he will be shoulder to shoulder in this effort to

accomplish justice. He must know that you and he are on the side of justice, not to the extent where it becomes a war to the finish, and the other side is a vicious, vindictive individual or organization that is trying to defeat justice.

Let him know practically and on a fairly high level what the situation is, and why the adversary relationship exists.

As you talk to him you will determine in your own mind what investigation may be necessary, and that investigation should be followed through with thoroughness and vigor. Frequently you will not get the case until three to six months have passed. By that time the defendant has had its investigators out, taken statements--sometimes from your client, even though he is in bed in the hospital all bandaged up and sedated with morphine and other opiates. They will have a complete, five-page signed statement giving all the details of the accident. Incidentally, the more detailed and thorough that statement is, and the less alive your client was when it was taken, the better it is for you, because it will indicate to the court and the jury what kind of investigation was made, and what the purpose of it was--not to get the facts, but to defeat a claim.

You should retain a certain sense of objectivity, and yet recognize your position as an advocate, resolving all doubts in favor of your client. You must neutralize whatever witnesses may be against you. By that, I mean to take a statement from them which will destroy them on the stand when the defendant uses them. If in talking to a witness you find that he is very much opposed to your client, or that his recollection of the circumstances, vague though they may be, would not be helpful, the more vague they are the more important it is to get that vagueness into a statement which he signs.

If you have a statement from a witness to the effect that he doesn't remember very much of what happened because as a matter of fact he had his back to the accident, and can only guess at what happened, and that's all he is doing, and his guess is so and so, then when he gets on the stand for the defendant and tells a beautiful and devastating story about what he saw in detail, a story that will destroy your client, you will do a good job for your case when you produce that statement and the jury hears that this witness, whom you saw shortly after the accident, didn't even see the thing, and what he has said to them from the witness stand is something that he happens to have heard from somebody else and has come to believe as true.

I don't think that many people get into court and having taken the oath, deliberately lie. I think there is very little deliberate perjury in our trial courts. I do believe that the first one who gets to a witness can drop certain suggestions which the witness, being involved in the situation, may be inclined to accept, and as time goes on, these germs grow in his mind, and he comes to believe that he had heard and seen that which was suggested. When he testifies, he is honest in his testimony, because he now thinks that these things that he testifies to he actually saw. As a matter of fact, he didn't. I think there are very few situations where either plaintiff's people or defendant's people know exactly what happened in an accident. Usually things happen so fast they have no foreboding, and not anticipating anything, are not prepared to remember exactly what happened. Neither side recollects very accurately what happened in the situation.

We are faced with a certain problem. We can only resolve these disputes by testimony from people who are supposed to know what happened. So, capable counsel on both sides, or capable investigators on both sides, will handle witnesses

by making suggestions in the course of their interview. The more capable and experienced they are, the less these things will sound like suggestions, and the more the witness will think, "This is what I know." The counsel or investigator suddenly gets a statement from a witness which is simply what counsel or the investigator thinks happened, but the witness says, "This is what I know happened." We try to do things in accordance with our beliefs in the principles of justice, and these are some of the things we are confronted with.

You will also determine in the initial stages of your case whether or not technical experts will be needed. In most cases where you have permanent impairment, physical impairment, you will need a medical expert. I understand that in this jurisdiction there is some difficulty in that connection. You don't have enough doctors to treat the public, medically, let alone having them available for counsel and appearances in court.

The defendants have very little difficulty in that regard, generally, because they can put a doctor on retainer, pay him some nominal retainer, with an agreement that he will get certain sums of money for court appearances, examinations, and consultations. They have thus removed him from usefulness as far as a plaintiff is concerned, so you plaintiff's attorney are confronted with the problem of getting doctors.

In large metropolitan areas we don't have very much of a problem in that regard. Our problem is only to get the best. We find that the defendant is using the best sometimes, and then we retain him, because he would much rather, generally, work for plaintiffs. He gets paid better, more quickly, and also, unless he is a profound reactionary, he still has a feeling of humanity and a sensitivity that enables him to tell the truth.

You will be developing in your own mind what visual aids will be helpful in your case. It has always struck me as a peculiar reaction on the part of some judges who dislike visual aids, who think that it tends to the dramatic. They dislike the use of blackboards, or limit the use of blackboards. I am not talking about the District of Columbia Judge.

I feel that we should recognize that counsel on both sides are trying to inform a group of strangers in reconstructing a situation, trying to educate them. In grade school, high school, college, and even in law school, we find that blackboards are useful and necessary aids to education, to transmitting information. Is there any reason why it shouldn't be similarly useful in court? Is there any reason at all why, after talking for three days to a jury and giving them very confusing sets of facts and figures, we should compel those members of the jury to remember all these things until counsel on both sides have finished, and then get back in the jury room and try to figure what the testimony was on past losses, future impairment, differences in present value of moneys which a man lost over an extended period of time and will over an extended period in the future. One of them says, "Oh, no, I heard it differently." You spell it out on a blackboard, the fact that a man lost six months' work, was making $100 a week, and that loss is $2600. You write it down, 26 weeks at $100 a week equals $2600. You write down, medical expenses, $1000. It is in the evidence already, where the supreme court can find it after the transcript is prepared. You write down, property damage, $850; you write down, working expectancy, 25 years. Impairment, 50%, or $50 a week. $2500 a year, times 25 years, and you put that total down. You put, present value at 3%, and whatever that total is. Of course, you can't put any total down for pain and suffering, because under our system of law, as it still is, we have no

right to make suggestions to the jury. That is peculiarly within their judgment, predicted on their experience as humans.

These other figures you do have a right to put down, and defendant has a right to put down whatever he wants to put down, because the blackboard is a recognized device for transmitting information.

If the judges in this jurisdiction are somewhat conservative in their permission to use the blackboard, I suggest that you still try. I suggest that you try to educate your judges that we have advanced, that we do find there are certain basic devices that we have been using for 165 years that have now become recognized as desired aids, and this is one of them. Suggest that sometimes your jurors are not college graduates, and sometimes they are not high school graduates, and sometimes they need that device to aid them in recollecting what happened.

You will start suit as soon as possible. State as soon as it is practically possible, as soon as you can prepare pleadings that meet the fundamental requirements of your procedural rules. That's not difficult under the Federal practice, because the pleadings are notice pleadings. You must realize in the Federal practice, and I hope your state practice is that way soon, that there is discovery available to the defendant, and if the defendant is doing the job he should do he will file a notice for oral examination of your client with his answer to the complaint. Consequently, you should pretty well have the theory of your case established in your mind. You should pretty well be able to prepare your client as you would prepare him for trial, by the time you have started suit.

You should pretty well have researched whatever the legal problems may be in your case, so that the facts can be developed to meet the law as it applied to your case.

I suggest that in your pleadings you make sure that they are brief and punchy, that they aver facts which the defendant is going to have to answer, and which if he admits will enable you to offer into evidence as a record of admission and eliminate the need for a lot of proof.

I suggest also that in any kind of case involving any substantial and serious injury, you include the aggravation of a preexisting condition. Frequently we find after several examinations of a client that he did have a preexisting condition, such as an arthritis of the spine because of the hard manual labor he had done, but it was asymptomatic. It wasn't until this traumatic experience that he had begun to suffer pain, limitation, and disability. Of course, you can always amend, but it is better practice to have it in there from the beginning. In the Federal practice the plaintiff doesn't sign the complaint, so the defendant's attorney can't very well embarrass him at the time of trial, asking why plaiutiff avered certain things which now he has not endeavored to prove, or which have been proved not to be so.

It is most important in developing your case that you become fully acquainted with the nature and extent of your client's injuries, and the extent of his disability. Before you can talk to the treating doctor, and certainly before you talk to any expert whom you hope to retain, it is important that you educate yourself, first so you don't appear to be stupid to the doctor, but mainly so each will understand what the other is talking about, so that you will get the help you need when you talk to the doctor.

It is important before you talk to the doctor that you look at any medical records, hospital records that may be available. There is a danger in large offices,

and particularly with defendant's, if they have a large volume of work, that they will have an investigator look at these records. The investigator generally isn't a man who is trained in the law. He is not a man who is familiar too well with the problems that confront counsel. It is desirable that you look at these things yourself.

It is desirable that when you talk to another professional man, a member of the medical profession, that he has and gain and maintain for you the respect that you have for him. The relationship should be on a high level, and you will find also that you will be much more likely to get his cooperation if he has that respect for you, and if he realizes that you know what you are talking about, and you also know what he is talking about.

You might review medical texts relating to the injuries that your client has, so you can ask the doctor intelligent questions, with regard to your client's injuries, and with regard to the prognosis.

Having developed the case, the same thing applies to counsel looking at the scene of the accident. Counsel should talk to the witnesses himself, rather than having some paid representative take statements. It is important that you yourself know what is involved in your case.

Having been unable to settle the case, and having gone through all the negotiations that the circumstances indicate are desirable, you are now getting ready for trial. Let me suggest to you that a trial has a great many similarities to a theatrical production. We have the dramatic aspect in the unfolding circumstances to an audience by a cast of people who may or may not have participated in the situation; but it has certain differences which are dramatic in the legal situation. In the courtroom you have the cold, decorum, and dignity which most of our courtrooms properly have. You do not have the theatrical aids that are present to the stagemen. You do not have the backdrops. You don't have the different lights, the spotlights. You don't have the soft music. You don't have the clothing that the cast in the stage production are provided with. You don't have the makeup. You have people looking the way people look. Your client has bags under his eyes. When he gets on the stand he still has bags under his eyes, and he may look dissolute. If your client is Marilyn Monroe, John McDevitt notwithstanding (because he does like her and he is susceptible, being young enough to be influenced by those things), you do have a pleasant situation for a plaintiff.

You don't have a lot of the things that a stage production does have, and yet you are trying to sell an audience a bill of goods. Who is your audience? It is not the theater goer who buys a tieket and who is receptive and wants to be entertained, and who wants to throw himself into the atmosphere of this stage production. You have twelve people, many of whom are disbelievers (I am not talking about religion). They come in with a chip on their shoulder, with a "show me" attitude. "I am not going to believe what they say unless it is persuasive and very convincing." You have a judge who has heard this kind of thing day after day, and week after week, and year after year. Maybe he is a little tired, and maybe he had a disagreement with his wife, and maybe a little irritated that morning. You don't have a very receptive audience in every situation.

Recognizing that, you should use whatever aids you have available which may act as props, whatever demonstrative evidence you have available.

You must recognize you have a cast which is not trained, and that your star performer, your client, is scared and has butterflies in his stomach when he gets on

the stand. He is not going to remember a lot of the things you told him. He is going to get flustered, and that applies to the other witnesses in the case. Many of them have never been in court, so you do not have the highly skilled personnel aiding you that the producer of a theatrical production has. Yet, you are trying to accomplish the same result. You are trying to sell an audience a convincing story. You must have every photo and map and other aid you may have developed.

It is important that in preparing your factual material, in preparing your witnesses, you acquaint them with everything with which they may be confronted in court. Explain to them what happens in court. Explain to them the dangers of cross-examination. You can't anticipate all of the cross-examination that your opponent will make, but you can generally illustrate what will happen, and test your witnesses out. Tell them that as long as they tell the truth, testify only to what they know, do not get into this game with defendant's counsel and start guessing with him, when he asks them to guess and speculate--that they have nothing to worry about then.

Whatever maps and photographs you are going to produce in court, be sure you show the witnesses in your office. It is awfully embarrassing to get in the courtroom and show your client a picture of the scene of the accident, and have him testify that it happened on the other corner when you all know it didn't happen on that corner, and have him testify that north is south and south is north. The jury would believe that the guy is a fool and stupid and if he doesn't even know the right directions, how can he be telling the truth about what happened. See that the witnesses are prepared in your office before they get into court, and see that they understand what they have to face.

The same thing applies with the doctors, unless you are using a medical-legal man who has been in court many, many times. Then you have a different problem. Then you have the problem of tactfully rejecting their suggestions as to how you try your case, because every medical-legal man, every good doctor that has been in court, thinks he would make a much better lawyer than you. Of course, he thinks that he makes a much better doctor than you, too. You have to listen to his suggestions. Don't use them, of course. But don't antagonize him. Try to get him to understand what you are trying to accomplish. Read to him or give him a copy of the hypothetical question that you are going to ask him, and if he suggests changes, with regard to the medical aspects of it, change it. See that he understands the requirements of legal proof. There is an awful lot of disagreement between members of the legal and medical professions, and much of it is based on misunderstanding

They don't like the way we have to present things. They are trained from a scientific point of view. They are trained in taking the position that unless a thing has been proven over years and by many, many cases of experimentation, demonstrated to be so, they can't scientifically say it is so. They like to qualify everything, saying it is "Possible," "could be," "may be." You have to point out to the doctor that unfortunately in the law we are confronted with a different situation, and if the doctor in his considered opinion thinks that it could be so, you should like him to say that in his opinion it is so. In certain jurisdictions, under the state of the law as it is, unless he says that, you have not established causation, and have not met the necessary requirements of proof.

One of the things a plaintiff's lawyer finds necessary is that he be a good housekeeper, methodical in his preparation, with things where he can reach them, find them, and doesn't have to spend an embarrassing five minutes pawing through

his briefcase looking for an important exhibit and feeling that maybe he left it in the office or home last night when he was going over the case.

You should prepare a trial schedule, an outline of the way your case is going to be developed by you. It should be a basic kind of document, starting off with the selection of jury, with whatever suggestions you have for yourself in that regard. 2. Opening to the jury, with whatever suggestions you have in that regard. 3. Offers you desire to make in the record. Go down the list, down to witnesses. Have a list of your witnesses as you intend to call them, with the weak ones sandwiched between the strong ones. Have this trial schedule prepared so that it meets the requirements for the elements your case has involved in it, so that if you have to prove certain things, by the time you have covered your trial schedule, checking them off as you do them, you can be sure that your record is correct; so that having gotten a verdict, you will not be confronted later with a technical omission which might destroy all of your efforts.

The trial schedule is a very important part of the preparation in my office. Every man must prepare a trial schedule, so he will know that he has met every requirement of the law by the time he rests.

It is also important that you prepare a trial brief. I suggested to you before your responsibility with regard to the court. Your trial brief should set forth a brief statement of facts, brief statement of the questions involved in the case, and a discussion on the law, where the applicable law will be set forth, the law that relates to the facts of your case.

At the end you should have a short statement on the damages in your case. It is my experience that defendants don't generally do that. It is an added piece of work. They generally don't get paid for doing things that don't have to be done. They are very busy. They represent a lot of insurance companies, having a lot of cases to try. This is just something which isn't absolutely necessary, so they don't do it. I hope they continue not to do it, because it's a very helpful device which the plaintiff's counsel has. It enables you to condition the judge's thinking, to get his state of mind in a receptive position. You put the facts in your trial brief, as you know them to be, resolving every doubt in your favor. The judge reads that statement of facts. He is undoubtedly influenced to a greater or lesser degree. He must be. It is like making an opening statement to the jury. Everything that he hears or they hear after that will be heard in relation to what this statement of facts was, and how it set their minds.

The questions are clearly outlined. He has those questions pinpointed and then answered by the discussion of law, by the citation of cases from your jurisdiction, so that after all it is a very easy job that he has, because when the case starts, he knows the facts, what questions are involved, what the law is with regard to those questions. You have made his job easy, and helped to make certain that you will have an error-free record.

You should also have memoranda of law which you may need. You can anticipate questions that may arise with regard to admission of records, with regard to questions of evidence. You will have memoranda of law on those questions. It's a most interesting experience to be in court and have defendant's counsel make an objection to something you have already anticipated, and have the judge say to you, "How about that, Mr. Lorry." You can say, "Judge, I felt sure this question might come up, and I researched the law and I have a short memorandum of law that Your Honor might care to read." You hand it up. It shows him what the law

is. It shows him what the ruling should be—in your favor, of course. He says to the defendant's counsel, "There is no question about this. Mr. Lorry is right. Your objection is overruled." That happens two or three times, and the jury thinks that you are a smart guy, the defendant's counsel isn't very bright, but is simply trying to defeat justice in this case by technical and improper objections. The judge thinks you are a swell guy, and you get a verdict which begins to approach an adequate award.

It is plaintiff's counsel in the main who will determine the atmosphere of the trial. If you are going to have a vicious, no-holds-barred, roll-in-the-gutter proceeding, you will be the one as plaintiff's counsel that will make it that way. If you are going to have a nice, clean, decorous kind of proceeding, again plaintiff's counsel will be the one who makes it that way.

Of course, that depends on knowing something of the personality of your opponent. John McDevitt is the kind of guy I can never get a rise out of. I have tried for many, many years. If you have for an opponent a counsel who baits easily, you will know how to handle him so he will get all steamed up, emotionally aroused, and then you can be very calm, injecting the needle once in awhile and leaving the barb in, getting more and more, aroused, but appearing to be very calm and conducting yourself on a high professional level. Let him be the mean guy. By and large, it is the plaintiff's counsel who will determine how that trial is to be conducted.

You might even get the judge steamed up, which isn't always a desirable procedure. If you do use the needle on the judge, make sure that it has a highly effective opiate, because otherwise you are going to be in trouble.

I remember talking in Virginia. In the panel discussion we had afterwards they had a proceeding where they had four leading practitioners from four different sections of the state on the platform. Afterwards we kicked around these comments with regard to the local situation. One fellow's claim to fame was that he had been held in contempt more than any other practitioner in the State of Virginia, sometimes with very effective results, because in the farm area in which he practiced the farmers delighted in seeing a contest between counsel and the court, and when the counsel had gotten the court so stirred up that the judge finally held counsel in contempt and fined him fifty bucks, the jury decided then that they were going to be on the side of the underdog, and they would see that he got his fifty bucks back with interest. That's why he did it, he said. (Laughter)

I feel seriously that it is important that counsel conduct himself on a high professional level, that his conduct be beyond reproach, because again, with regard to the clients, the witnesses, the strangers in the courtroom, their impression of the law and of our profession comes to a very great extent from what they see in the courtroom. Even though they have seen movies, stage proceedings, and have heard about the Clarence Darrow type, and they have heard about the intensive, biting, vicious cross-examinations, and the finger pointing kind of business, and they like to see a fight. They are always ready to say, "Let's you and him fight." It doesn't lend itself toward the attainment of justice, nor does it leave the right impression. Counsel should be strong-principled and strong-minded enough never to let his client say, "Why don't you give him hell? Why don't you jump on his back and stomp him in the teeth?" Don't let your client run your case. You run your case. Be respectful to opposing counsel, and be completely respectful to the court. Whatever your personal feelings may be about the man, you must have respect for the office which the judge holds, and you should indicate respect for the court. If

is because the defendant was what in law we call negligent—that is, he was careless. He didn't do what a person in that situation would do if he were ordinarily careful." Explain it to them in basic, simple language, using simple words.

After you are through, they should feel that there is really no reason why this case should be tried, why their time should be wasted, because it is a very clear and simple situation. This defendant is going to have an awful lot of explaining to do to show them why he is wasting their time and making them sit through this tiresome proeeeding.

If you haven't succeeded in doing what you should have done when selecting the jury, to create a bond of interest, a feeling between the jurors and yourself, you can do it here. You will know from your knowledge of the individual jurors and your knowledge of their background, of their hobhies, of their philosophies, that there are at least two or three people on that jury who think the way you think, who have mutual interests, and you should try to dcvelop at least with two or three jurors that relationship, a relationship not only of respect, but of liking, because if they like you they will like your client, and if they like your client, they will like to do things for him. They will like to bring in a verdict.

They will be influenced by your summation, in your telling them how their deliberations should go. There is nothing wrong in it. It is perfectly proper. We are dealing with human beings. The whole question is one of a code of conduct and of humanity. So act like a human. Don't be patronizing to the jury. Don't talk down to them. You are just one of the boys. Establish that relationship of a mutual feeling of respect and almost of affection. They like what you are doing, the way yon are doing it, and are going to show you that they like it.

Frequently the defendants in our jurisdiction will withhold their opening statements until they get to their part of the case. I don't know what John is going to tell you in that regard. I like it when they withhold, because if they let me go ahead and make my opening statement, let me tell the jury what I think the case is about, why I think they should bring in a verdict in favor of my client, and then let me put on my witnesses who will support in their testimony what I told them the situation is, by the time the defendant gets up to make his opening statement he is talking to a blank wall. They have their minds made up, and it is awfully hard to unmake them.

After you have made your opening statement, you have some admissions made by the defendant that you want to offer into evidence. If you are in Federal eourt, you should eertainly have used all of the procedures that are available, including requests for admissions. You should have used them first because it is the proper way to try your case. Whatever need for witnesses you can eliminate, whatever time you can save, you should do it. If you can file requests for admissions, and get the defendant to admit that the proper bill for property damage is the cost of the repair, $837.50, and it is a fair and reasonable amount, you don't have to bring in a mechanic. You can save an hour of examination and cross-examination. You don't have to bring in receipted bills. You don't even have to have your client testify to it in detail.

If you can get admissions, and you certainly can, in your pleadings, with regard to jurisdictional matters, certainly you can read those into evidence. You folks haven't had the pleasure of having state rules which provide for discovery. I hope that you do in the very near future. You will find it is not only conducive toward the attainment of justice, but it helps trial counsel on both sides to accomplish a

your disagreement on rulings is fundamental, make it a respectful disagreement so that the record shows that you disagree, but don't make it anything less than respectful.

Selection of the jury. I suppose your problems are completely different from ours in the metropolitan areas. I have tried them in rural areas, too. You can't have a jury that gives you an objective consideration of the case without knowing who your jurors are. It is my own impression from experience that the voir dire proceedings are generally dangerous. All you have to do to antagonize the whole panel is to embarrass one juror and humilate him by an unfortunate question. The jury panel is like a lodge, a club. They stick together, and if one of the members of the club is embarrassed by counsel, the whole club doesn't like that attorney. It is going to reflect itself in the decision that they make.

In Philadelphia we subscribe to investigative services. The individual members of the panel are investigated by professional investigators. One of the firms we use happens to be a chap that was in the Bureau with me. I think he does a very good job. The only restriction is that the juror himself should not be interviewed by an investigator. That is the order of the court. The investigation is similar to a credit investigation, except that it is a little more penetrating. We receive a page on each juror, indicating who he is and what he does, what the other spouse does, how many children they have, what their economic situation is in the community, whether the person has been on the jury before, and if so, how that jury acted; what the person's feelings are and philosophies are; if he is against unions, conservative or reactionary type, very well-to-do, and thinks that those who have money should continue to have it and those that don't have it should remain in that position so that there are those who work and those who don't work. In that way we can determine generally who would be desirable on our jury.

Of course, you do have to ask certain basic questions, whether the members of your panel are represented by counsel, or are acquainted with, related to the parties, or have stock in the defendant.

It is highly desirable to develop that phase of the ease. If the defendant is a corporate defendant, it is good to ask in several different ways whether they have any stock in this large eorporation, whether they have any financial interest in the operations of this eorporation, whether they have any connection with the various subsidiary plants or parts of this organization, or any of the far-flung braneches of this defendant corporation throughout the country. It helps to develop in the jury's mind that here is a pretty big outfit which has facilities, money, and personnel enough to investigate this case thoroughly, while plaintiff is just a little guy and can't do the job they can do. It does help to influenee their thinking in the broad, over-all picture.

The jury has been sworn, and you make your opening statement. I suggest yonr opening statement should he the kind of narrative discussion that you would have with these twelve members of the jury if they were in your living room at home, and you were explaining to them what happened. Make it completely unlegal. You might say to them, "Ladies and gentlemen, this case is not a very complieated situation. As a matter of fact, the issues are not very difficult at all. Here is what happened. My client, who is called the plaintiff, Jim Jones, was walking across Main and High Street at three o'clock in the afternoon—" Now, after you have outlined the facts briefly, you should explain to them that the reason we are here, "The reason we ask you to bring in a verdiet in money damages which will fairly and properly compensate Jim Jones for the damage he was eaused,

fair result, to do it with a tremendous saving of time and expense, and inconvenience to other people as well as themselves, and it is a nice way to conduct a law suit.

You shouldn't read all of your admissions into evidence right in the beginning to get them off your chest. They should be read into evidence at an appropriate time, so as to have the greatest and most dramatic effect. Make up your trial schedule, and note in your schedule where you will make or introduce the certain admissions. They have to be done in your part of the case, your case-in-chief. When you do that, do it so the jury knows what you are doing. Don't just lean over and mumble to the reporter, into his secret ear, "We offer into evidence the following admissions." The jury doesn't like that. You are keeping them out of something. They are curious. They want to know everything that is happening during the proceeding. Not only do they not like it, but they should know that important part of the case which has been admitted by the defendant. Turn around and read it to the jury. The court reporter will hear it. If he doesn't, he will tell you about it, and give you a chance to read it twice. If he is a friend of yours, he will tell you about it several times. (Laughter)

In that connection, let me suggest this to you. It is good to be friendly with and friendly to all of the court employees—the bailiff, the judge's law clerk, the court reporter, everybody. It is nice to be a nice guy. The jurors have a very intimate contact during the course of the trial with these court officials, a lot more contact than they have with the court or with counsel, or with anybody else. Occasionally, I am sure, jurors may say to a court attache, "What kind of guy is this fellow Lorry?" If the court attache should say, "Oh, he is a swell guy. He never comes into court with a case that isn't right." (Laughter)

I am sure they don't say it or I wouldn't lose as many cases as I do, but they may say it, or say something to indicate Lorry is a pretty nice guy, and it is highly desirable. Besides that, it is the human thing to do.

Let me suggest to you that in this adversary situation we have in trial proceedings, by and large plaintiff's counsel is looked on as the human part and defendant's counsel is looked on as the machine that represents the big, monstrous corporation. Try to retain that impression that you are the human guy in this case, and be a nice fellow with all of the court personnel.

Don't use any more witnesses than you have to. If you have 18 witnesses, 17 of whom would simply corroborate, use one or two of the corroborating witnesses. The reason why is obvious. Every time you put on an additional witness, you give the defendant another chance to penetrate, to break down that witness. Maybe he is a weak witness. Maybe he can't stand up on cross-examination. Just use as many witnesses as you have to. Besides, if you use a lot of witnesses you don't need, you annoy the court, irritate the jury, and you waste a lot of time.

With regard to direct examination, you should have outlined for yourself, in each instance, what you expect to prove with each witness, and when you have proved that, stop. Turn your witness over for cross-examination. There is no need to try to develop your whole case with each witness. Generally, each witness fills in one of the segments of this cross-word puzzle, and when he has done his part of the job, and done it well, let him alone. It's enough. If he stands up reasonably well under cross-examination, don't take him back on redirect. He may destroy everything he did for you on direct. If he breaks down a little bit in cross, don't worry about it. Very few witnesses can stand up completely when you have

competent counsel on the other side. By and large, the jury has to determine anyway what they are going to believe, and you won't patch anything up. It only opens the door to a recross-examination which may hamper you more, be more prejudicial than before.

With regard to cross-examining defendant's witnesses, in most instances, don't. Don't ever go on a fishing expedition. If the defendant's witness hasn't hurt you, let him alone. No sense wasting time. No sense giving him a chance to develop something that may hurt you. If he has hurt you, and he is a good witness, chances are you better cross-examine him on some collateral issue, on how much he is getting to come into court to testify, ou his feelings about the situation, on the weather yesterday or something like that. Don't expect that you are going to have him say "No," on cross, when he said "Yes" on direct, because if he has been properly prepared by capable defense counsel, he is just going to say the same thing again but say it more effectively, and you are going to be in more trouble.

Your summation should be the kind of job which wraps up the whole picture. It brings in the loose ends. If the defendant has put in a defense so you get a rebuttal of his summation, it leaves the defendant in a position where he has to answer a lot of things. Even if you find, in preparing your summation, that there are really only two issues that you need to talk about, throw in just a sentence or two on four or five other things, because the defendant will think he has to answer those things, and he will waste an awful lot of time in his summation in answering completely unimportant things, and he will forget to answer some of the important things he should have answered. In your rebuttal, you can say to the jury, "See what happened. He didn't even answer this question, which you have to decide, and which I suggest to you the evidence requires you to answer this way. He stayed away from it. He didn't want to touch it. It is obvious why, ladies and gentlemen. He had no answer. He wanted to talk about the weather, not about why the defendant ran through that red light."

There are certain tactical procedures you will develop as time goes on, which are all in the line of attaining substantial justice, which means getting the best results for your client that you can get in accordance with the facts and the law. That depends on knowing your opponent. You will do different things with different members of the bar.

The charge of the court. The court has a difficult responsibility in his charge. I don't know whether in your jurisdiction the judge can comment on the facts. In our jurisdiction he can. Some judges not only comment on the facts, they relate in detail everything that has happened from the day you entered the courtroom, from that moment. Other judges say, "You have heard the facts, and I am not going to comment on them." They give general comments on interest of witnesses and things like that, and leave the facts up to the jury.

Be that as it may, the judge has a tough job in making a charge which may have to be reviewed by an appellate court. You know the law of the case and you should prepare brief points, suggestions for charge, at least in Federal procedure. Give him points for charge which set forth principles of law which are applicable to the facts in your case, and support them with citations. Don't tear a three-page opinion out of a state reporter, and have your girl type it as a point for charge. The judge isn't going to read an opinion of the appellate court. From that opinion you might find two lines, categorical statements of law, which apply to the facts in your case. Give it to the judge by reciting the law and saying,

"Therefore I charge you that if you find so and so, you will find so and so." Give him the citation. Give the judge every conceivable help you can.

Let me suggest to you, ladies and gentlemen, that if counsel on both sides perform fairly and properly and effectively, if you do a good job, you will find that your interest as a lawyer, your dedication to your profession, is kept alive, that it is a fascinating proceeding, that your daily job is one of pleasure, not a burden; that your only problem will be in connection with your income tax returns, because you will find that the defendants, either willingly or unwillingly, have become more and more generous; that your clients will be able to enjoy this high level of living which is significant throughout the world in the American way; and you will have attained for your clients the most adequate award, which is your responsibility.

Thank you. (Applause)

PRESIDENT RANDALL: Before Mr. McDevitt continues for the defense, we will have a five-minute break.

(Recess, followed by announcements).

MR. McDEVITT: Mr. President, and my friends. I can say that because we have certainly met at least half of this group, and have had a chance to talk to you. We learned a lot about your locality that we couldn't possibly have learned if we just came in for a few hours and left immediately. It is one of the very fine recollections we are going to take back with us.

The first thing in Bill's mind and my mind is this beautiful locality here. On a morning like this we are telling you to do more work, at a time when you are not in the most receptive mood, because just about now with this atmosphere you would like to be doing anything but work.

The only limitation that any of us should put into the handling of a case would be perhaps the question of expense. After hearing Bill Lorry tell about all the things that should be done on a case, and after all they should be, it must go through your mind, "Well, that's fine, if it is a $5,000 or a $20,000 case, but how many cases like that do we have?" If we are going to practice our profession properly, do the job that our clients expect, as far as our time and circumstances are concerned, we have to give that $500 case everything as far as effort, ability, and knowledge are concerned that we would give a case ten times that size. Everything that is said here is just as important to every case as it is to the big case.

Another mistake we make on both sides is to let the matter drag along for a time, because we think we have a good case, or we know our opponent, or we feel fairly certain a case is going to be settled. That brings to the forefront everything that was said yesterday about the evaluation of a case, and the very basis of a proper evaluation of a case is a proper preparation so you can do that. Some of the figures tend to lull us into a position of inertia, which can be very, very damaging, not only to the extent that we won't get what the case is really worth if we are for the plaintiff, or we won't be able to settle for what the case is really worth from our standpoint, if we are not prepared.

In doing a little research and preparation for this program, I ran across some figures. I think they are the figures of a New York lawyer, and they may not be applicable in other sections. He says that lawyers settle 75% of all liability claims before suit, and that only one out of ten cases that are not settled before suit are actually fully litigated. He arrives at the conclusion that only one out of forty

cases handled by attorneys are tried out. That would seem to put an attorney in a very favorable position as far as disposing of work, and he may get the idea he can do it with a minimum amount of effort. I suggest that isn't true, and that is the real reason so many of them are settled, because the attorney has done a good job.

Let's get down to the defense attorney. He probably gets into the case at a fairly late stage, although that may not be true here. In a metropolitan area the insurance company handles the claim up to the time of suit, unless it is a particularly large case where they want an advance opinion, or if a client insists that just as soon as the claim is made, the case be placed in the hands of counsel. It is quite possible that we won't see the case for some time.

You may figure that the insurance company has it anyway, having an investigator, everything all completed. That doesn't necessarily follow, either. Ordinarily, the first thing we have to do is make a routine check on service, decide what we are going to do in the way of pleading. I don't favor a lot of technical motions, or moves to try to obtain some advantage. If you have something worth doing, then of course it should be done. Under the Federal rules particularly you run into all types of cross claims and third party claims. You run into a lot of pleading work at that time.

As Bill suggested, the first thing we do is file a notice of oral deposition when we file the answer, directed to plaintiff. That does give us the jump to a certain extent. It gives us the jump for any tactical advantage it may be in being the first one to orally examine a party to the suit.

We try to shortcut as much as we can without working a disadvantage to our client, or losing an advantage. Quite frequently the other side will call up and say, "What's the use of having two preparations. I am coming over to your office. Then you are going to come over to mine. I am perfectly willing that we take the depositions of the plaintiff and the defendant at the same time." The only thing we do is to insist that if we are first on the ground, we have the right to first examine the plaintiff. Then immediately after that we will go on with the plaintiff's examination of the defendant. It does simplify the whole procedure. You don't have to pull the file out again, maybe a week or months later and review it, get your mind on it again. You get it all done at one time, and it is to the benefit of everybody.

I often hear plaintiffs say that the defendant has a terrific advantage, because the plaintiff is hurt, and perhaps he is taken to the hospital. He is out of circulation for a period of time. He not too frequently comes into the hands of counsel at some later date. The insurance company, of course, is trying to keep the case in line, and keep it away from counsel, using a legitimate approach, I hope, but the insurance company doesn't necessarily take advantage of that very good opportunity to get out immediately and line up witnesses, get statements, and make some of the very important preparations for the handling of the case. Usually you have to make some recommendations for further investigation.

I have in mind that some of you defense attorneys have to do the investigating yourself. Bill Lorry mentioned the fact that in his office, and it is true in a number of offices (in the maritime field particularly) the lawyers actually do the investigating, so this idea of lawyers investigating their own cases isn't something that is new to us or something we don't understand. But whether you or the insurance company is going to make the investigation, right at the beginning, after you get

the file and look it over, is an excellent time to write off some sort of a report. It may be strictly a preliminary report. You may have enough to put some early evaluation on it. Certainly that is the time to make the recommendations that are necessary for the future handling of the case.

I say this advisedly, and I hope it won't be misunderstood. If you are going to handle a file for a defendant or a case for the defendant, you have to proceed on the theory that all the major contentions of the plaintiff are suspect. I don't believe you can properly handle that file if you accept as face value any of the material parts of the claim until, as the situation clarifies, you are able to separate the good from the bad and arrive at some determination.

I don't mean that people are basically dishonest. I agree entirely with Bill Lorry that we have very little perjury in the strictly, technical, legal sense in our courts. People are strange to a point. Their reactions are perhaps a little unusual. Probably it is just a matter of human nature. It doesn't take too long for the participant in an accident case to come around to the belief that he or she in no way at all was at fault, or was completely in the right. It is human nature. The mind simply seems to work that way. You come up with a situation, perhaps, that is just as clearly contrary to the actual facts as it could be, but as far as that person is concerned, it's not morally dishonest. It is just that state of mind that we have to allow for.

There are routine checks that should be made in every case. If the insurance companies have a so-called index bureau, where they keep a record of earlier claims, of course the claim ought to be submitted to the index bureau. The company probably does that automatically.

I also suggest to companies something that I am sure hasn't been done, and that is where a case drags on for six months or a year or two years, it should be resubmitted to the index bureau to find out whether or not there is some additional injury or some additional accident that has occurred to that person subsequent to the one we are directly interested in. That isn't always done, and it should be.

I don't suppose an investigator can get too far with either hospital records or with treating doctors. It may be that your doctors out here are not as technical about it as they are at home. We don't have too much success in talking to doctors, getting reports from them. If you can get a hospital authorization, a medical authorization from the plaintiff, that's fine, and you are able to find out just what the claim amounts to.

You will have them check employment and lost time. That is something that an investigator doesn't do as a rule. Go to the employer and ask something about the man. How long has he been there? What sort of an employee is he? Has he had a good employment record? How does he get along with the other people in the plant? What's his reputation? Are there other matters you can think of pertaining to this employee which you think might be of interest? These are matters which are of interest in sizing up a claimant, just as important as the fact that he did or didn't lose a certain number of days or weeks after the accident.

You probably have to insist on a periodic checkup on activities. You should be pretty certain as to just when this man's difficulty ended and when he went back to work. If you are in the medical phase, you have the other angle on it, of when should he have gone back to work.

Here is a situation that might not apply here, because you know your area,

are not in a large center of population, and so know more about your locality. The insurance company or the investigating agency should have an actual diagram, at an early stage, of the intersection or the particular area. People are bad judges of distances. We learn to know that certain streets are a certain width. We all know that a concrete, two-lane highway is probably 18 to 22 feet. They should give you an accurate description of the highway, or the locality, with measurements, description of anything that is an obstruction to view, grades, traffic controls, signs, or whatever there may be. In other words, he ought to give you something that doesn't require you to immediately go to the scene, particularly if it is some distance away, and isn't the most important case you have in your office.

Sooner or later you certainly should see the place where that accident happened, because localities change. Perhaps your personal visit shouldn't be postponed too long.

Bill Lorry referred to statements. Insurance companies and corporate defendants, self-insured, whatever it might be, place a tremendous amount of reliance upon the signed statements they have in the file. By and large, the man investigating the case is a competent person. He may or may not use some narrative or originality, and imagination in his job. By imagination I don't mean putting stuff in that doesn't belong. When he goes out to investigate that case, he should have something in mind as to just what the picture is in the long run the defendant would like to develop.

Statements should be carefully prepared. Bill talked about long statements. I have seen statements that simply weren't legible, some incomplete, with some material facts, but at the same time a whole lot of information that lengthens the statement, makes it more difficult to get a signature, and really has no bearing on the accident at all.

The ideal statement would be one written in plain language, brief, covering the material points, and be ended up with a signature.

The signature by itself isn't as strong as the statement where you get the witness, or the plaintiff, for that matter, to write, "I have read this statement. It is true." Anything to that effect. Perhaps you can put down, beyond the end of the statement, two questions. "Have you read the statement? Is it true and correct?" Have him write "Yes" beside each one, and it goes a long way toward supporting it under attack in court, particularly if the witness or plaintiff recants on a statement.

Those things can be done. It is difficult to get a statement. Again, if the investigator goes about it properly, he can do it. It is a matter of explaining to the person why it should be done. There are all sorts of approaches. "This is my job. I have to get statements." There are all sorts of approaches a person can use if he uses his head while doing it.

I can think of cases, and I am sure that all defendant's attorneys can think of cases, where an investigator went to see a person, and found that that person had arrived after the accident, had his or her back turned, as Bill suggested, or for any variety of reasons didn't see the accident. That person, a year from that date, honestly or dishonestly turns up with a very clear recollection of what happened. It ought to be a fairly simple job to get a so-called negative statement from him. All it has to be is three lines to show that he was in the house, that

he came out, and people were being removed. He didn't talk to anybody. That's all. He is out of the picture.

I can remember picking up a file where I knew the only witnesses to a very serious accident were the ones that we had, and they were all in agreement. These youngsters had been playing ball on a corner with a big bag of paper. This one youngster backed out into the street to retrieve a pass that he has missed, and a neighbor by the name of Finnigan—this must be 15 years ago and I will always remember it—Finnigan was the name of the plaintiff and he was in his house. He had worked all night, and he had just gotten up and was preparing to go to work. He came down several minutes after the accident, put the boy in his car, and took him to the hospital. I will bet they could have gotten a negative statement from Finnigan if they had been on the job, but the investigator reported that he didn't see the accident, that he jnst took the boy to the hospital. He turned out to be the star witness, and he cost us some money. There is no doubt about it.

I have already referred to moving for depositions. It might be a time to say a couple of friendly words in favor of the Federal rules, relating to discovery. There is bound to be some feeling among a general bar membership who haven't actually taken a part as a whole in the writing of the rules. They think some group has more or less arbitrarily agreed on this decision, and we haven't had as much to do with it as we should. Let me beg you to bear in mind that we never get anywhere by cutting off our nose to spite our face. These Federal rules of discovery are a tremendous advantage to both plaintiff and defendant. I think the advantages are evenly divided. It certainly aids in a fair handling of litigation, because it is not supposed to be a cutthroat or a knife-in-the-back business of taking technical advantage where important rights are involved. On one occasion it may help the plaintiff prove his case, which he wouldn't have been able to do without the discovery procedure. On the other hand, the defendant gets an advantage which I suggest is not only entirely fair, that he should have, but it goes toward a proper handling of the case. It benefits both. Defendant gets a chance to question the plaintiff himself as to the extent of his claim, the liability for damages, to see the person and see how he or she testifies. You have a proper opportunity to evaluate the situation well in advance, and properly advise your client.

The good plaintiff's lawyer is just as well prepared for that deposition as he or she would be for an appearance in court, so the defendant will get no greater advantage than he would examining at trial. After all, you as a plaintiff's attorney might as well know the weakness of your case, and not be taken by surprise at the time of trial and find out that it is not nearly as good as you thought it was.

Discovery is a procedure well worthwhile. It is a modern approach to litigation. Whether the advantages are evenly divided or not, the advantages are there to both sides.

I understand that plaintiffs' attorneys are the ones opposed to them. If that information is correct, I am amazed, because the defendants in Philadelphia, for example, fought hammer and tongs for a couple of years against every interrogatory that was written. They would interrupt the oral depositions, and insist on a ruling from the court. We had quite a battle for a couple of years, until people began to realize that here is something that is benefitting both sides.

Let's not put unreasonable restrictions on the use and interpretation of the rules. You are going to hear more about that from Judge Holtzoff. I wanted you to know that plaintiff and defendant are strongly for it in areas where it has been in use for some years.

It saves money in investigating a case. That's a very practical aspect of it. How many hundred dollars have insurance companies spent, for example, running down a lot of information on the plaintiff that you can just sit down and ask the plaintiff about. As far as the plaintiff is concerned, he unquestionably develops through interrogatories and oral depositions the answers to questions which could have cost a lot of money on investigating, and probably not get the right answer at that.

We try to get these depositions early, and prepare for them just as we prepare for an examination in court. It helps for brevity, and to cover all material points, and not just depending on what runs through your mind when somebody suddenly comes into your office at the time scheduled.

A real question which you will have to work out yourself if your supreme court adopts the rules, which comes first, interrogatories or oral depositions? I suppose it varies in cases. Some lawyers think that if they file interrogatories first, particularly defendant's attorney, certainly it will shorten the questions necessary on oral. On the other hand, I would rather take the oral first, because I am going to file written interrogatories anyway at some later stage in the proceeding in order to have the up-to-date picture. That is one of the things you are going to have to think over and figure out, where the real advantage lays, whether you are for the plaintiff or the defendant, after the rules are adopted.

Medical examinations. Bill Lorry probably didn't cover it is thoroughly as his notes would indicate. It is a very important thing from the defendant's standpoint, and certainly from the plaintiff's, that there be proper medical investigation of the claim. From our standpoint, we suggest and get a prompt medical examination. There should be some judgment used in arranging it. It always strikes me as being a bit silly when I see a file where the investigator certainly knew at a very early stage of his investigation that it was a broken arm or a broken leg, and they arrange a medical examination while the limb is still in the cast. There is no sense in that at all.

Nor is there too much advantage to be gained from having an examination by a general practitioner who makes a specialty of examining for companies, but isn't strong enough to bring in court. If you are dealing with a case that involves some more serious condition, then perhaps your first examination should be by a person who specializes in that field. Some of us figure that these early examinations have some limited value. Why not use one of these routine examiners, and he will give us some advice that will guide us in making a selection at a later date as to just who or what type of man we want to use. That's something you have all had experience with, and you know what you think is the best practice.

I think a mistake is frequently made by insurance companies, because they have arranged an examination before you have been called, and have not given the examiner a fairly complete statement as to the type of accident, whatever explanation has been given about the type of injury or disability claim. In other words, why make the man go on a fishing expedition if you can start him off on a good outline of the background of the claim. Certainly we would like to have a full report from that doctor, and an opportunity to talk to him about some phase of the report.

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I have already referred to specialized examinations. I don't know what your practice is here, but in Philadelphia, with or without the agreement of counsel, we can get any reasonable number of examinations or reexaminations. Sometimes,

I am quite certain, the plaintiff's attorney likes to have as many as possible. You do have to be a bit careful. There is no sense in having a whole flock of examinations unless they are going to serve some useful purpose. On the other hand, if you start off with a routine examination, and find there is a serious orthopedic condition, then of course you want to have an examination by a qualified orthopedist. He will probably require x-rays. You may find out that in addition to the orthopedic condition, there is a neurological or psychiatric problem involved as well. There should be an examination by a specialist in that field. A fellow has an eye or ear condition, whatever it might be. You are pretty much required to protect yourself, if there would seem to be any question about that particular disability. There is no sense in having an examination to confirm what you are pretty certain in your mind already is there.

There is another way of doing it. The plaintiff has had a number of specialized examinations. You already have a copy of his medical reports. You see that there are no impressive clinical findings. The basis of the diagnosis is largely on subjective symptoms. Under certain circumstances we might decide that we are not going to dignify this claim by having a lot of examinations made, and then perhaps not want to bring a doctor in anyway and be criticized if we don't bring him in. I am simply going to rely on the advice of some qualified person in that field, in my preparation for the cross-examination of the plaintiff's doctor. That can be a very effective approach. Actually, I very rarely use a doctor as a witness no matter how bad the plaintiff's case may be, if I feel that I can make a sufficiently strong attack on the doctor's testimony to give me a jury argument if I am going to argue damages at all.

I am not stating any one of these positions as being the one that should be adopted at all times, but it would illustrate that there might be different types of approach to cases, and that each individual case is a study in itself, and a problem that requires your attention.

Briefly on the examination of medical reports. I think it is a good practice to exchange reports. I can't get away from our talk yesterday. We are both trying to arrive at a basis for evaluating our claim. What's the use of holding back until you get to trial, and then all of a sudden you are met with a surprise, or you find that the rug has been pulled from under you, and it is an entirely different case than you thought you had. I don't see where either side suffers as a result of exchange of reports. Sooner or later that is going to be the situation anyway. I believe from the defendant's standpoint it is helpful because an insurance company wants to know what they are paying for, particularly if they are being asked to pay in settlement a substantial sum of money. Just because the predictions in the reports of the plaiutiff's doctor are dire and the man is going to be a problem for the rest of his life, it doesn't mean that they are going to buy it. They also have their own reports, and they should have a sufficient ability to evaluate the conflicting reports and see what the weakness is in each, and arrive earlier at a better idea of the extent of the claim.

Very briefly on pleadings. I understand you have notice pleadings here. I know we tried to get away as much as possible from complicated complaints. We are using short form answers. We confirm to the rules of setting up whatever defenses we have. We always file a motion if there is some real tactical advantage to be gained from it, but I think we ought to bear in mind as well that it serves no useful purpose in the long run to build up a file and waste your own time and waste everyone else's time. It just doesn't pay off. I think your clients are better satisfied, and you are really better off yourself, if you do everything that should

be done, but not do a lot of unnecessary things, unless we have a client who insists that every technical position be protected.

I have trouble with some out-of-town companies, and you men probably have more trouble than I do. They get very much concerned if there is a technical defect in the service, and the question isn't raised, and there is an adverse verdict in excess of the policy limits. Perhaps the company says you should have objected to the service. Well, so frequently, it is some technicality that is completely meaningless. The statute won't run for another year and a half, and just as soon as you file a motion and knock a service out, he is going to start another suit anyway, so it would be simply a waste of time. I try to explain it, and suggest that they save money by not asking me to do it.

The third party practice, which you may have in one form or another in your state courts, is a rather complicated thing. It always bothers me to have to file a counterclaim, for example, because although I think I can see that it has a possible tactical advantage in the course of trial where both parties have claims, rather than just one, your hands are tied to a certain extent because once you file a counterclaim you have some difficulty in getting the assured's consent to dropping it, if you reach the point where an advantageous settlement can be made. So, it can be a problem, and often does more harm than good. The more people you bring into the case, the more attorneys you bring in, the better opportunity the plaintiff has to sit back and watch all these counsel at the defense table fight it out. They so frequently do that, and it is very difficult to avoid a full-scale fight between defendants each one of whom feels he has to make a good showing for his client.

I think the preparation for trial has been very adequately covered. I am going to try to slip through here and only pick up things that I think are really important.

Bill Lorry covered interviewing witnesses. I suppose we all realize the importance of interviewing our client and witnesses. Bill and I do the same thing, I am sure. We try to interview them in advance of trial—not the morning of trial, and talk to them a bit about court procedure. There is no mystery about it. It is conducted quietly. Attorneys don't stick their fingers down your throat or try to put them through a torture routine. Try to put them at ease. You have to discuss the very fundamental situations. You can't assume that they know all the answers.

People aren't good judges of distances, or of time. How frequently have you asked a person, "How much time elapsed between the time you saw the car here and the other car there?" They come up with answers such as, "Not more than a minute." All sorts of answers are given which are completely unrealistic. Their judgment of distance is bad, and you ask how big is this room and how far is it to the building across the street, and try to rationalize the thing and get them down to some sensible basis.

Witnesses on the stand have frequently been asked, "Did you talk to Mr. Lorry before you came in?" "Did you talk to Mr. McDevitt?" They have spent a couple of hours with us, and they say, "No," because they think it is wrong. The same thing applies to a statement. "Did you give a statement?" "Yes." "Did you read the statement before you came in?" They will say, "No." You explain to them that I would be a very poor attorney if I didn't talk to you before I put you on the stand, or I wouldn't be representing you very satisfactorily if I didn't go over the case with you.

Talk over those various things. Tell them to be courteous. Don't let the

plaintiff's attorney needle you. Talk out loud. Remember that although you are only a witness, the jury is watching you very carefully. In other words, go through the thing pretty thoroughly with each witness, no matter how important or unimportant he is.

A little cross-examination won't hurt, either. The witness should understand what the important things are in the case, what the plaintiff is trying to prove or what the defendant is trying to prove. Try to get them to be firm on things which he has told you are true. It he believes that to be correct, there is no reason why he should vary, no matter how rigid the cross-examination is. It really pays off to talk to them. If you do get a witness in the office the night before the trial, and make the right approach, get them interested, no matter how serious that injury is to the plaintiff, he will probably be on your side. He will then go right through and testify to what he told you in the beginning, as to how that accident happened. It can be a very, very valnable thing.

Some companies use a court man to interview witnesses, and he sits down in your anteroom or in the anteroom of the courthouse, and reads the fellow's statement over to him, and that's that. A lawyer that handles a case like that for the defense isn't going to do very well.

On the question of preparation for trial, I think I am going to skip over most of that.

An attorney has to give an opinion of the liability and the value of the case, and there is no sense in the world of quibbling on it. Perhaps I am saying this as though it is something attorneys do quibble about. It is rough to sit down at some stage of an important case, and put yourself more or less completely out on a limb; but you have to do it. I tbink the best practice is to keep your client informed of the situation, as the time runs on, the months pass, or whatever the time might be. If you advise them primarily, if you advise them as various important phases of the case develop, your medical reports, your oral examinations, your interrogatories and answers to them, with a little comment as it runs along, then you are setting the picture up for that opinion which may come at any stage during the proceeding. Certainly by the time you come up to the final opinion, you ought to be able to give some value on a case.

You try to be as accurate as possible. You can't say arbitrarily this case is worth $500 or $5000. You may want to say that the verdict is worth so much and the settlement is worth so much. You can say that I would only pay so much now, but in the course of the trial it is quite probable or there is a possibility that we might want to increase the figure. You may have a policy situation where there is every advantage in getting that case closed out as quickly as possible, because what's the use of spending money if you are going to pay all your policy limits anyway.

You have to face the music, and if the picture is bad, the worst thing you can do not only from your standpoint but from the company's standpoint is to pull your punches. Plaintiffs and defendants understand that even the larger companies have a certain retention. The rest of it is reinsured. The figure can vary. But in any event, if it is a snbstantial case, and there is a verdict or a substantial settlement, that money may not be entirely theirs. It's embarrassing to the company to have to contact a reinsurance company in the course of trial or immediately before trial and say, "Look, we only have a $10,000 retention here and our lawyer tells us the case has a $25,000 potential, and we ought to pay $15,000." Now,

everybody is in a bad fix, because they are learning something later which they should have been told earlier.

You are never going to lose a client by telling them what your best judgment is, no matter how astounding it may be to the company when they receive that information.

On the trial of a case from the defendant's standpoint, I saw a note of another lecturer in which he said, in referring to counsel sitting at the defendant's counsel table, something to the effect that you must not look like the person the plaintiff's attorney is describing your client to be. I don't think anybody has to be told how to handle himself as counsel for the defendant. My own feeling is that he can't sit back and let the plaintiff run away with the case. On the other hand, unless it is your normal personality, you can't be the dominating factor in a trial where the plaintiff, regardless of liability, has the sympathy of the jury. It is something you have to figure out for yourself. The basic advice is what we were told in law school, "Be yourself and don't copy somebody else." You can learn things from other people, but don't try to copy mannerisms and things of that type. We have one defendant's lawyer in Philadelphia who is entirely different than anybody else trying cases. He is a big, fine-looking fellow. He is a nice guy, hnmorous. He makes mistakes, lands on his head, but does a terrific job. He is a good lawyer, but if I ever tried to imitate those tactics, I would get my brains knocked out. He is that type of man. He can get away with it. The jury either likes him or they dislike him. He gets up and tells them in his closing address that he has gotten angry. He has made mistakes. He shouldn't have done this and that and the other thing, but he is representing his client, and he says it so convincingly that he gets away with it.

We have another fellow who acts if he were selling tomatoes on the corner. We don't understand how he gets away with it. He figures, I think, that when he is trying a case the jury believes the defendant isn't insured. He really makes a mess of it. He does everything that a defendant's attorney shouldn't do, hut yet he gets away with it. So the idea is, be yourself, and like a draftsman, make as few mistakes as possible.

We have to keep the jury interested in the case as a whole. Try to keep them open-minded, on the alert for something that doesn't qnite ring true in the course of plaintiff's testimony. Try to create that man from Missouri attitude, and don't let them make up their mind before they have heard your case. If we go about our job modestly and efficiently, we don't have to compete with the show the plaintiff is putting on, but don't sit back like a dummy and let the plaintiff run away with the case.

I suppose books could be written on the selection of juries. If the information I received is correct, your jury panel is severely limited, and perhaps doesn't represent a cross-section of your county or your state. If that is the condition, then of course it is not a good condition. Every citizen shonld serve on a jury. There are some people, for example, doctors, lawyers, and a few other exceptions that for obvious reasons should not be required to sit on a jury. By and large, people ought to serve. The fact that a man is a big shot in the bank or a hot shot in business is no excuse why he shouldn't serve.

If your jury fees are reasonably adequate, and they should be, then even the working man should be required to serve, even though it is a matter of some temporary inconvenience to his family. It is a service that everyone should give.

story in support of the co-defendant in the case. He saw too much. There is no doubt about that, but I could point that out to the jury in my argument. I had to do something about it, though. As a result of discovery, I had gotten hold of a statement taken by the plaintiff's investigator of this witness. The only reason I got it was because they thought it was so good they wanted to give it to me to influence a settlement of the case. I knew the name of the man who made the investigation, so the only cross-examination I gave this fellow was to show first of all that he had been a P.T.C. motorman, as he said, for over 44 years. I said, "Weren't your instructions during all those years to report every accident or incident that happened in and about your trolly car, regardless of whether your vehicle was involved or not?" He said, "Yes." I know he was going to say "Yes" because I represent the company. Then I asked him about why the actual investigation by the officer didn't have his name, and he said, "Well, I called the police but I didn't give the name." He described that the police had been around there for 15 or 20 minutes making measurements, and that they asked for witnesses, and he hadn't given his name. I asked if he knew who they were. Of course he did. He had been operating trolley cars for years. He knew the special squad of the Philadelphia police, and he knows their purpose. I went along that line with him, and finally I asked him about the man who took his statement about eight days after the accident. I said, "Owen Kent came to see you, and did he also tell you he was a former P.T.C. man?" He said, "Yes." Then I made a couple of other cracks to the effect that these two P.T.C. fellows had gotten together with a couple of buddies. He was the "disinterested witness" in the case, and I could have questioned him forever and a day about what he saw or tried to illustrate that he couldn't have seen it, but I think the collateral attack on him, and the argument, were clearer.

Here were four people taken to the hospital, all bleeding badly. He never went to a hearing. He didn't know whether the people were living or dead. Yet in the course of his testimony he said that this one driver didn't have a chance. He was driving carefully down his side of the road and the other came over on his side, and he didn't have a chance. He kept saying it repeatedly, and I didn't object, because I knew the type of cross-examination I was going to use. You can make a very devastating collateral attack on a witness, under circumstances where you wouldn't get to first base if you tried to cross-question him or break him down on parts of his testimony.

Now on requests for instructions for change. The judge suggested that each request be placed on a separate page. It is partly because the judge has a habit of putting those which he is going to affirm in one stack and those he isn't in the other. Here, I believe, you have to request that the court charge on what are the material issues from your standpoint, or you run the risk of the court not covering it. Whether it is your practice or not, each side should have a certain number of requests for charge, requests for instruction to the jury. They should be stated in plain language. If you possibly can, take them right out of one of the reports, as long as it is still in plain language. Don't have a conclusion of the court, if you so find your verdict must be for the plaintiff or the defendant, because that will kill it.

Have a number of them so that whether the court says that he has the following requests from the plaintiff, that he doesn't say, "Refused, refused, refused." It makes you look like you are on the wrong side of the fence. Have a certain number which he either has to read or say that, "I have already covered that in my charge. I affirm it." That gives a good atmosphere about your case.

I think I lost a case one time where I was trying to hold for a third party defendant, because the judge insisted on reading the restatement of the law of torts and a certain point which was controlling as to the liability between the defendants. If there is ever any double talk in the literature of the world, it is some of the sections that restate torts. He read it a second time at my request, and it is hard to read. He kept stumbling on it. It was a lost cause. That statement was very favorable for my case, actually, but perhaps I should have set forth that same statement of the law in plain language, and no doubt I would have received a very definite advantage from it.

Regardless of your practice, it is certainly an advantage in having requests for charge, either for the guidance of the court, or in order to create a favorable atmosphere.

My final point here is on a concluding address. I am going to skip all except one or two things that have some reference to what Bill Lorry said.

First of all, you have to meet the issues. Bill says to throw in a few extra points that don't mean anything, but make the defendant's attorney work harder. You have to be very, very careful, I believe, with competent plaintiff's counsel, to make some reference to just about every point that has been made. You don't have to make a speech about it. You can skip over it with just a few words. You have to meet the issues headon, if it is possible to do it. If you can't, you have to make some explanation for why you can't.

I would say to Bill that the defendant's attorney can make an argument which will keep the plaintiff's attorney very, very busy on rebuttal, whether he wants to or not. He has to answer on rebuttal the main points that have been raised by defense counsel, and if you emphasize them and if you think you have a particularly good point, you can challenge him to answer it. You can give them a very, very busy time.

Plaintiff's counsel knows he shouldn't stand up and waste his time making long replies to argument; nevertheless, you can take that same advantage that Bill Lorry suggests the plaintiff take of the defendant. It sets up a situation that you want to set up, one of adverse interest, where there is disagreement and where the jury has something to ponder about.

I think that covers largely the things I had in mind as to the defense's position on points that weren't covered by Bill Lorry. After all we have to be just as thorough as plaintiff. We have to do just about everything that the plaintiff considers necessary in the preparation of his case, so that we run through largely the same type of investigation.

I think trying cases for defense is interesting. Every defense attorney gets a plaintiff's case once in awhile, and it makes sort of a change of timing, I suppose. I don't think we should ever get in a position of being a beaten man. It is nice to hear that the plaintiff's attorney thinks that we are on the more popular side. What we have to do is maintain our sense of humor, our sense of values, and simply feel that win, lose, or draw, there are certain results that can be obtained in that particular case. You know what they are while you are trying the case. Your client knows it, and if you win it or lose it, if you have done the type of job that should be done on that case, you have performed your function as a professional.

Let me say again it has been a terrific pleasure to come out here. If we have contributed anything, so much the better. We are going to go back with a very

warm feeling for Idaho, the Idaho Bar, and Sun Valley. It has been fine to meet you, and I hope to meet the rest of you before we leave. (Applause)

MR. LORRY: Now to give you the figures on the three hypothetical questions which were prepared simply to give you a chance to test some of the suggestions that were made yesterday.

Just one minute before I give you that. I am not going to rebut John, because we don't have time, although it is a very pleasant thing where we do have time to get into an intellectual brawl up here, and also have you folks participate.

With regard to medical examinations made by the defendant's doctors, remember that defendant's doctor is to make a medical examination. He is not a lawyer. He is not an investigator, and those doctors who think they are investigators and lawyers, who begin to cross-examine your client at the time of their examination, as to when he went back to work, and a lot of things which are completely irrelevant to the medical examination, you should stop. Don't let your client go to that doctor alone. Go with him, because he needs your help. If the doctor is a professional witness, a medical-legal man, dedicated to winning cases for the defendants, he will do the best he can to get for the defendant information which will help the defendant to embarrass your client.

He should have whatever information he needs to make an intelligent examination. It is important for him to know how far your client fell, and if he landed on his head or his back. Those things should be replied to. I wouldn't suggest that you tell him nothing.

It reminds me of the situation where the doctor was examining the patient, and the patient just wouldn't answer any questions. It wasn't a piece of litigation. Finally the doctor said, "I am going to refer you to Dr. Smith." The patient said, "Well, he is a veterinary." The doctor said, "Yes, I know, but he is the only one I know who knows how to make an examination and diagnosis and treat without having the benefit of the cooperation of the patient."

I should also like to eliminate from your thinking, if any of you have come to that conclusion, that in our office we have an aggravation room. We do not have any instruments of torture in preparing for trial. We do try to makethe injuries look a little better. We try to make them look as good as we can, but we don't put our client over the rack and twist him a little bit and have him come into court with real pain which he received a half hour before.

CASE NO. 1

"Harry Black, the plaintiff, at the time of his injury was 43 years old. He has a wife and two small children. He works for the Structural Painting Company earning $110.00 weekly. His employer obtained a contract to paint the metal girders in the Craftsman Steel Company yards. Plaintiff propped his 30-foot extension ladder against the rails of an overhead track used by the steel company to run ore and other metals into their furnaces. The ladder extended above the rails for a distance of two feet. The tracks were 20 feet above the ground. Plaintiff was painting the underside of the shield alongside the overhead track. The safety engineer of the defendant steel company knew that plaintiff was painting these shields.

"Defendant caused a small ore car to be operated over the track so that the car struck the two feet of ladder extending above the track, knocking the ladder

and plaintiff to the ground. The ore car gave no signal of its approach. The defendant's operator said he did not see the ladder extending above the tracks.

"Plaintiff landed on both feet and then fell on his back. X-rays of the legs, feet and heels revealed no fractures. Plaintiff's back was not x-rayed since he had no pain in this region following the fall. The day he was to be discharged from the hospital, ten days after the injury, he began to experience severe pain in the low back. The staff roentgenologist reported that the x-rays taken at the hospital showed a compression fracture of the fourth lumbar vertebra. Plaintiff has 'shooting pains and tingling sensations' in the left leg only, extending into the left heel. He complains that the toes of his left foot feel 'cold' all the time; that the left leg is 'tireder and weaker than the right.'

"Plaintiff remained in a plaster east for six weeks and now wears a back brace. He returned to work twelve weeks after the date of injury. The compensation carrier has paid all hospital and medical bills, which totaled $937.00. He also received $35.00 per week for twelve weeks' compensation from the compensation carrier. Plaintiff returned to work twelve weeks after the accident but is unable to do heavy painting now. He does inventory and similar work at a pay of $80.00 per week.

"In plaintiff's suit, filed in a rural county, he alleges injuries to his legs, feet and heels, a compression fracture of the fourth lumbar vertebra and a herniation of the intervertebral disc at this level. The defendant's doctors, a neurosurgeon and orthopedic surgeon, both of execellent reputation, say that plaintiff does not have a compression fracture; that the condition is a congenital anomaly because of the absence of any new bone growth in the alleged fracture site. The defendant's neurosurgeon says that the tingling in the heel is not a part of a disc syndrome but is rather due to the direct injury to the heel.

"This case has been referred to you by plaintiff's personal counsel. How would you evaluate it?

"At pre-trial the defendant offers $7,500.00 in face of your demand for $30,000.00. The plaintiff states he will leave the matter of settlement or trial entirely to you and will be guided by your advice.

"The forum is a rural county about 100 miles away from Denver. What would you advise?"

He had a life expectancy of about 30 or 31 years. He has a working expectancy of at least 25 years. He was earning $110 a week. I take it arbitrarily that you are now evaluating the situation about one year after the accident happened.

You have 12 weeks for total loss--that is, he didn't work at all for 12 weeks. Twelve weeks times $110 is $1320. Your medical is $937. If it is a year you have 12 weeks total and 40 more weeks in each of which he lost $30, because he is now back at $80 and he had been making $110. So it is 40 weeks for the $30 loss, totals $1200. You have past losses to that point of $3750.

For the future, you have a 25-year working expectancy with an average loss of $1500 a year—$30 a week times 50 weeks. The fact that as he gets older his earnings may be less is compensated by the fact that he can earn only $80 at 45, and for the next several years his earnings would probably increase, so it levels off at $30 a week as a fair estimate of future loss. Twenty-five years at $30, or $1500 a year, is $37,500, which reduced to present value of 3% is approximately $26,500.

Under the facts of this case you could, and being plaintiff's attorney you should, add probably another $1000 for medical expense for probable surgery for the disc, and probably wage loss for six months which would be another couple of thousand dollars, but without those items you have a substantial figure.

In this case pain and suffering could conservatively be estimated at $15,000, I submit to you. So you come out with a total figure of approximately $45,000.

In that type of case, with the problem you have confronting you, a recommendation to your client if you are dealing with somebody like John McDevitt, whom you know very well, and would not be confused, I would say, "John, this case is worth $45,000. I know you would probably think you have a defense, and you don't, but let's not fight about it, I would recommend $35,000."

Let me say in that connection, I would put a full value of $45,000 with a settlement value of about $35,000, because liability is good and the injuries are there. The danger of saying to a defendant's attorney or to a claims man that the value of this case is about $45,000, but I will take so much, is that whatever figure you give them is the figure at which negotiations will start. If you say, "I will take $35,000," he says that it is a lot of money and "Now let's be sensible, and tell me what you will really take, so I can see what I can do for you." You say that, "I will really take $25,000." That's where it is going to start, at $25,000. You won't get $25,000 either. You are in much better shape if you say that, "Well, I told you I would recommend $35,000, and that's what I will take." That's where the negotiation would start. If your case is one of clear liability and you say it is worth $45,000, you don't know what you will take because he doesn't know what he will pay. He will say, "I will be happy to submit any figure you give to my client." You maintain that position, although you may have to try the case, if it is a good case worth trying. Eventually he will get a figure back.

CASE NO. 2

"Plaintiff, prior to her injury, was a model for Powers Models, Inc. She is single, very pretty and 22 years old. While her car was stopped at a traffic light, the defendant Speed Freight, Inc., caused its tractor-trailer outfit to collide with the rear of her standing car. The impact damaged the rear of the car to the extent of $68.50. She said she had her foot on the power brakes and that her head and neck were thereby caused to be violently snapped. She struck her nose on the steering wheel. It bled profusely at the time of the original injury—none since. Her neck was painful for about three weeks following the collision. Her medical bills are $75.00. She has not returned to work claiming that her nose is 'misshapen' that her appearance is so 'terrible' she can no longer model with the same poise and assurance as prior to her injury. Her parents claim that she cries for no reason at all. Plaintiff refuses to see her friends and will no longer go out with the young man she planned someday to marry. Photographs taken sometime prior to the injury establish that her nose was straight and that now there is a slight deviation to the left. She has lost ten pounds and claims that she is no longer the same model dress size. There are dark circles under her eyes which she claims give her a haggard and dissipated appearance. Her contract with Powers Models, Inc. is for two years at $8,000.00 per year with the option of renewal by Powers at $12,000.00 per year for an additional one year.

"You have been retained to represent plaintiff. The report of a psychiatric examination requested by you indicates that plaintiff had a pre-existing neurosis in that she had a constant fear of suffering an injury to her face which would mar her beauty; that the injury to her nose, although minor, has triggered off this pre-existing neurosis so that she now has a full-bloom traumatic neurosis. The

psychiatrist concludes that the prognosis must remain guarded. The defendant's insured carrier claims that plaintiff was a neurotic prior to the minor injury she sustained and they make an offer of $1,000.00.

"What, in your opinion, is the value of this case?

"What would be your advice to your client?

"The forum is a large metropolitan mid-west jurisdiction."

I think the case is worth almost as much in a rural country as it is in a metropolitan area. I put that in there because we have become convinced that there should be a wide divergence in values, a different basic sense of values, in different areas. There is a difference in values, but today, with transportation what it is, with communications what they are, with people in rural areas having television in their homes, and seeing how people in metropolitan areas live, with everybody wanting to live well and wanting to have everything that our advertising fraternity tells us we must have and it only costs $2.83 a week for the rest of your life, people in rural areas, too, have come to have close to what is a proper sense of values. They may be conservative in their thinking, but if you have done your job in convincing them how badly your man has been hurt, and if it has simply become a matter of arithmetic in figuring what the damages are, I am convinced your rural jury will give you close to what your metropolitan jury will give you.

It may be that in a rural area a case worth $35,000 you might be wise to knock off four or five thousand, but I wouldn't think it is desirable to knock off much more. If you are going to adopt that attitude you are never going to make much change in the rural areas, and they need change.

This young lady has a very good potential earning picture. There is no question from the facts as given that she has had an aggravation of a pre-existing condition. Whether it is caused by what she feels or whatever it is, she can't work. Competent neurological testimony will develop the fact that even if it is psychosomatic, it is just as real as though it was some organic condition. In fact, it is an organic condition, an organic condition of the brain.

Assuming again that it is one year after the accident happened, this young lady has already lost $8,000. Medical expense is nominal, $75, and her property damage is nominal, $68.50. So you have a total of $8143.50 for past losses.

Your future presents a real problem, because as defense attorney, they will have a doctor who will say that there is really nothing wrong with this girl, no reason why she can't go back to work today, why she couldn't have gone back to work a year ago. I assume that as competent and effective plaintiff's attorney you will have a well-qualified neurologist who will testify that this girl has a very serious condition, and it might be some years before she ean be restored, even with competent treatment, so she can resume her occupation.

Taking advantage of everything that plaintiff should take advantage of, you have at least one year at $8,000 and one year at $12,000, or $20,000. You should have medical testimony that to treat a neurosis like this requires long and expensive treatment, a couple or three times a week, maybe the stuff where the girl lies on the couch in the doctor's office being talked to; but whatever the nature of the legitimate and proper treatment, she has a condition that requires treatment, and it is expensive, probably about $5,000.

It has been demonstrated that she has an earning potential of $12,000 a year

Undoubtedly it would increase. Being very conservative, a $12,000 earning potential for a period of about ten years I would estimate when arriving at a tentative value of the case for myself. For about ten years she will be impaired to the extent where she will only be able to earn half as much as she was able to earn before the accident, so that she has a $6,000 annual loss for 10 years, which at present values of 3% would total about $53,000. That also takes into contemplation the fact that possibly she would go up to $15,000 or $18,000 a year potential.

Her pain and suffering is a serious question here in connection with a neurosis. Those people do suffer. They do have physical pain, besides the emotional disturbance which they experience. More than that, she has the humiliation of the disfigurement, which to her is serious, and being the kind of lady she is, it could well be demonstrated by her testimony, that conservatively it would be worth $10,000. The figures would total about $71,000.

In this kind of a case, I think I would be very happy to take probably $25,000 in settlement. I say that because as plaintiff's counsel I have an obligation to my client, not only to get her the best possible result, but to assist her in her rehabilitation, and I know from my experience that there is such a thing as "litigation neurosis." There is such a thing as continuing the neurotic influences on a client who is disturbed and worried about the results of this litigation. If the case were settled, she would probably respond much quicker to treatment and be much better off. If a settlement can be made, it would be worth taking a substantial reduction, worth it for the client, and better for the entire picture.

CASE NO. 3

"John Smith, age 62, was struck and killed by Harry Jones. Smith was in the crosswalk and had the green light. He lived for two days after the injury but was unconscious the entire time. Jones had been drinking. The police report says Jones' 'ability to drive was not impaired.' (But his reaction time and ability to see was.)

"Smith's wife is 56. There are two married children. One of Mr. Smith's married daughters has been suffering from a heart condition and her husband is in the army. For several years prior to his decease, Mr. Smith had been sending his daughter $15.00 per week. She is now 28 years of age. Mrs. Smith does sewing at home and earns an average of $25.00 per week. Decedent was a shipping clerk for a railroad company, earning $75.00 per week. He was due to retire at age 65 and would have received in retirement $105.00 per month.

"Defendant Jones carries a $50,000.00 liability policy with the European Casualty Insurance Company. Jones is a laborer on a road construction gang. He has no personal assets and will look that way in the courtroom.

"What will it take to settle this case?

"If it can't be settled, what, in your opinion, would the jury's verdict be, considering all of the circumstances?

"(The case will be tried in San Francisco.)"

Deceased had a life expectancy of about 15 years. It is a little complicated because you have survival and wrongful death action involved. I am not sure if in this jurisdiction you have the benefit of both those acts, but most states do have. I am sure that in this jurisdiction you don't have any limitation on the recovery in death action like you do in Minnesota and some of the others. You have a

widow who was receiving about $40 a week, because the man was sending $15 a week to one daughter. Assuming it cost him $20 a week for his own expenses, lunch and transportation and cigarettes and things like that, at least $40 a week he gave to his wife. You have a period of 3 years at which time it is indicated that he would have been retired by his company on pension, and therefore would not be getting the amount of money he did before. You have 3 years at $2000 a year, which is $6000, a period so short that present value reduction amounts to very little. Then I would assume that this man being 65, and today we learn that people are not put out to pasture at 65, and that in many instances they have reached a point of maximum efficiency, at least from the point of view of experience, being more capable. If they are not doing some very, very hard manual labor, they are able to do a very good job. So he will probably get another job after retiring, and on that conservatively he will make $2000 a year for that—or at least his wife will get another $2000 a year. You have 5 more years of working expectancy, which total $10,000.

His daughter has that eight-year period, the working expectancy of her father. She was getting 15 bucks a week, $780 a year, and that would total another $6,000. Those figures total about $22,000.

As for pain and suffering, it indicates the man remained unconscious for the entire time of two days. Most courts have held they will not let you get into the question of pain and suffering since the man has been unconscious. There is a fallacy in the law, with respect to many jurisdictions, that you don't experience any pain because you are unconscious and have no experiences as an unconscious person. I will argue for pain and suffering and put it down as $10,000, because the man lived for two days with the disabilities he had; purely for the purpose of argument.

In this case I would recommend a settlement of $17,500, and I would think that the defendant, with the clear liability that we have, would be wise to pay that kind of money.

If any of you have any different ideas we will be glad to discuss them with you later. I think John has worked out some figures which would be probably slightly different than mine.

MR. McDEVITT: I thought Bill's figure on the third case was a very practical approach to it. On the first case, it is a liability case, and it has been set down for trial in about a year. The man did have a partial disability at that time. Probably the defendant gets an advantage from the short period of time which has elapsed. He has two conditions which are subject to some disagreement by competent physicians. He does have some clinical evidence of injury, which isn't too clear. There has been an absence of specialized tests, such as a myelogram, which may or may not be as painful as it is said. There is a new procedure called electromyelograph, which is much less painful. If the people using it have statistics which are correct, it is supposed to be more accurate than a myelogram, a largely painless procedure. None of these tests have been made. The case is being tried in a rural county, and for the time being, at least, there is very definitely a difference in value placed on cases.

One other thing, I wouldn't be convinced in my mind that if he could work, even though it was work of a sedentary type, even assuming that there might be some basis for saying that he couldn't do industrial painting, some job which would require climbing such as he was doing at the time, nevertheless he could make

an equal sum of money in his trade, but in a more limited activity. At no time do I concede that there is any permanency in this condition.

My valuation would be pretty close to the pre-trial figure set for it here, about $7,500 or $10,000 for the case. I believe you can make a pretty strong argument in Philadelphia or anyplace against a large verdict in these particular facts and circumstances.

The girl who is a neurotic. The plaintiff's attorney has a real problem, because his expert is going to have to be pretty much in agreement with the expert that the defendant brings in. She has a condition. We can all concede that she has it. It's not an organic condition. It is a condition of unresponded treatment. The question doesn't indicate that she had received during this period of one year the type of psychotherapy which would admittedly prove helpful after the litigation has been terminated, but which is expensive. There are new drugs which probably haven't been mentioned, because as far as this country is concerned they are brand-new, and they are very definitely effective. Statistics in the state institutions prove it, even though they have been used for about a year. Although we have only used them for a year, it is the European finding and it has been used for five years over there, and the results, particularly in treating various phases of schizophrenia, of which this would be one of the conditions, has been highly successful.

If she hasn't been under any course of treatment, and everybody concedes that it will be beneficial, it is a difficult problem, and is going to affect the value of the case.

Even if she has $8,000 for a year plus these very small specials, I should think that the value on the case would be somewhere around $15,000. I am not so sure that a jury would give her any more than that.

There are a lot of elements in this case. She is a beauty specialist. How long is she going to last? At some time her defense mechanism against this neurosis would have given way anyhow. The trouble with the boy friend, affections cool. Perhaps that would have some effect on her condition as well. She was undoubtedly a difficult person at her best, before the accident, to get along with. She was doing a very tedious and exacting job. It is a tough job she was doing, and if you are not mentally and physically constituted to stand it, it certainly doesn't do any controlled condition any good.

Her personal problems could have a very real effect upon this situation, following the accident, even though you have conceded that the accident did precipitate a more acute phase.

I am not sure that a jury even under the very best presentation would give a substantial amount. Let me give you a very good example.

I saw a case tried involving a railroad employee under the F.E.L.A. The big, husky Irishman about 42 years of age had a leg that he carried just as stiff as though he had no knee. Plaintiffs brought in a couple of experts, and they admitted there was nothing organically wrong with him, but testified that he had a traumatic neurosychosis, and that caused him, because he had that for three years, to have little probability of being treated successfully. The defendant used a neurologist who very frequently testified for plaintiffs. I mentioned him yesterday. He did a very beautiful sales job in this on the stand. He conceded that the man was not a malingerer, that he had a real condition. It was just as real

as if it were due to a traumatic injury to that limb, but that he had a claim pending, and he hadn't received psychotherapy. He conceded that it would be a mistake to give psychotherapy until this factor of the pending litigation was eliminated. He said again and again so convincingly that I am absolutely convinced that if I had that man for 11 or 12 weeks, if I could institutionalize him and give him psychotherapy, he would recover just as certain as anything by the end of that time. I believe the expenses were about $16,000 and the jury gave him $25,000. There was a F.E.L.A. case where there was no question of liability.

There is a gamble for the defendant in that type of case, but there is also a problem for plaintiffs where the client is suffering from a psychosomatic ailment rather than something plainly organic.

PRESIDENT RANDALL: Mr. Lorry and Mr. McDevitt, I am sure I express the thought of the entire Bar in thanking you for coming out to contribute so much to our meeting. It always speaks well for our profession when two men will come out and leave an active practice from as far away as Philadelphia, and attend our meeting without any compensation whatever. I assure you that we appreciate your coming very much.

We will adjourn to the lodge dining room for lunch.

(Applause and recess at 12:18 p.m.) – (Resumed at 2:25 p.m. with announcements by President Randall)

PRESIDENT RANDALL: We are going to have some drawings for door prizes. I will ask Phyllis McClenahan to come up and make the drawing. The first will be Spellman's "How to Prove a Prima Facie Defense." Ralph Breshears wins. Next will be for a couple of subscriptions to Kitchen's Supreme Court Service. Ina Mae Wheeler. Now the second subscription. No. 19. No. 128. Carey Nixon gets that.

I am going to ask Willis Sullivan and Gilbert St. Clair to escort our next speaker to the platform. (Applause)

PRESIDENT RANDALL: Ladies and gentlemen, I am sure our next speaker needs no introduction. He is a lawyer, a member of our Bar. He has been very active in the legal profession in the State of Idaho. He has attended many of our annual meetings, and is a friend to all. It gives me a great deal of pleasure to present to you the Honorable Robert E. Smylie, Governor of the State of Idaho. (Applause)

GOVERNOR SMYLIE: Mr. President, distinguished members of the Idaho State Bar Commission, distinguished judges, my friends of the legal profession:

Enterprises like this business of being helped down the aisle by Willis Sullivan and Skinny St. Clair put me in mind of the story that I think you might be interested in, because it touches somewhat upon the relative importance of being governor. It is a story that I use occasionally to get myself back to base.

As some of you know, Mrs. Smylie and I have a six-year-old boy who is redheaded, and is a sort of Johnny-Come-Lately Will Rogers at times. He has a very close personal friend who, among other things, happens to be a friend of his mother's and mine, named Louise Shadduck. She and Bill were out at the house one day, and they decided they would call up some people who were down at the Hotel Boise to see if they didn't want to come and share breakfast with us. They did, so Bill and Louise climbed in the car and went down to pick them up. They got down Eighth Street, just about to the Jefferson Street crossing, and

Bill pointed across at the big stone building and said, "That's my Daddy's office." Of course, he can't remember any time that I didn't work there. Louise said, "Oh, is that so?" He said, "Yep, but he changed rooms." Louise asked, "What did he do that for?" Bill thought about it a little while, and said, "Well, it's bigger and it has a toilet." (Laughter)

Every time I get to thinking that I am important, I remember what the red-headed boy said.

Last Sunday afternoon, I got to thinking about what I might say to you, and I asked your very distinguished president and his cohorts if there is anything in particular they would like to have me say. They said, "No." I thought that was a perfect opportunity for me to get away without saying anything. However, I suppose I ought to say something, so I thought of some subjects that might intrigue you.

I am recently returned from a governors' conference. Mostly the talk at that governors' conference was about higher education. I don't say much at those conferences. I just sit and listen. I listened and listened, and first I heard that scientists were in short supply, that engineers were in short supply, that this type of technician and that type of technician was in short supply. Finally I came to the conclusion and said to Barnett Nover, who works for the Scripps-Howard Newspapers, who was sitting next to me, that I considered that everything was in short supply in the United States except clergymen, presidential candidates, and lawyers. That brings me pretty close to what I want to talk about to you today.

I am in the unfortunate situation of having had a part of my speech made by Mr. Bowler at the noon luncheon. One of the questions that I desired to raise for your consideration tendered to you by Mr. Carver, and the issue which it raises in turn spoken to you by Mr. Hawley. Probably the best thing I can do today is to just turn around and go home, saying nothing; and probably by that maneuver make no more enemies than I have already made today, and perhaps might even salvage a few friends.

I want to talk a little bit about the work of your committee on judicial salaries. I would like to commend especially the committee's decision that while finding sources of revenue is a legitimate object of the committee's endeavor, that the furnishing of money for salary increases for judicial officers is a general fund obligation. I think it would be a vast and historic mistake to attempt to tie the cost of anything so intimately connected with the conduct of our government as the conduct of our courts to a special source of revenue. In other words, the old ear-marking theory I think would be sheer foolishness, and I think it would ultimately be a kind of a noose around the neck instead of a rope that would lead to progress.

I indicated, when I was speaking on the subject at lunch, that I thought, as one who has had a reasonable amount of experience with legislative committees, the problem of adequate compensation for our judiciary is inextricably intertwined with the general problem of adequate compeusation for all governmental offices, municipal, county, and state.

At this point I should like to say, in answer to an observation that I believe was made—perhaps not intended quite in the tenor in which it was stated at luncheon today—I think the statement was something to the effect that it would not be proper for we as lawyers to take the leadership in the solution of this which I think, and I can say to you as our chief executive, is one of the most pressing

governmental problems of this mid-century decade. I thought at the time that had that sentiment prevailed, and had we so long divorced ourselves from the conduct of public affairs, if that had been the case in 1789, then numerous of the gentlemen most prominent in writing the basic document under which our government operates would not have been in Philadelphia and would not have participated at all.

I think I can safely say that this whole broad question is one that not only deserves, but it demands the attention of this Association, because this Association has a problem which is inextricably intertwined with all the rest of the problems. For that reason, I think you owe it to yourselves, to our courts, and to the state, (and I think that last obligation is paramount)—you owe it to all three of those sources to view this problem in its broad concept.

A few comparisons that Mr. Bowler didn't give you this afternoon might be intriguing. I mentioned the fact that the superintendent of the State Liquor Dispensary draws $5500 a year. The Commissioner of Finance, who has the task of supervising all of the state banks in the state—and in addition to that he works with building and loan associations and small loan associations—draws $5500 a year. It is just as important, I think, to remember that while the Chief Justice of our state draws only $8,500, and with apologies to the Dean of the College of Law, his salary is in excess of that.

By the same token our Commissioner of Agriculture, who presides over the regulatory machinery of the most important industry in Idaho, draws $5,500, while his counterpart in the academic world at the University draws $9,000.

All of these things add up to a patchwork quilt. I have been through three attempts to achieve some sort of piecemeal solution to this problem, and none are more convinced than I that we need to remedy, that we have to remedy, the problem of an increase in judicial salaries.

I will say this to you right now, that I will sign any bill that comes before me that improves salaries. I think I ought to warn you that, based on experience with three successive legislative attempts to solve this problem, unless the problem is approached from day one, on a broad field of attempting to get all of these inequities out of the picture, of attempting to achieve a final solution of this problem on a broad base, you are going to settle for peanuts and chips, and you are not going to think big like Mr. Bowler wants you to think.

Look at what happened in the last session. You attempted to do something real in the field of judicial salaries, and some salary that is not affected, which is patently too low, is used to whip you.

I think there are some members of the State Affairs Committee of the House of Representatives in the room this afternoon. They will remember that in the closing days of the 1955 session it was impossible to get substantial agreement, agreement enough to write a bill to increase the salaries of people like the Commissioner of Agriculture of Idaho, the Commissioner of Finance, the Commissioner of Public Works, the Commissioner of Lands, from $5,500 to $6,000.

If you don't think that this is going to take a full-scale assault, broad-gauged, broad-based, with a real attempt to solve the total problem, then let me warn you most seriously this afternoon, that it will. I know what happens to these proposals in the legislature.

As far as money is concerned, it isn't a big thing. A million dollars will clean

this program up, across the board. A million dollars is not a lot of money when you are talking about 126 million, which is what your state government spends in this biennium. That way you could straighten the thing out.

For instance, here is the kind of a chain reaction you set off. Your proposal this noon at lunch was for $15,000 for district judges, a figure of which I heartily am in accord and approve. Anybody who knows history knows that district judges and the attorney general started even, when the Constitution was written in 1889, at $2,500 apiece. It is a legitimate question to ask, how come you are going to raise district judges and not raise the attorney general? So you say, "All right, we will raise the attorney general." Then they say, "Why the attorney general and not the auditor?" You say, "All right, then the auditor." Then, "Why not the Superintendent of Public Instruction, and why not the Commissioner of Agriculture, and why not this and why not that?" So, unless your program is broad, an attempt to solve the whole problem, you are going (to used military parlance) to be defeated in detail. You are going to be cut into little tiny segments, and knocked off there. You won't ever get decision on the basic problem.

I can say to you as lawyers, and I can say as your chief executive, that if we can get a broad-based attempt to realistically solve this problem of compensation in the judicial and executive branches of the government, it will have my total support. But I don't think that any of you would disagree with me when I say that it is a little difficult for me to support, for instance, a $12,000 salary per year for the State Engineer, and $5,500 for the Commissioner of Agriculture. Somewhere rank, violent injustice is being done, and it is being done because of the fact that the agencies which are not subordinated to the direct appropriation and control of the legislature have been able to keep pace with the rising demand and the rising competition that they feel with other agencies in other governments, and with industry, for personnel.

I say in all seriousness that we can't long, in Idaho, continue to take the chances that we have been taking, because you can't entrust a retail business such as one of the biggest in Boise, for its total management, to a fellow whom you pay $270 a month. That's Store No. 1 on Eighth Street in Boise, in the State Liquor Dispensary. He ought to be getting at least $500. But he can't be paid that, because it is an appropriated sum.

These things have to be approached on a broad base. I shall say this same thing to numerous other agencies who ask for my support about the same thing. In so doing, I think I can enlist some support for your ideas about increasing judicial salaries; but I would ask you to be as broad-gauged about this total governmental problem as some of the old guys were in 1889, Lycurgus Vineyard and others, who spoke of this issue when they were organizing the Constitution on which our state is founded. They acted in most of the debates which touched on these problems, on the sentiments of George Shoup, who was the Territorial Governor who called that convention into being. I can't recall the exact quotation, but in answering this problem, I think the sentiment certainly speaks all of our emotions when it says a great deal about public reaction to the problem if it has a total projection. I think when Governor Shoup said this, it was true that the cost of good government would be more, would be higher, and it would take taxes to pay for it, but he knew in all of his long public life, and it had by then been quite considerable, he had never known a people who more honestly and with greater patience and fortitude bore the just burdens of government more cheerfully than the people of Idaho.

There are two key words there, "just burdens." This one is just; the cause

is right. It can be documented. It can be factually supported, but it can't be done piecemeal.

If I might, as a member of this profession, leave you with one request this afternoon, it would he simply this: Please ask your committee to join with other people who are studying this problem, the Dairymen's Association, the Cattlemen's Association, and all the rest. Join with them in attempting to put together and then make law a broad-scale approach to this problem. If you do, that way lies victory. If you don't, you will settle for less than half a loaf again, and you will solve no problems except perhaps to ease mildly the strain of public office on some of our judicial officers.

It is a little more than I planned to say, but I think this problem can be solved. I think that the Bar Association, and we as individual lawyers, owe it to the good of our state government to solve it, and to give it leadership, because none can do it better.

I think that too often, in these latter days of the republic, our bar profession has been unmindful of the duty of public service that it owes by reason of its eminence in the craft, to the people as a whole.

Once again, it is a real pleasure to visit with you. Thank you. (Applause)

PRESIDENT RANDALL: Thank you, Governor Smylie, for coming. It is always a pleasure to have you with us.

I would like next to ask Judge Clark to escort our next speaker to the rostrum. Ladies and gentlement, it is a pleasure to present our own senior Federal judge, the Honorable Chase Clark. (Applause)

JUDGE CLARK: Mr. Chairman, members of the Bar Commission, members of this convention. It is a real pleasure to appear before you with the task that I have today. As we get old, and I don't say I am getting old but I am getting along, we are prone to live in the past and go back over the past. We sometimes wonder just what we would do if we had our lives to live over. Willis Sullivan and myself sat in an audience where we heard one of the justices of the Supreme Court of the United States discuss this question to some extent. He told the story of three boys. One was three years old, one was six, and one was eight. They were discussing just how they would have lived their past lives if they had it to do over again.

The eight-year-old boy said, "There is one thing that is a certainty. They would never make me eat spinach, because I have got to the place where I can't get along without it." The six-year-old boy said, "They wouldn't make me eat oatmeal, because I still have to eat it and I don't like it." The three-year-old boy said, "If I had my life to live over again, I would be a bottle baby. I am darned tired of eating ashes." (Laughter)

The guest I have to introduce to you today, as I reviewed his past life and past accomplishments, I am sure there is very little change that he could make. I have to refer to some notes because his long list of accomplishments, his long, illustrious career, has covered a great deal of territory. You know him, I know him, and all who do not know him personally know him by reputation. By reason of his background and experience he is eminently qualified to discuss the subject that he is going to discuss today, and that is the "New Rules of Civil Procedure for Idaho."

He received his A.B. Degree from Columbia College in 1908, graduated from Columbia University Law School in 1911.

He began the practice of law in New York City in 1911 and continued this practice until 1924 when he was taken to the Department of Justice and appointed Special Assistant to the then Attorney General, Harlan F. Stone. He continued as such special assistant under various attorneys general until 1945.

During the years from his graduation until 1945, in private practice and as Assistant to the Attorney General of the United States, he held many positions having to do with the improvement of our profession and generally with the administration of justice.

He represented the Attorney General on the President's Committee on Economic Security, which laid the ground work for the Social Security Act.

He was a member and Secretary of the Advisory Committee of the Supreme Court on Federal Rules of Criminal Procedure from 1942 to 1945.

He was a member and Secretary of the War Department Committee on Military Justice, 1946, which committee studied and recommended changes in the court martial system.

He was a member of the Committee on Revision of Naval Court Martial System. For this work on this committee he received a Navy Distinguished Public Service Award.

He had much to do with the preparation and adoption of the Rules of Civil Procedure, now a part of our Federal practice, and after their adoption wrote a book dealing with the rules, explaining them fully and giving a very understandable reason for their adoption. He is also the author of several other law books.

He was appointed by President Truman and is at present Judge of the United States District Court for the District of Columbia.

He is the present Chairman of the Section of Judicial Administration of the American Bar Association.

I could go on and on reciting his accomplishments, but I will not do so now. I will simply say to you that I don't know where he could have bettered himself if he had his life to live over.

I introduce to you, with a great deal of feeling, knowing I have been distinctly honored by having been given this privilege, the Honorable Alexander Holtzoff. (Applause)

JUDGE ALEXANDER HOLTZOFF: Mr. President, Judge Clark, Governor Smylie, ladies and gentlemen. I am very grateful indeed to my friend, Judge Clark, for his very gracious and generous introduction. I attribute it, however, not to any desserts of mine, but to his friendship, which I value a great deal.

It is a great deal of pleasure for me to be here in this wonderful spot, and while this is the first time that I have ever been in Sun Valley or that I have stayed in Idaho any length of time, I did not feel totally a stranger to your great state, because I have had a great many friends from your midst. I have known your president for some time, through his very prominent and able work in the administration of justice. He and I participated together in the recent conference called by the Attorney General on congestion in the courts.

I knew for a great many years and had the friendship of one of the oldtimers of your state, who just within the past week passed to his reward, at the age of 93. He was a man well known to all of Idaho, the Honorable Addison T. Smith. He

and I were neighbors for years in Washington, in the same apartment house. We all mourn his passing.

I have entitled my little talk on the new Federal Rules of Civil Procedure, "The Quest for Justice," because a yearning for justice is an inherent characteristic of mankind. It pervades man in all ages and in all places. A sense of what Shakespeare called "even-handed justice" is found in practically every human being. This innate feeling is the product or perhaps one of the causes of natural law. As was said by Francis Bacon, "There are in nature certain fountains of justice, whence all civil laws are derived but as streams." Strangely enough, there seems to be no satisfying and comprehensive definition of what constitutes justice. One of the best explanations is that it involves a disposition to give every man his due.

To achieve this lofty objective, man has evolved principles of law governing the rights and duties of individuals. At times these doctrines are developed in concrete form by judges; at times they are prescribed by governments; and in many instances both processes simultaneously contribute to their evolution. By and large, substantive law tends to keep pace with the needs of society, adjusting itself gradually, sometimes somewhat slowly, and in a lagging manner, to shifting and changing social and economic conditions. While this process in some places and in some eras has not always functioned adequately, nevertheless, on the whole except perhaps at times under dictatorships, it has met the requirements of the community.

It is a peculiar paradox that troublesome obstacles have been found not in developing the vast body of substantive law, but in devising and operating the machinery by which legal rights are vindicated and legal liabilities are enforced. Inefficiency and delay in this field have confronted mankind since the dawn of history. These problems may be divided into two categories: first, the creation of an efficient machinery, that is a well-organized judicial structure; and second, a simple expeditious procedure within the judicial tribunals. Even in prehistoric times we find a reference to the difficulties of establishing an efficient organization for administering justice. For example, it is recorded in the Book of Exodus that during the wanderings of the Hebrews in the wilderness, Moses was admonished by Jethro, his father-in-law, that his method of judging controversies was inefficient, and he was advised how to organize it on a systematic basis.

My discussion this afternoon will be devoted to the second aspect of the general problem, namely, internal procedure within the courts. The aim of administering justice must be to make it expeditious and inexpensive, without regard to technicalities. It was eloquently said by a great English jurist, Lord Brougham, over a century ago, and I quote:

> "It was the boast of Augutus . . . that he found Rome of brick, and left it of marble . . . But how much nobler would be the Sovereign's boast when he shall have it to say that he found law dear, and left it cheap; found it a sealed book — left it a living letter; found it the patrimony of the rich — left it the inheritance of the poor; found it the two-edged sword of graft and oppression; left it the staff of honesty and the shield of innocence . . ."

Here, too, we find another peculiar paradox. In a primitive society, contrary to what one might expect, a great deal of emphasis is placed on compliance with exact requirements of form. As civilization advances, procedure becomes simpler and less technical. It begins to dawn on both the general public and the legal

profession that courts exist for the purpose of determining controversies on their merits, and that the litigant has no concern with technicalities that frequently absorb the intellectual interests of lawyers. For centuries the courts of England adhered to an archaic, complex procedure under which substantive rights were frequently immolated on the altar of form. Yet there was hardly a move to improve conditions. The attitude of the legal profession of those days was gently satirized by Gilbert and Sullivan in their inimitable comic opera, "Iolanthe." Some of you will undoubtedly recall the lines spoken by the Lord Chancellor of that delightful phantasy:

> "The Law is the true embodiment
> Of everything that's excellent.
> It has no kind of fault or flaw,
> And I, my Lords, embody the Law."

During the Nineteenth Century a different attitude gradually began to develop both in this country and in England. About a hundred years ago, the State of New York abandoned the antiquated common law and equity pleading, and completely revolutionized the practice in its courts, by adopting what is generally called Code Pleading. Many states, especially in the Middle West and the West, followed this lead and introduced the New York Code as the basis for reform of procedure. The great progressive State of Idaho from its territorial days has always had a type of practice based on Code Pleading. In the 1870's England completely revamped the organization of its courts and drastically simplified its judicial procedure. It adopted a practice that was the simplest that had been devised up to that time. In the course of years Code Pleading, unfortunately, developed difficulties of its own. Narrow construction by the courts and amendments continually passed by state legislatures, weighted it down with technicalities. In due time it, too, became outmoded and unsuitable for the purpose for which it had been originally intended.

The next milestone in the past of reform of judicial procedure was the enactment by Congress in 1934 of a statute conferring upon the Supreme Court of the United States the power to regulate civil procedure in the United States district courts. Pursuant to this authority the Federal Rules of Civil Procedure were drafted, adopted and promulgated. Since 1938 they have regulated practically the entire field of civil procedure in the Federal judicial system.

Since that time it is highly significant that state after state, one by one, has adopted the Federal civil procedure. Among them are Arizona, Colorado, New Mexico, Nevada, Utah, and we go east to Iowa, Minnesota, Kentucky, New Jersey, and Deleware. In addition, Missouri and North Dakota are now in the process of introducing the new procedure. You will observe from this enumeration, and you may be proud of the fact, that the progressive West has been in the forefront of the procession. It is also significant that the Rules, although originally framed for Federal judiciary, are equally adaptable to state courts, as appears from the experience of all the states that have adopted the new procedure. The District of Columbia presents a striking demonstration of this proposition. As the District of Columbia is a Federal area, and therefore has no state court of general jurisdiction, all actions that elsewhere would be tried in state courts are there handled in the Federal court, in addition to those that are peculiarly cognizable in Federal courts. Yet the United States District Court for the District of Columbia, finds the same procedure equally applicable to both categories of actions and makes no distinction between them.

This brings me to a consideration of the Rules and their operation in actual practice. The Federal courts have had almost twenty years' experience with them, and some of the states, although for a somewhat shorter period, nevertheless, have made use of them for a considerable time. First, let us consider who drafted the Rules. They were not the product of the theoretical minds of a group of visionaries or idealists. They were formulated as a result of careful study and thorough deliberation by an Advisory Committee appointed by the Supreme Court of the United States. This Committee consisted predominantly of practicing lawyers from various parts of the country, all of them with a rich background of long, actual contact with the trial of law suits. The Advisory Committee was assisted by cooperating committees of members of the Bar in every Federal judicial circuit and district in the United States, as well as similar groups representing various bar associations. The sources of many of the Rules are found in Code Pleading, in Federal Equity Rules of 1911, or in the English practice, and some were devised by members of the Committee themselves. I might add that the Chairman of this eminent committee was former Attorney General of the United States, William D. Mitchell, who previously had been Solicitor General, and previous to that had been one of the leading trial and appellate lawyers of the St. Paul Bar. Thus, the new procedure, which although being now almost twenty years old, is still regarded as new, must be regarded as a practical product of practical men.

It was natural that when the Federal Rules were first adopted and promulgated there should have been some opposition, some antagonism, some misgivings, and at best, some skepticism. As years progressed, most of this feeling has vanished. Neither Federal judges nor lawyers who practice in the Federal courts, even those who were antagonistic to them originally, would want to abolish these Rules and revert to the old procedure.

I think it can be said without fear of successful contradition that the new Rules have attained their objective, if the test is, as it should be, that they have reduced technicalities to a minimum, have made litigation less expensive and less protracted, and have led to a disposition of controversies on their merits, eliminating to a very large extent decisions on matters of procedure and evidence, which do not advance the disposition of the rights of the parties. By and large, judges have construed the Rules in the liberal spirit in which they were conceived and have given them a broad interpretation and sensible application, rather than requiring a strict and rigid adherence, as unfortunately was often the case with the old codes. Judges have taken to heart and have followed in their daily work the admonition that the Rules, "shall be construed to secure the just, speedy, and inexpensive determination of every action."

At this point, may I again remind you of the obvious but oft forgotten fact that the law and the courts exist and function not for lawyers, but for the public not for members of the bar, but for their clients. The ultimate test is not whether the lawyers like the procedure, or whether the judges like a procedure, but whether it advances the interests of the parties who come before the courts. With this thought in mind the success of the Rules must be emphatically acknowledged.

What are the principal advances made by the new procedure? First, is the abolition of technicalities in pleadings. No longer may a complaint be dismissed for the omission of some word or phrase, or for ineptness in phraseology. No longer may a client be deprived of his rights because his lawyer made an error in drafting a pleading. A complaint may be dismissed only if it appears from its allegations

that under no possible theory and under no set of facts that can possibly be proved thereunder, would the pleader be entitled to any relief.

Along with the abolition of technicalities in pleadings come the abrogation of demurrers. Motions to dismiss are substituted, which are not granted on any technical basis. Then there are liberal provisions for joinder of causes of action and joinder of parties. The old and intricate mass of learning concerning the question when causes of action may and when they may not be joined in the same complaint, that has caused much perturbation to lawyers in the past, has been cast into diseard.

Motions for summary judgments were introduced, thereby making possible a prompt disposition of cases in which there are no material issues of fact in controversy and one or the other party is entitled to judgment as a matter of law. This expedient eliminates many delays, and makes possible a prompt disposition of cases. Exceptions and bills of exceptions were abolished. The use of alternate jurors was sanctioned, thereby avoiding a frustration of the trial in instances in which a juror became sick or otherwise unable to proceed during the progress of the trial--something that happens not infrequently.

I have left to the last the principal progressive step taken by the new Rules, namely, broad and liberal discovery. Those of you who were here at this morning's session heard a great deal said about discovery under the Federal Rules, both from the plaintiff's standpoint and from the defendant's standpoint, and I was gratified to hear that both sides felt that their interests were advanced by the use of discovery. The purpose of the discovery rules is to avoid or at least reduce to a minimum the application of what has been aptly called, "the sporting theory of justice." The objective of litigation and the function of the courts is to render justice between the parties. The goal of discovery is to make it possible to require every party to the law suit to produce whatever evidence is in its possession that is germane to the issues. An exeeption is, of course, made for privileged matters, as well as for memoranda and files that contain what has been graphically called, the work product of the lawyer. This general principle has been effectuated by liberal provisions for the taking of depositions, not only of witnesses, but also of parties, interrogatories, requests for admission, discovery of documentary evidence, and medical examinations.

Depositions have proved a peculiarly potent weapon in attaining justice. For example, in the District of Columbia, and I believe in most Federal jurisdictions, in practically every action to recover damages for personal injuries, the defendant promptly after the institution of the law suits takes the oral deposition of the plaintiff, thereby getting his detailed story under oath on paper at an early stage of the litigation. Similarly, the plaintiff is free to take the deposition of the defendant's employee, who may be the person charged with negligence. Medical examinations, which are freely allowed, discourage exaggerated claims and deflate them when they are asserted, but at the same time substantiate well-justified contentions of plaintiff's injuries. By the use of interrogatories and requests for admissions, many facts are made of record and the necessity for a great deal of testimony, as well as loss of time, is frequently obviated.

There is still another vital innovation to which I shall advert briefly. I refer to pretrial. The assiduous use of pretrial crystallizes and narrows the issues actually in controversy, brings about stipulations of facts not really in dispute, and thereby shortens trials, and what is perhaps even more important, reduces expenses to the litigants.

I think I should make a brief reference to facts, that there are a few minor differences between the Federal Rules and the proposed Rules for this state. Under the Federal rules the voir dire examination of jurors may be conducted solely by the court. It is entirely within the discretion of the trial judge whether to permit counsel to do so, or supplement his voir dire examination. The proposed Idaho Rules preserve the right of counsel to conduct the voir dire examination. In most Federal courts today the interrogation is handled entirely by the judge, who generally permits counsel to suggest additional questions to him. Actually the Federal practice has been found successful in obviating the spectacle sometimes still witnessed in some state courts of spending day after day in the selection of a jury, although I do not think you suffer from it here—a spectacle that is a reflection on the administration of justice in the minds of the thinking lay public. It has been my observation that many lawyers who originally did not like this innovation have gradually changed their minds and prefer it to the other system, since they can get a judge to ask questions that might antagonize some juror if asked directly by counsel. I will not enlarge upon this subject, since the proposed Idaho Rules propose to preserve the old system, and not to adopt the present Federal practice.

The new Idaho Rules also preserve the three-quarters vote of a jury in civil cases, for the State Constitution so provides. In the Federal courts a unanimous verdict is required in every case, and I think I might say in passing that most Federal judges would not want to abandon the requirement of unanimity.

Also, the proposed Idaho Rules perpetuate the requirement that a judge's instructions to the jury must be in writing. On the other hand, as all of you know, the Federal courts adhere to the procedure existing at common law of instructing the jury orally, directing them as to the law and to the extent the judge deems appropriate, advising them as to the facts, emphasizing, of course, that his discussion of the facts and comments on the evidence are not binding on the jury, but that the jury are the final judges of the facts. Most Federal judges and most Federal practitioners believe that the common law system is far superior and leads to better results. The American Bar Association has been advocating its restoration in state courts. But this again is a subject I need not discuss at length, because Idaho does not propose at this time to return to the common law system in this respect.

Candor constrains me to state that the introduction of the new procedure has been a slow and laborious process. At times it has required a campaign of education, and on occasion considerable time has been consumed in arriving at a successful consummation. There are a number of reasons. In the first place, there is the usual inertia of man and the conservatism of human nature, which is sometimes found among lawyers even to a greater extent than in some other groups, due to the nature of their work. Then, too, there is a natural reluctance on the part of experienced practitioners, especially the older members of the bar, to learn a new type of procedure and to abandon the use of something to which they had been accustomed over the years. This is easily understandable. Yet most lawyers who have overcome this disinclination and have acquired a facility to work under the new procedure—and that is a facility easily acquired—have completely forgotten their earlier hesitancy. Moreover, it is but fair to consider the advantages to younger lawyers. The coming generation will no longer be burdened with the necessity of learning two types of procedure, if the Federal rules are adopted by the state. They will have to familiarize themselves with only one type, which will prevail in both the Federal and the state courts.

So, the process of adoption of the Federal procedure by the states, which began somewhat slowly, has been accelerated in recent years, so that the long list of states that I read to you a few moments ago has already adopted the Rules or are in the process of doing so, and more states are now in the process of adopting them.

Perhaps the strongest opposition has come from the adversaries of broad and liberal discovery, which is indeed a far-reaching innovation. It has been my observation, however, that those who were opposed to broad and liberal discovery in the first instance and who were afraid that it might lead to fabricated claims and fictitious defenses, have become most adept in making the most skillful use of discovery. For example, a great deal of antagonism to broad discovery at times comes from the ranks of able lawyers whose practice is devoted to a large extent to the defense of actions to recover damages for personal injuries. Yet they are the ones who probably make the most complete and the most enlightened and successful use of discovery weapons. As I have indicated, there is hardly a personal injury action in the court of which I am a member in which the defendant does not take the deposition of the plaintiff shortly after the institution of the suit and in which he does not take advantage of the rule which accords to him the right to a medical examination.

All too frequently fears that loom large in the dead of night are dissipated at dawn. Mr. Justice Holmes remarked in one of his essays that he had almost no belief in sudden ruin. Contrary to the horror expressed by some opponents of the new procedure when it was first introduced, the Federal rules have not destroyed or ruined practice in the courts. On the contrary, the admiuistration of justice has been rendered more speedy and less expensive.

It is natural for busy lawyers to become absorbed in their daily work of representiug elients and earning a livelihood. The unfortunate result is, however, that many of them unconsciously acquire a myopic vision toward the larger problems of life. Lawyers as members of a learned profession, however, owe a peculiar duty to the community over and above the successful performance of their daily tasks. They must lead and mold public opinion. In the history of our country they have done so whenever the need arose. We are now confronted with a clarion call for the improvement of the administration of justice. We lawyers must rise to the occasion and lead in the performance of this great task. (Applause)

PRESIDENT RANDALL: Thank you, Judge Holtzoff, for coming out to Idaho and being on our program. Ladies and gentlemen, it has always been the policy of the Commission to bring the outstanding authorities to be on our programs. In my opinion we have just heard one of the outstanding authorities in the United States, not only on the question of rules of civil procedure, but on the entire subject of administration of justice in our courts.

I again want to thank you, Judge Holtzoff, for eoming and being with us. We will take about a five-minute recess. (Recess 3:30 to 3:45 p.m.)

PRESIDENT RANDALL: I will call on Kent Power, the president of the Prosecuting Attorneys' Section, to come forward and introduce the next speaker.

MR. POWER: Gentlemen, during the last two days, while the general membership has had their backs turned, the prosecuting attorneys had a great deal of pleasure and have been able to secure a great deal of information in our own particular field from Professor Fred E. Inbau.

Professor Inbau has been the director for a number of years of the Chicago

Police Scientific Criminal Detection Laboratory. Prior to that time he was a member of the staff at the Scientific Criminal Detection Laboratory at Northwestern University School of Law. In this work, his special field has been the interrogation of suspects and witnesses in criminal cases.

From some of the information he has made available to us during the last two days, I think a great many of our membership in the prosecuting Attorneys' Section feel there will be no necessity to try any criminal cases next fall, thereby perhaps cutting down on some of the activities of the people who are here this afternoon. We don't feel we ought to be selfish about it, however, so we want to share him with you.

Professor Inbau has written a wonderful book which a number of us have had, on Lie Detection and Criminal Interrogation. He has some information which I hope all of you will be very interested in. I would like to present Professor Inbau. (Applause)

PROFESSOR INBAU: Thank you, Kent. Some of you may have wondered why anybody would have the audacity to put down on the program for the general meeting the subject of interrogation techniques. I assure you, though, that there is something about that particular subject that ought to be of interest to everybody, civil law practitioners as well as just the citizens in general. You never know when you have to resort to it on a non-criminal matter, and I can best illustrate the point by telling you of an experience that Pat Finnigan had when he was concerned about his wife's infidelity.

Pat and Mary Finnigan, husband and wife, had three children in the household, two healthy, intelligent specimens, and one stupid little runt. As the three kids would walk by Pat as he was talking to his wife, Mary, he turned to her and said, "Mary, are you sure the little fellow is a Finnigan?" "Yes, Pat, the little fellow is a Finnigan." Pat would be satisfied for a couple of days or weeks, and then he would see the three kids go by again, the two healthy, intelligent ones, and the stupid little one. He would turn to Mary and say, "Mary, are you sure the little one is a Finnigan?" 'Yes, Pat, the little fellow is a Finnigan."

That went on for years, and finally Mary was on her death bed. Pat came over and held her hand, and said, "Mary, you are about ready to go now. There is just one question I want to ask you. Is the little fellow a Finnigan?" She looked up at him, and said, "Yes, Pat, the little fellow is a Finnigan, but the other two are Murphy's." (Laughter)

There is an interrogation lesson in that story, because Pat fell into the same pit that a number of police interrogators do by accepting the answers they get as the complete truth when it is only the partial truth.

What might be of interest to you is just how confessions are obtained, and then visit with you for a little bit on some of the practical aspects of the whole problem.

One thing we find to be essential in any interrogation of suspects and witnesses is to do so in conditions of privacy, so the interrogator is alone with the person from whom he is trying to get the information. Now, that applies to legitimate interrogation, not the kind where you use rubber bats and hoses, and hit a man on the head with books to make him talk. Lawyers in private practice in civil cases tend to forget this fact almost as much as police fail to recognize it. The peculiar thing of it is that it is something we recognize almost instinctively in our

ordinary, everyday affairs, yet in criminal investigation it is something that is completely overlooked. You can't get confidential information from a client unless you talk to him when you are alone.

In police interrogation there are frequently two or three people present, whether it is done by the police or the prosecutor. I know of one case in Chicago where there were 30 people present during an interrogation. It is a violation of all common sense to set about it in that fashion.

In addition to the element of privacy, there are certain things in the interrogator's attitude that are important. It is a mistake to try to question somebody across the desk or a table when you are trying to get something from him of a confidential, embarrassing nature to him. That applies to your private civil case practice equally as it does in criminal investigation work. The desk or table constitutes a terrific psychological barrier. Those of us who have spent time in this interrogation field find it much better to sit down in a chair, immediately across from the man we are talking to. Get physically as well as psychologically next to him. It makes for a much more successful interview.

In the normal course of interrogation, when you are talking to a person you, the prosecutor, and the police know committed a crime, point out some of the circumstantial evidence of his guilt, and then go into a discussion of the psychological and physiological symptoms. You may be interested in some of the things utilized for this purpose.

If you are talking to a person who won't look you straight in the eye, you can make capital of that, even if it doesn't prove that the person is lying. Some truth-telling people don't look you straight in the eye. If you are talking to somebody who is guilty, and he doesn't look you straight in the eye, you call it to his attention. Tell him, "Joe, I am talking to you. Look me straight in the eye." It is done for the purpose of making him feel that after all, he is guilty and his guilt is being exhibited by himself. The more he realizes it, the more vulnerable he becomes to questioning.

You spot something, such as a dryness in the mouth, which in itself, incidentally, is a pretty reliable symptom of deception. That is called to his attention. "Your mouth is pretty dry, isn't it, Joe?" "Yes." "Feels like a wad of cotton in it?" "Yes." "The reason for that is you are not telling the truth here. You are in a state of tension. Your salivary glands arent functioning, and that's the reason your mouth is dry. The only way to cure that is to tell the truth.'

Things of that sort, called to his attention, make him feel he is giving himself away. You resort to psychological symptoms and call those to his attention. For instance, if you ask him a question that can be answered with yes or no, and he comes back with a "not that I remember" expression, something ought to be called to his attention so he doesn't think he is getting by with it.

You may find that in the courtroom or in the committee investigations, the witness who resorts to the "I don't remember" expressions is using a wonderful dodge for a liar. You may have used it yourself, when perhaps you were cornered with a critical question in your own home. Instead of saying yes or no; yes—telling the truth and getting in trouble, or no—telling a lie and getting caught, the best thing to say is "Not that I remember." It puts you in a position where you can find out whether the interrogator has anything. If the interrogator comes back with a remark that pins you down, in the meantime you have had a chance to

think about it, and can come up with a more plausible lie than you could have done at the beginning.

Criminals under interrogation frequently resort to that. When they do, you ask them to answer by yes or no. Don't let them get by with it. I suggest if you have a witness on the stand who indulges in such dodges, you pin him down some way or the other. Just recognize the fact that it is a dodge. The way we handle it in criminal interrogations is to say, "Well, look, I asked you a question that can be answered by a yes or no. Let me have a yes or no answer. I tell you, Joe, the reason you are not giving me a yes or no answer is that you haven't got what it takes to either lie or tell the truth, so you are splitting it down the middle."

In other words, let him know he can't make a fool out of you. Let your witness on the stand know he isn't pulling the wool over your eyes.

If a person under interrogation raises his hand and says, "Honestly, honest to God I am telling the truth," he shouldn't be permitted by that means to pull the wool over the interrogator's eyes. We say to him, just as he is putting his hand up, "Put your hand down. When you are telling the truth, I will know it, and you don't have to swear to God or anybody else." You let him know why he resorts to something like that. "You know you are not telling the truth and you know I know it. You are trying to color your story and make it believable. Let's cut out the nonsense."

The same holds true of a man who tells of his spotless past record. He says he is a fellow who goes to church every morning, or something of that sort. The chances are that if he were a religious man he wouldn't be in this trouble anyway. He tries that to make you believe the story he realizes you are not believing. It is up to the interrogator to pin him down and let him realize that he is not getting by with that attempt to pull the wool.

Criminals by and large will fall into either one or two groups in this interrogation field, the emotional and non-emotional criminal. By emotional we mean the type of individual who commits a crime in the heat of passion or anger or revenge, or one who commits an accidental offense. There is the hit-and-run driver, or the one who commits the crime in a fit of passion. They usually have a troubled conscience.

The best interrogation technique is to sympathize with them for what has occurred. Make them feel a little bit better about this thing that is troubling them. That little better feeling is a considerable inducement to them to come out and tell the whole story and get the complete relief that a confession will give to anyone.

In contrast with that group you have the non-emotional criminal who commits crimes for monetary gain, such as the thief, burglar, robber, or someone who kills another for money. They don't have this feeling of troubled conscience, so consequently it doesn't do any good to sit down and sympathize with them. On them you must make a factual analysis of the facts that confront them ultimately to convince them that either their guilt is proven now, or it will be provable, so there is not much for them to do but come out and tell the whole truth.

Take the man who kills his wife, or who has committed a sex offense, or a hit-and-run driver, all in the so-called emotional group. You use sympathetic expressions, such as "Anyone else in the similar conditions might have done the same thing." For instance, in a wife-killing case, where the fellow had a nagging wife to be disposed of, you tell him, "Anybody else under the same or similar

conditions and circumstances might have done the same thing." Insofar as possible, you indicate to him that if you had been in the same situation you might have done likewise. And incidentally, in these wife-killing cases you can be doggone convincing, too. (Laughter)

In a hit-and -run case you use the same technique. "After all, a man like you, reputation to preserve, with a couple of drinks, driving down the street and you hit this fellow, even if it is his fault, anybody else might have done the same thing. If I had been in that car I might have done the same thing." He feels relieved about it, and that's an inducement to him to come ont with the rest of the story.

You reduce his guilt feeling by minimizing the moral seriousness of the crime by telling him how many times this crime has been committed. Here again the interrogator, insofar as he discreetly can do so, lets this fellow believe that perhaps he himself has donc something of a generally similar nature. The person being interrogated has a feeling of kinship with the interrogator, and figures that here is a man who understands me. Hc thinks, "He understands me, and is not going to criticize me or condemn me." He doesn't want to talk to a person who can hardly understand how he could possibly do this thing. He wants to feel that you are almost an accomplice.

Speaking of accomplice, how comforting it is to put the blame on the person that is hurt. For instance, little Johnny next door has been pushed down on Sunday morning when he is all ready for Sunday school, and you pushed him down and he tore a hole in the knee of his pants. He runs to his mother, and she comes to your mother. The first thing you would like to do is lie about it, but you can't. You have been seen pushing Johnny down. So the next thing you do is put the blame on Johnny. "He called me a bad name," or "He stuck his tongne out at me," or "He hit me first." Johnny didn't do anything, but it kind of eases the situation from your standpoint. The same thing with accomplices.

You remember how comforting it was to say, "Dad, it was Johnny's idea. It was him that started it." When people grow up and commit crimes, they react the same way. The interrogator takes advantage of that by suggesting some of the responsibility was on the part of the victim, on the part of the accomplices. It makes it easier for the person to come up with the initial admission. Then you point out how ridiculous it was to say the victim is the one that brought this on, or the accomplice is the one who had the idea. In other words, you can talk him out of that, and ultimately end up with the truth.

When it comes time to pop the $64 question to him, you make it as easy as possible. Instead of saying, "Tell me all about it. You did it, didn't you?" ask him some detail about the offense, something before or after the offense. Ask him, "Where did you put the gun?" In an auto stealing case "Where have you got the keys?" "Where did you get the kerosene," in an arson case. Make it less difficult for him to get it out of his system than by asking for the admission of the horrible offense itself.

For the non-emotion offense, the technique is different. The burglar, robber, or woman who poisoned her husband for the insurance money she is going to get ordinarily doesn't have the troubled conscience. If they were the type that would have a troubled conscience, the chances are that is not the type of crime they would commit anyway. A person might bash his spouse's head in in a fit of anger and then have a troubled conscience, but the ones that normally go about

deliberately poisoning their husbands are not the type to go about grieving about the case. What you have to do here is to sell them a bill of goods that in the light of the evidence that is against them now, or that will be gathered, they might as well tell the truth.

For instance, the burglar on whom you have some circumstantial evidence, or the husband killer, you talk to them about how they are butting their head up against a brick wall, that it won't do them any good ultimately anyway. "Don't dig yourself in any deeper. No sense of mortgaging your home in order to provide yourself with all sorts of defenses here. I have laid my cards on the table and you see what we have, and that's only the start of it." So on and so forth. With expressions of that sort we try to get the idea across that they might as well talk, because they are licked anyway.

With a young fellow who has committed his first offense, his first burglary, robbery, or something of that sort, early in his criminal career, you point out the grave consequences of keeping on like that. When he is in an automobile, with money in his pocket and a girl beside him, he thinks a life of crime is pretty good going, but put him in jail a night or two, and he is taking stock of the situation. You point out, "Boy, it is hard to realize it now, but this is about the best thing that could have happened to you that you got caught early, because something is going to happen if you keep on like this. You will climb in somebody's window some night, he will wake up and grab something and hit you, and you will have to protect yourself, maybe by killing him, and the next thing you are in for the rest of your life. Put the brakes on now while you can."

If you have two or more who have committed a crime, you can play one against the other, leading one to believe the other has talked.

All these things we have talked about are things the courts have said are all right, even though they involve trickery, for the reason that it is not the sort of thing that makes an innocent man confess. The whole exclusion rule was built around that notion, the protection of the innocent. It differs from the self-incrimination privilege, which was there for some policy reasons, and is available to both. You might think it is a dirty trick, but it is not the sort of thing that is going to make an innocent person confess.

When we have two people to be questioned about a crime, we take the weaker one of the two and bring him in the back of the laboratory. We question for a couple of hours and he is not telling us anything. One of us goes out and comes back with a notebook, and addresses a secretary in front of a typewriter. She would get out her notebook and sharpen three or four pencils, all in front of the fellow on the bench, the suspected accomplice. She gets some legal-size paper, inserts some carbons, opens up her notebook, and starts typing for ten or fifteen minutes, and all of a sudden stops and asks the officer regarding this other fellow, "How does this man spell his last name?" The officer will say, "How do you spell your last name?" She says, "Thank you," and keeps on typing. After it is all typed up she puts the papers together, puts the carbons back in the desk, and goes back. Then we take this other fellow back into the laboratory, and ask him about it, and he wants to know what the other fellow said. We say, "Never mind what the other fellow said. I want to know if you are telling the truth. Now, start right at the beginning and then you better have it right." Then Mike goes ahead and tells you the story. After you get the confession you bring Joe back and show him Mike's confession. Many a crime has been cleared up by that technique.

You may say its a dirty trick, and it is to some extent a dirty trick, but when you realize the importance and the fact you are not depriving an innocent man of life or liberty, there is some justification to be served by this practice.

You find it expressed in appellant courts time and time again that perhaps there is some other way to get around this problem; that you don't have to question people, but you ought to be able to solve crimes in some other way. One jurist has gone so far as to suggest that the police not be given an opportunity to question suspects at all. You also hear references such as "In England they do it differently. After all, you have the Judges Rules over there, and they get along very well." I suggest to you there is a gross misconception there in looking on the English practice as the solution to our problem. There are three basic factors overlooked when you adopt that position. Many criminal cases, even when they occur in the jurisdiction of the most competent police departments, are capable of solution only by reason of the opportunity the police have to interrogate suspects and witnesses.

There is a feeling that if you have a person in custody and in a room by himself where he can let his conscience weigh upon himself, he will confess and there is no necessity for conducting a lengthy interrogation. That is erroneous thinking.

Our detective story writers probably mislead not only the public but some of our judges into believing that every time a crime is committed, if you just go around with an intelligent look on your face and some scientific equipment, you ought to be able to find some clues by which you could apprehend and convict the guilty. There are relatively few crimes that lend themselves to solution by that means. In most instances the only way we can solve a crime is by questioning suspects and witnesses. Let me give you an illustration of an actual case to make the point.

A woman was found murdered in her home—skull bashed in. So far as can be ascertained, there was no forced entry into the home. There didn't seem to be anything disturbed. The first person that came in for some suspicion was her estranged husband. The police got hold of him, questioned him, and ultimately came to the conclusion, although the fellow didn't have any real alibi, that he did not kill his wife.

Further investigation revealed that the husband had a brother, who wasn't such a first-class citizen, a man who had been in some minor police trouble before. They got hold of the brother-in-law, and questioned him. A thorough search of the crime scene revealed nothing by way of fingerprints or anything else. I know of my own knowledge that on this case there was a very thorough investigation. When the brother was questioned, by these techniques, he ultimately admitted the killing, and as a motive, he gave the necessity of some money. He was trying to borrow some money from this woman. She refused, and he was rather desperate about it, and he killed her and took some money that he knew she had about the place, and also a diamond ring and some other jewelry, all of which was recovered in the place he said it was.

When he went home that day, he changed clothes, took the old ones and burned them, so there was no chance of getting any evidence on him that way.

That case is not an unusual one. It is typical of police cases. There wasn't any way on earth that that crime could have been solved except by means of questioning suspects and witnesses. In that case the questioning actually led to the release from suspicion of the man who of all people should be most suspected, the husband.

I am not suggesting that is what the police should do at the outset in any case. As a matter of fact, it is certainly better from a very practical viewpoint to have a good investigation of the scene, a search for all physical evidence possible, before an interrogation is begun. Some cases are solvable by that means, but there are a number of them, such as the one I just gave you, which can be solved only by the use of these interrogation procedures.

Also a lot of nonsense is that you don't have to spend much time interrogating people, except persons guilty of the crime. You can appreciate the nonsense of it when you reflect on your own experience in non-criminal cases. If you have something about a non-criminal case which should be revealed, you don't go around just revealing it, but only do so when approached about it by somebody. You realize in your non-criminal cases that when you are searching for the truth, you have to go get it and not just sit down and wait for it to come to you.

Very few confessions come about through any other manner than interrogation, sitting down and questioning somebody for a period of an hour or two hours or even longer. As long as it is the type of interrogation I outlined to you, it is not endangering the safety of an innocent person, and is certainly the only way you can get confessions of guilt.

You find some expressions in the courts' opinions condemning secret police interrogations, because this man was questioned outside the presence of his friends and relatives and lawyers. So what? This crime was committed under conditions of secrecy, and if you sit down and question him in the presence of relatives, friends, and particularly if he has a lawyer, somebody is going to tell him to shut up. It seems to me that it is a purely impractical viewpoint to suggest that there is anything wrong with that.

Another gem in our court opinions is saying something about criminal confessions are often the offspring of reasoned choice. To insist that all confessions be the result of a reasoned choice is to ignore the fact that a great many criminal confessions represent outbursts of emotion which one's reasoning powers would tend to supress. In other words, his emotions burst by the techniques of interrogation we have referred to.

I made reference earlier to the English practice, looked upon as something that we ought to adopt in this country, the Judges' Rules, outlining specific conditions under which interrogations can be conducted. I can refer you to two publications by Canadian and English authorities, in which they point out how the police as a practical matter have to work out some way to evade these so-called Judges' Rules. As an illustration, these Judges' Rules say that once a person is arrested, charged with the offense, then there can be no further questioning of that person. You have to warn him, and also, once you have effected the arrest, you are not to question him at all.

The British have a simple way to get around that. They merely delay the time when they consider somebody a suspect. Go ahead and question the person, and then when he starts to confessing, at that point consider him a suspect.

I am not criticizing the English police, but merely pointing out that we are not justified in pointing to the British practice as something that solves this problem, and is the sort of thing that ought to be adopted in this country.

Although some judges, lawyers, and members of the public look upon some of these practices as unethical, I wish to point out that this isn't exactly a ten

party. In ordinary affairs, professional dealings, social contacts with people, we look upon deceit as something that isn't particularly proper, but here you ought to keep in mind the fact that you are dealing with a person who has committed an offense, or even if innocent of that offense, is certainly in a different frame of mind than most of us. Of necessity you have to resort to some of these methods, and I wish to emphasize that none of these practices are of a type that are apt to make an innocent person confess.

Those are some of the things I thought you might like to hear about with regard to police problems and questioning suspects and witnesses. It has been a pleasure to have had this visit. My purpose in coming here was primarily, of course, to visit with the prosecuting attorneys.

This is the first time I have had the pleasure of coming to Idaho. To indicate to you my true feelings about this, I would like to tell you the story of a girl in Chicago who went to her father one day and advised him of the fact that she was pregnant, and that the man who got her in that condition was the rich Mr. Smith who lives in the Drake Hotel. The father put on his coat, and went right over to the Drake Hotel, and barged into Mr. Smith's room. He launched into a tirade, whereupon Mr. Smith said to him, "Just a minute, hold on. Maybe we can straighten this whole thing out. If your daughter has a girl, I will settle $40,000 on her. If she has a boy, I will settle $30,000 on him. That's fair enough, isn't it?" Whereupon the girl's father scratched his head and said, "Yes, I guess it is, Mr. Smith, but if she has a miscarriage, would you give her a second chance?" Thank you very much. (Applause)

PRESIDENT RANDALL: Mr. Inbau, thank you for a very instructive lecture. We appreciate your coming out to Idaho to be with us.

Next item on the program is a report of the Canvassing Committee, and I will ask Hugh Maguire to come forward.

MR. MAGUIRE: Mr. President; Commissioners. The Canvassing Committee has canvassed, and from a result of our tally Clay Spear has been elected as the commissioner from the Northern Division. I submit herewith our official tally on that, Mr. President.

PRESIDENT RANDALL: Thank you. I see that Clay Spear is in the audience. Clay, would you come forward and be properly installed in your new position. (Applause)

JUDGE CLAY SPEAR: Mr. President, Members of the Commission, Distinguished Judges, and Fellow Members of the Bar: I am glad of the results of the election. Once you get into these things you want to win them, and I am happy for it. I have attended several of these meetings throughout the year when I have been a member of the Bar. This is the first opportunity I have had the privilege of addressing you at an annual meeting of the Idaho State Bar. I find myself much in the position of the little Negro boy in the backwoods village in the deep South, who had a habit of going into the store, and whenever the storekeeper wasn't looking he reached over into the molasses barrel, scooped up a finger full of molasses. As time went on the molasses got further and further down in the barrel. Ultimately the inevitable happened, and he toppled into the barrel as he was reaching down to get this scoopful. He got all covered with this sticky molasses, crawled out, and ran out as fast as he could and scampered down the road. He went as far as he could before he ran out of breath, stopped for a minute or two to size up the situation, and he noticed all of this stuff over him that he enjoyed

so much. He reappraised his situation, and he looks up skyward, and said, "Lord, please make my tongue equal to this opportunity." (Laughter)

I am in the same situation. I am not going to take a great deal of your time. I think as far as an acceptance speech is concerned, it should have three things: first, to thank the members of the Northern Division for their support for me—which I do sincerely; secondly, to pledge to you the very best of my efforts. I am not going to tell you that I am going to try to fill the shoes of my immediate predecessor, because if you have noticed him, that's a physical impossibility for me, either figuratively or literally. Figuratively speaking, I am going to try to convince what I feel is a minority of the Bar who have taken a little dim view of the district judges getting into the position of Bar commissioner.

I am going to try to convince them at the end of my three-year term that I will have done just as good as any practicing attorney from the Northern Division could have.

Thank you very much.

PRESIDENT RANDALL: Thank you, Clay. That concludes the program this afternoon. I would like to remind the members of the Continuing Legal Education Committee that we want to meet with them immediately. I also want to call your attention to the business session tomorrow morning. I would like to have as large an attendance as possible. We are going to have five drawings of books, so there is an incentive for coming other than the business that will come up before the convention.

If there is no further business this afternoon, the meeting is adjourned until tomorrow morning.

(Evening recess)

(July 14, 1956)

PRESIDENT RANDALL: The first drawing this morning will be for a year's subscription to Kitchen's Supreme Court Service. I wonder if Sam Kaufman would make a drawing for us. No. 25, Charles Johnson. No. 122, Francis Rasmusson. No. 132, Grant Wallace. No. 45, Robert E. Brown, of Kellogg, Idaho. Finally a winner.

We will give a three-volume set of Cowdery's Forms. No. 55, Francis Sheneberger.

I am not going to announce whether Justice Douglas will be here on not, so we can hope to hold an audience at lunch. We will proceed with the program immediately. First a report from the Prosecuting Attorney's Section. Mr. Kent Power, of Weiser, Idaho. (Applause)

MR. POWER: President Randall and Members: I appreciate this opportunity to report for the Prosecuting Attorneys' Section. With at least one member in each county, we feel our association represents a cross-section of thinking throughout the state and aids the administration of Idaho's law. Our organization was first organized in the early 1930's as a loose association of prosecutors throughout the state. Later, in 1946, under the direction of Earl Morgan of Lewiston and Howard Adkins of Shoshone, a formal organization which has been meeting regularly ever since, was constituted.

We have had two working meetings each year. This year, under the direction of Wynne Blake, Lewiston, as vice president; Wayne C. MacGregor, Grangeville, Secretary; Nells Sahl, St. Anthony, Treasurer; and myself, president, the annual winter meeting was held in Boise. As you know, we have also been meeting here for the past two days.

Several working committees have been active throughout the year and have reported recommendations to the members. We have had a committee studying the Youth Rehabilitation Act, the new juvenile code, and the members of this committee have not only made several recommendations for changes which they feel should be made by the next legislature, including change in the arrest, custody and appeal procedures, but have actively participated in meetings throughout the state concerning youth problems. Another committee, studying possible revisions in our criminal law, has drafted suggested changes in the check law, the county coroner law, and the laws governing mental treatment.

Those of the committees' recommendations which are adopted by our membership will be submitted to our legislative committee. We sincerely hope the activities of this committee can be coordinated with the efforts of the Bar Foundation, State Bar Legislative Committee, and Judicial Committee on Legislation. The chairman of our legislative committee has initiated a program we strongly recommend to the State Bar, that of securing voluntary assistance from our members to meet with the legislature in promoting the Association's recommendations. At the present time we have commitments for a total of 28 man-days from members who, at their own expense, will go to Boise and work with this committee during the legislative session. We ask the State Bar that these men's efforts be coordinated into any program it maintains for legislative service at the next session.

This year we have also published the third edition of our book on criminal forms. The first edition of this manual was made up by Jim Blaine in about 1945 at the time he was prosecuting attorney of Ada County. He collected a set of the more common criminal charges for use in drafting complaints and informations. In 1947 and 1948, under the direction of the then attorney general, Governor Robert E. Smylie, a more complete form manual containing annotations to Idaho cases was published. The current edition containing a little over 200 pages was compiled, brought up-to-date and annotated from forms submitted by the general membership to myself and Howard Adkins of Shoshone. Howard, by the way, is one of the Association's strongest members, as well as one of its organizers and his name always appears on the list of hard workers. Howard has our sincere appreciation. The Association also wishes to express its gratitude to Attorney General Graydon Smith's office for its financial contribution toward printing the manual.

The Association has also been fortunate this year in securing guest lecturers for an education program at our general meetings. We have had wonderful and pleasant cooperation from both the Supreme and District Court judges in meeting with us. The faculty of the University of Idaho College of Law has contributed speakers also, both of these in our criminal law revision studies. The F.B.I. contributed two special agents to our meetings, one of whom was a laboratory technician in a study of evidence analysis. The present president of the National Association of Prosecuting Attorneys has spoken to us on trial techniques. The State Hospital has sent representatives to give us information on commitment procedures for the mentally ill. We also secured the services of a pathologist to give us insight into blood alcohol procedures and autopsy methods. We also have had several speakers at our meetings on the subject of juvenile delinquency and correction. Of course, we have been very fortunate to have been able to have

Professor Fred E. Inbau from Northwestern University with us for a series of lectures during the past two days.

It would have been impossible to put on these programs during the past year without whole-hearted and very effective cooperation by the State Bar Commissioners and the help of Secretary Paul Ennis. We are proud of the educational work we have attempted, and are very grateful for their help. In concluding this report I want to particularly thank those men for their work and assistance on our behalf.

Thank you very much. (Applause)

PRESIDENT RANDALL: Are there any comments or suggestions on this report? We will proceed with the next item on the program, which is the report on the Judicial Section. Justice E. B. Smith.

JUSTICE E. B. SMITH: Mr. President and Members of the Idaho State Bar: Three of the five Supreme Court justices and twelve of the sixteen district judges of the State of Idaho met July 12 in annual judicial conference. Honorable L. E. Clapp, the warden of the Idaho State Penitentiary, at the invitation of the conference, presented the subject matter of penal problems as related to sentences. His paper dealt generally with prison problems in relation to variances in sentences provided by law, and thereby necessarily meted out by the judiciary. Particularly he dealt with the indeterminate sentence law.

The Warden made a recommendation which the conference adopted, that a three-man committee of judges be appointed with instructions to meet with the Board of Corrections at least once a year to discuss with the Board its policies and procedures, the purpose being to attain a better understanding between the Board and the judiciary in relation to problems of each of those bodies.

District Judge Gilbert C. Norris presented an exhaustive comparative study of criminal penalties, whereby he was able to show the considerable variance in criminal sentences for various criminal offenses of similar gravity. I might say that these variances in sentences for similarly grave offenses in character have presented tremendous problems to the district judges as well as to the Board of Corrections. They are presenting some very serious problems now on appeal to the Supreme Court.

Judge Norris' committee recommended that studies be continued, and that recommendations be made to the legislature designed and intended in time to remedy the serious situation, particularly to obtain uniformity in sentences for criminal offenses. His recommendations were adopted.

Honorable Alexander Holtzoff, Judge of the District Court for the District of Columbia, presented a paper having to do with procedural matters in the courts. Particularly his paper dealt with the procedural advantages under the Federal Rules of Civil and Criminal Procedure as compared to the systems which preceded the adoption of those Rules.

District Judge John Carver presented a proposed code of ethics and decorum for use during the trial of cases, for study by the various district judges. The adoption, however, was left to the option of any district judge insofar as his particular court is concerned.

Judge Carver and Judge Henry Martin made reports relative to Judicial Canon No. 35, with special reference to its interpretation by the recent opinion of the

Colorado Supreme Court entitled, In Re Hearings Concerning Canon No. 35, reported in 296 P. (2d) 465. Those reports were not for the purpose of any action being taken by the conference, but merely reports having to do with the status, all realizing that the American Bar Association up to date has taken a distinct stand with reference to upholding Canon No. 35 and not letting down the bars having to do with publicity or publicizing trials during the process thereof in the district courtrooms.

As I understand the particular Colorado case referred to, that case does not depart, but to very little extent, if any, from the particular stand which has been taken up to this time by the American Bar Association. The question of Canon 35 has been before the House of Delegates of the American Bar Association for some two or three years, off and on, with many presentations made pro and con as to the publicization of trial proceedings in the courtrooms as the trials are in progress. I understand it will again come before the House of Delegates at the August meeting.

The next meeting of the Judicial Conference was fixed to be held in Boise, Saturday, November 24, 1956, at 10:00 o'clock a.m. That is the Saturday subsequent to Thanksgiving. This meeting will be held at the Supreme Court chambers. The main purpose of that meeting will be to further study and make legislative recommendations in the form of bills or proposed enactments designed and intended to commence this program for more uniformity of sentences for criminal offenses. It is intended to commence that program, which may take some time to accomplish. The meeting is intended to start to correct these tremendous inadequacies having to do with the indeterminate sentence structure and the wide variances in penalties.

I thank you. (Applause)

PRESIDENT RANDALL: Thank you, Justice Smith. Is there anything further in connection with the Judicial Section?

JUDGE GILBERT C. NORRIS: I believe, Justice Smith, that the Criminal Penalties Committee was to work with the Prosecuting Attorneys' Section on the question of recommended changes to the 1957 Legislature. At least, that is my understanding.

JUSTICE SMITH: May Judge Norris' remarks be made a part of the report, Mr. President?

PRESIDENT RANDALL: Yes, it is so ordered.

We are going to have another drawing now for one set of the Tax Court Digest. I am going to ask our new commissioner, Judge Spear, to make the drawing. He hasn't been on the Commission long enough to lose his sense of integrity. (Laughter)

No. 113, Orval Hansen. (Applause)

The report on the Committee on Continuing Legal Education, John Carver.

MR. JOHN CARVER: Mr. President, and Gentlemen of the Bar: The report of the Committee on Continuing Legal Education is a report of activities of the Commission more than it is a report of the activities of the Committee. The Commission has recognized the importance of this program, and has given it its unstinting support. Without that, we would not have had the successful program we feel we have had.

We have had two formal statewide institutes, as President Randall mentioned, one at Moscow last fall on tax problems, divorce and separation, and on law office management; one at Twin Falls on appellate practice. Financially speaking, our programs show a marked improvement. We lost on the program at Moscow a total of $400, due to a large extent to the terrible weather. On the other hand, at Twin Falls we very nearly broke even. It is our view that this program now will carry itself, definitely.

In addition to these, the committee membership have participated in other institutes, particularly Professor Walenta, at Idaho Falls, and the regional institute at Spokane this spring.

It is the sense of the Committee and of the Commission that we are proud not only of the talent which our associatiou furnishes for these meetings, but of the willingness of the members of this Bar to give of their time and of their substance for the benefit of fellow members of the Bar. It is for that reason that the committee members are so highly pleased that Oscar Worthwine was recognized with the Award of Merit, because we on that committee know that his aetivities with us, at the Twin Falls institute, were tremendously valuable, and we sincerely appreciate them.

In mentioning that, I do not want to pass up our recognition of the other members of the Bar who have likewise outstandingly participated—Ralph Breshears, Chief Justice Taylor, former Judge Givens. From the two institutes we have the definite feeling that we have in the Idaho Bar members whose experience is valuable and whose willingness to give of that experience is sufficient so that it is not necessary for us to go too far afield in this small state and with our small budget to have really outstanding institutes.

We have observed the practice developing that the lawyers want continuing legal education of a formal kind, and will come and work at an institute if they feel that they will benefit from it in their practice. That is the test. The test is not how good the social program is, or how big a name is presented, but can it translate into something of value in their practice. We feel that both our programs have met that test, and we intend that future programs likewise meet that test.

We don't want the Bar in Idaho to have the idea that continuing legal education is merely a matter of formal institute or educational sessions. The Committee has discussed and made recommendations to the Bar president on local programs which the State Bar might help with at local meetings.

We emphasized the importance of the scholarship of the Bar being developed by having a medium for its expression in publications, and I know that the State Bar Bulletin is available for lawyers who have something to say on legal subjects. We feel that the program in the Ninth District of working with the accountants and life underwriters is a positive step which should be followed.

We feel that the American Bar Association has a wonderful program, splendid facilities, and that our Committee and the Bar Commission should strongly cooperate with the American Bar Association's Committee on Continuing Legal Edueation.

Thank you. (Applause)

PRESIDENT RANDALL: Thank you, John. Is there anything to be added to this report? If not, it will be approved and ordered filed.

PROFESSOR WALENTA: I think general information should be disseminated as to the second institute to be held in Moscow on October 6th. Some of these men might take the word home.

PRESIDENT RANDALL: On October 5th and 6th they have scheduled an institute in Moscow, which I mentioned the other day. Incidentally, that corresponds with the date of the WSC-Idaho football game. Hotel rooms have been reserved already, so when you go back to your local bars, we would like to have you advertise that institute as much as possible.

That committee has done a tremendous job, and we certainly appreciate it.

The report on the Committee on Public Relations, Alden Hull, Chairman.

MR. ALDEN HULL: Mr. President, Members of the Commission, and Members of the State Bar: A year ago your committee presented at the annual session an outline of what was then considered a rather modest public relations program. Fortunately for the committee's sake, we did not set a deadline as to any completion date for this program, for if we had, I am afraid that we would evidence some disappointment. Things of this kind could not move as fast as we hope, and possibly should have expected. We know that public relations is something new to the Idaho State Bar, and as all things new, it does move slowly. However, we do feel that some progress has been made, and I wish to report briefly on steps that have been taken and what we believe are actions in the right direction.

The American Bar Association, in its recent publication of the coordinator, noted the steps or asked for additional systems in the National and State associations, and adopted the following resolutions, which resolution I read was adopted by the Board of Governors. This resolution might allay some of the fears and doubts that might exist in your minds with reference to the merits of this program. This was in the June 1, 1956 issue of the Coordinator.

"An expression of the Association's Public Relations program was approved. Included will be a National Experts Burcau to make leading lawyers and judges available as experts before important laymen's organizations of all kinds. The Committee on Public Relations was authorized, in addition, to negotiate for appropriate commission sponsorship of a series of legal television and radio programs and films that will portray lawyers in courts authentically."

I am going to digress from the report I prepared just one moment, because that last statement, "prepare television and radio programs and films that will portray lawyers in courts authentically," drives right to the meat of our whole program. With the advent of television in the State of Idaho in recent years we are acutely aware of misrepresentation of the legal profession in those films and shows.

I had this pointedly driven home the other day that I am going to take time to comment on this phase of our program.

My son, who is only 9, asked me why all lawyers on television shows are crooks. Now, that is what the modern youngster is growing up to. I realize that films have misrepresented the profession for a number of years, but we know that televisions programs have industrial sponsors, and many of those sponsors have house counsel. I hope that our delegates to the American Bar Association, at the annual session and in their special sessions, will support this program of television and films authentically portraying the legal profession. I don't think there is anything that probably holds the legal profession down, dollar-wise and otherwise,

as much as this misrepresentation. Until the client can feel that there is a hundred per cent trust when he is in front of a lawyer, the legal profession will continue to drag its feet.

The past year the committee submitted to the Commission two series of newspaper articles for its approval. These columns many of you have seen. They are substantially the same idea, but with sufficiently different material to be of interest to all the public. If these columns are accepted, it is our desire that each newspaper in the State of Idaho will publish them during the next few months. We know that some papers throughout the state have carried these types of columns, and of course we will not ask them to repeat something they have already published. I know from having seen these columns and having heard comments of those who have seen them, that the public does get a great deal of information from them.

When these columns are made available to newspapers, your district associations will be asked to give them publicity, give the editor assistance in setting the columns up in proper sequence, and set the proper coverage in the papers.

The committee has also submitted to the Commission five general pamphlets. These pamphlets deal with common legal questions, such as "Why Should I Make a Will?" or "What Should I Do When I Have an Accident?" It is our hope that these will be distributed through the medium of private financial institutions, such as banks, financing houses, abstract companies, and the like.

Four or five canned talks have been submitted. These will be used by attorneys at special events. We are trying to encourage speaker groups in each of the district associations. On individual districts I do not have much to report as yet. I know there is a lot going on, and the attorneys are before the public constantly, but we don't have a clearing house for that type of information.

The Third District Bar Association has established a legal aid service. To my knowledge, this is the second such society in the state. This is one type of service that has done more good for the legal profession through this country than any other single program. The literature and reports we see from the American Bar Association encourage this. They set forth the enthusiastic reception that these programs are gaining in the cities throughout this country.

I received a copy of the Third District's resolution adopting this program, and I feel that if any of the other larger cities in Idaho wish to adopt such a program, that the Third District will be happy to forward a resolution to them.

Last fall three members of the Shoshone County Bar Association participated in program attended by about 300 women. It was a very successful program.

The Shoshone County Bar has now established an expert's bureau, and we are also establishing a scholar's program for the high schools of our county.

John Carver told you of the work of his Committee on Continuing Legal Education. In my mind that's one of the outstanding public relations examples of our state. The publicity gained at the time of these institutes is invaluable. The public was very pleased to find that the lawyers took time out, recognizing the fact that perhaps there were problems that they could well afford to acquaint themselves with. I attended both institutes and I highly recommend them to all of you.

The Award of Merit, inaugurated last night, is another step in the right direction. Many of you are constantly offering your services to your community, and we

encourage that, because if the lawyers will not take the rightful place in the community activities, as public servants, then we are derelict in our duties.

I would like to encourage each association to coordinate its public relations activities by means of a committee. I feel that a planned program will be of a great deal of benefit to your associations and to the state. Our profession is an honorable one, and we should be proud of it. I feel that these district committees can do a great deal without expending a great deal of money to push forward this program.

I want to thank the Commission for its help. These things have moved slower than we hoped. Money has not been available, as we anticipated, in all cases. Next year I am sure that the Public Relations Committee will have additional progress to report.

Thank you. (Applause)

PRESIDENT RANDALL: Thank you. Is there anything to be added to that report from the floor?

MR. FABER F. TWAY: I have a suggestion that might be of interest to all of you. Last year, on KID television, they had a series called "Justice" that ran every Sunday night around 10:30. It was sponsored by some cigarette company. It did portray the work of the Legal Aid Societies, and there was quite a little favorable comment in our area on this particular program. It really did portray the lawyers in a good light. If any of you fellows have TV stations in your area, perhaps you could investigate the possibility of getting somebody to sponsor that series.

I want to say one other thing. In our particular district, in reading the Coordinator, which Mr. Hull referred to, we ran outo information on a series of ads which the City Title and Trust Company of New York City ran for the benefit of the lawyers in New York City. I sent and got this series of advertisements, took the matter up with our good friends Bill McFarland and Stan Jenkins of the Idaho Title and Trust Company, who thought the ads were very good, so they are running a series of 13 ads for the benefit of the Ninth District Bar. You people in the other districts might be interested in checking that series.

PRESIDENT RANDALL: Thank you for that information. I think it is contemplated that the Commission will seek the help of certain institutions in promulgating the recommendations of the Public Relations Committee. It has been the lack of funds that stopped us from doing it on our own. That is another committee that has done a tremendous job and we certainly appreciate the work they have done.

The next report is the Committee on Unauthorized Practice. I do not think there is a member of that committee present, so I will ask our secretary to make it.

MR. PAUL ENNIS: The Committee on Unauthorized Practice met in Boise in September, 1955, and organized at that time so that its business could be dispatched as efficiently as possible. It was decided that the Committee members themselves would make at least the initial investigation of reported violations and the State was divided into three geographical areas with each Committee member taking responsibility for one such area.

During the year the Committee has disposed of two reported violations without

the necessity of Court action and have pending before the Committee at the present time three reported violations which are under investigation.

The principle work of the Committee has been its effort to reach a compact with the realtors of the State of Idaho defining the proper fields of activity for the attorney and for the realtor, and creating a joint Committee to investigate and dispose of differences arising between attorneys and realtors. Your Committee members and other cooperating attorneys met with the realtors in Idaho Falls, Pocatello, Twin Falls, Boise, Lewiston and Coeur d'Alene and presented the proposed Agreement, which is patterned after that adopted by the American Bar Association and the National Association of Realtors. The Committee has been careful not to obligate the Bar Association to any Agreement merely regarding the ground work for the adoption of an Agreement when one is finally approved by the Commissioners and the Association. The Committee has presented to the Commissioners at the time of this Convention a proposed compact.

At the request of the Commissioners your Committee studied and prepared a statement of policy with regard to the employment of graduate attorneys awaiting admission to the Bar of Idaho. This statement was approved by the Commissioners and is now in effect.

Your Committee has before it for consideration a proposed rule of practice before the Public Utilities Commission of the State of Idaho, which would change the existing Rule 116 of the Rules of the Board of Commissioners of the Idaho State Bar and permit any foreign or non-resident attorney to appear before the Commission provided the State in which such non-resident is admitted permits Idaho attorneys to appear before its Regulatory Board. The Committee is studying this proposed change and would appreciate your comments. The exact content of the proposed new rule is as follows:

REPRESENTATION OF PARTIES: Appearances and representation of parties shall be made as follows:

(f) An Attorney appearing in any proceeding shall be an Attorney at law duly admitted to practice, and in good standing, before the highest Court of any State. If such Attorney is not admitted and entitled to practice before the Supreme Court of Idaho, an Attorney so admitted and entitled to practice will be associated unless Idaho Attorneys are permitted to appear in a representative capacity, without associating counsel, before the public utility regulatory body of the State in which the Attorney appearing is admitted to practice.

Your comments and suggestions upon the proposed Rule change would be welcomed by the Committee.

Respectfully submitted,
R. H. COPPLE

STATEMENT OF PRINCIPLES
IDAHO STATE BAR AND IDAHO REAL ESTATE ASSOCIATION

ARTICLE I

1. The Realtor shall not practice law or give legal advice directly or indirectly; he shall not act as a public conveyancer, nor give advice or opinions as to the legal effect of legal instruments, nor give opinions concerning the validity of title

to real estate, and he shall not prevent or discourage any party to a real estate transaction from employing the services of a lawyer.

2. The Realtor shall not undertake to draw or prepare documents fixing and defining the legal rights of parties to a transaction. However, when acting as a broker, a Realtor may use an earnest money contract form, and any other standard legal forms customarily used by the broker, for the protection of either party against unreasonable withdrawal from the transaction, provided that such forms shall first have been approved and promulgated for such use by the Bar Association and the Real Estate Board in the locality where the forms are to be used.

3. The Realtor shall not participate in the lawyer's fees.

ARTICLE II

1. No lawyer in rendering professional service should for any reason other than in the interest of or for the protection of his client express an opinion discouraging the consummation of a real estate transaction, where the parties have been brought together by the real estate broker.

2. The lawyer shall not participate in the Realtor's commissions.

3. A lawyer who engages in business activities ordinarily undertaken by a Realtor shall qualify under the Real Estate License Act when his business activities are such that qualification would be required if he were not a lawyer.

ARTICLE III

1. The Idaho Conference of Realtors and Lawyers shall consist of three realtors appointed by the President of the Idaho State Realty Association, and three lawyers, members of the Idaho State Bar (who may or may not be identical with the three members of the Idaho State Bar Standing Committee on the Unauthorized Practice of Law, in the discretion of the Bar Commissioners of the Idaho State Bar), to be appointed by the Commissioners of the Idaho State Bar.

2. The Idaho Conference shall seek to have the two Associations:

(a) Engage in common effort to simplify laws and procedure governing real estate transactions and to reduce the cost thereof;

(b) Eliminate detrimental practices arising in connection with the taking of expert testimony of the valuation in litigations involving the value of real property;

(c) Maintain a constant exchange of information concerning any practices on the part of their members which may be detrimental to the public or to the members of either Association.

(d) When called upon to do so, to make, or to cause to be made, investigations of violations of these Principles and to make recommendations to the appropriate group or agency for disciplinary or other action.

3. The Idaho Conference may consider any controversies referred to it between realtors and lawyers and shall seek to settle and dispose of the same.

4. The Idaho Conference, in line with the principles herein stated, shall, from time to time, issue such further statements of principle as may be agreed upon which are deemed in the public interest and in the interests of realtors and lawyers,

and which are approved by the Idaho State Bar and the Board of Directors of the Idaho Real Estate Association.

5. Upon the adoption of this Statement of Principles by each of the Associations, the American Bar Association and the National Association of Real Estate Boards shall be immediately notified thereof and each shall be furnished with a copy hereof properly certified by the Secretary of each Association.

ADOPTED at the annual membership meeting of the Idaho State Bar, Sun Valley, Idaho, this ____ day of July, 1956.

IDAHO STATE BAR:
By _____
President

ATTEST:
_____
Secretary

ADOPTED at the annual membership meeting of the Idaho Real Estate Association, _____, Idaho, this_____Day of_____, 1956.

IDAHO REAL ESTATE ASSOCIATION
By _____
President

ATTEST:
_____
Secretary

MR. ENNIS: It has been suggested that in the absence of the chairman of that committee a motion be made at this time that the report be accepted, and that the Bar go on record as adopting the foregoing statement of principles, and I so move.

MR. MARCUS J. WARE (Lewiston): I second the motion.

PRESIDENT RANDALL: Is there any discussion on this report or on the compact?

KARL JEPPESEN (Boise): Some parts of it are contrary to our statutes. The statute provides that lawyers can indulge in the business of selling real estate without a license. There are other parts that need a lot of discussion before they are adopted.

MR. RAYMOND GIVENS: I would like as a substitute motion that this be referred to the various districts for ratification, because it does not involve a departure from the present statute.

PRESIDENT RANDALL: Are you willing to withdraw your motion, Mr. Ennis?

MR. ENNIS: He just moved to amend.

MR. GIVENS: I moved a substitute motion, or to amend Paul's if you will consent to the amendment.

MR. ENNIS: I will eonsent to it, but do you mean after ratifieation by the various bar associations that that will bc construed as an adoption by the membership of the Idaho Bar?

MR. GIVENS: Yes.

MR. ENNIS: I will accept it as a substitute motion or amendment, either way.

PRESIDENT RANDALL: Will the second to that motion accept that? I am going to call it an amendment.

MR. WARE: Yes, Mr. Chairman.

PRESIDENT RANDALL: I don't know just what the status of this is. As I understand it now, this memorandum of understanding between the realtors and the lawyers is to be referred to the local bars for approval, is that right?

MR. GIVENS: Yes.

PRESIDENT RANDALL: Is there any further discussion? All those in favor of the motion please say "aye." "No?" The motion is carried, and I presume that will dispose of that matter.

I presume that that did not in any way refer to the report of the committee, which I am going to accept and order filed.

Is there someone from the Committee on Lawyer Referral and Legal Aid? We will pass that for the moment. Bill, do you have a report on the Committee on Minimum Fees?

MR. BILL GALLOWAY: We do not have a formal report. Work is continuing from the point where we left off last year, and we anticipate that in this meeting we will pick up where we did leave off last year. There will be coming bcfore this meeting, in connection with the Resolutions Committee, something on minimum fees.

PRESIDENT RANDALL: Thank you. Last year at the annual meeting, under Resolution 7, which was adoptcd, a committee was to be appointed to study the elimination of legal publications. That committee is ready to report, and I am going to call on Bill Furchner to make that report.

MR. WILLIAM FURCHNER: Mr. President, Members of the Commission, and Members of the Idaho Bar: Pursuant to the resolution defining the duties of this committee, we have considered all of the sections of the Idaho Code, at least those cited in the index requiring publication of notices, with the view to eliminating those not being necessary, and shortening the period of publication of those deemed necessary, and of requiring only posting where publication does not appear to be required. Many of the legal publication requirements are found only in special proceedings which are not frequently used, and which do not appear to the committee to be burdensome or unnecessarily long. We, therefore, feel no necessity of changing the requirements of such notices, and have only the following rccommendations to make:

First: That Section 5-509, providing for the publication of summons, be amended by eliminating tbe provision that at least 26 days must elapse between the first and last publication of the summons, or, by requiring five publications of the summons, thereby either permitting only four weekly publications of the summons, in conformity with the provisions of Section 60-109, or making Section 5-509 otherwise comply with the general section on the notices.

That Section 8-503, dealing with the publication of notice of attachment, be amended to require publication only after an actual levy has been made by the sheriff, and by requiring only two publications of the notice.

Third, that Section 13-201, dealing with the time for notice of appeal to the Supreme Court, be amended to provide for a period of 60 days in all cases.

Fourth: That Section 15-1001, dealing with the notice of petition for specific performance of contracts of sale in probate proceedings, be amended by eliminating the publication of notice, and substituting posting of one notice for 10 days as is generally required in other probate notices; also, by providing that the petition for speeific performanee may be filed by the executor or administrator of the estate.

PRESIDENT RANDALL: Thank you, Bill. Is there some formal action that you desire to have taken by this convention?

MR. FURCHNER: The Committee resolved that these should be stated as proposed resolutions for adoption by the assembly.

PRESIDENT RANDALL: Are they in the form of a resolution? Have they been submitted to the Resolutions Committee?

MR. FURCHNER: No, they have never been submitted to the Resolutions Committee.

MR. JOHN CARVER: I move that they be referred to the Resolutions Committee—the Legislative Committee for study.

MR. KARL JEPPESEN: I second

PRESIDENT RANDALL: It has been moved and seconded that the motions be referred to the Legislative Committee. Is there any discussion? All those in favor signify—no, my parlimentarian advises me that since this involves a matter of policy, it must be voted on by bar associations.

(Whereupon the roll was called and the vote was by bar associations).

PRESIDENT RANDALL: The motion is carried unanimously. Resolution No. X of the 1955 proceedings called for a committee to report on preparation of a compact with the medical profession. I am going to ask Hugh Maguire to make tbat report.

MR. MAGUIRE: Mr. President. You will recall that last year Mr. Racine obtained from the Oregon State Bar a compact that have been entered into between the members of the Bar and the Medical Society in the State of Oregon. The committee was appointed to meet with the members of the medical profession, and discuss the possibility of entering into such a compact in the State of Idaho. Members of that committee were Mr. Racine, Mr. L. H. Anderson, and myself.

Mr. Racine obtained a copy of the statement of principles governing certain physician-lawyer relationships that have been adopted, as I understand it, by the Oregon State Bar, and also the Medical Society in the State of Oregon. It was first adopted by the Oregon State Bar in September, 1954, and then was amended in September of 1955. We gave this statement of principles to a member of the Resolutions Committee of the Medical Society, and we are advised informally, not officially, that when they met here in June they adopted this statement of principles. We were unable to confirm this officially. The person who was elected as the President of the Medical Society has been ill, and had to undergo some surgery.

It is the recommendation of the Committee that this statement of prineiples be adopted by the Bar. I haven't furnished this to the Resolutions Committee, and I am not certain, Mr. President, what will be the proper method of procedure, whether we should read it or what.

All right, I will read it.

STATEMENT OF PRINCIPLES GOVERNING CERTAIN PHYSICIAN-LAWYER RELATIONSHIPS

Since physicians and lawyers are each members of a profession dedicated to furnishing professional skill and service to the public and since certain problems have arisen in each profession in connection with the other that might result in detriment to the patients or clients of each profession, to the professions themselves, and to the public as a whole;

NOW THEREFORE, to create a better understanding and a 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.

The following statement of principles is hereby adopted by the Idaho State Bar and the Idaho State Medical Society, each in convention assembled:

I. Each organization shall appoint three members from its profession who shall serve on a committee, one to serve for a term of one year, another for a term of two years, and the third for a term of three years, and thereafter members shall be appointed for a term of three years, and said six individuals shall constitute the Joint Medical-Legal Committee. Such Committee shall:

a. Promulgate such suggestions as may be necessary to carry into effect the principles hereby adopted.

b. Jointly attempt to mediate and arbitrate, in the first instance, any disputes arising between individual physicians and lawyers or between the two professions.

c. Report annually to each of said organizations the work of the committee during the year and make such recommendations to said organizations as the committee deems desirable.

2. No lawyer should request and no physician shonld furnish any information concerning the history, physical condition, diagnosis, or prognosis of a patient to any person except upon the written authorization of the patient, provided that this principle sball not affect the giving of written medical reports to the State Industrial Accident Commission on behalf of patients whose treatment or whose examination is to be paid for by the State Industrial Accident Commission.

3. All records of the attending physicians or surgeons made in connection with the treatment and care of the patient in the office, home, or hospital, including radiographs reports of diagnostic and therapeutic procedures, are the property of the physician or surgeon in charge of such patient or, as the case may be, of the physician preparing or making the radiographs, diagnostie or therapeutic tests or procedures.

4. If a medical examination is requested or arranged by a party adverse to the individual being so examined, or by a prospective employer as a pre-employment medical examination, the report of such examination shall be made directly to the person arranging for such examination.

5. The patient or his attorney, as his duly authorized agent, shall be entitled, upon written request, to a prompt report from the attending or treating physician or surgeon concerning the history, findings, treatment rendered, diagnosis and prognosis, irrespective of whether or not a governmental agency is made responsible

for medical care and compensation to the patient or whether or not an insurance carrier or third party has contracted to assume financial responsibility for the patient's care or portion thereof, in the absence of contractual provisions to the contrary. The physician shall be entitled to charge a reasonable fee for the preparation of detailed reports requiring an analysis or study of his records, or for a consultation with the patient's attorney, but, in the absence of unusual circumstances, simple status reports or simple reports in the nature of a proof of loss shall be made available without charge. It is suggested that a better report will be secured by the attorney if he includes in his request any specific medical or disability questions or a specific request for an examination covering certain conditions.

6. No member of the legal profession should request, and no member of the medical profession should agree to accept, an expert witness fee wholly or partially contingent upon the outcome of the matter in which such expert testimony was offered.

7. A reasonable expert witness fee is a proper and necessary item of expense in litigation involving medical questions, and payment thereof shall ultimately be made by the client; but, in every instance in which the lawyer makes arrangements for expert testimony, it shall be the obligation of such lawyer to see that adequate arrangements for the payment of such expert witness fee shall have been made.

8. A lawyer, in disbursing money either after settlement or after a judgment has been obtained, has an obligation to use every legitimate means to see that the charges of the attending physician, cost of examinations, and expert witness fees are paid by the client.

9. Recognizing that practitioners in each profession have qualified for practice by specialized training and demonstration of the necessary character and integrity, members of the legal profession shall abstain from giving medical advice to their clients and members of the medical profession shall abstain from giving legal advice to their patients.

10. It is the duty of each profession to present fairly and adequately the medical questions involved in controversies. To that end, the practice of pre-trial discussions between the physician and lawyer of the medical questions involved shall be encouraged, and in all instances a frank discussion of the issues and opinions between the client's physician and the client's attorney shall be encouraged for the purpose of obtaining a complete understanding on the part of both as to the medical and legal issues involved.

11. Each profession shall recognize that the time, advice, knowledge, and skill of the other is the means by which each earns his livelihood, and in order to permit the most efficient use thereof, consultations with physicians and lawyers and appearances in court shall, so far as is possible, be arranged to accomplish a minimum disruption of the practice of the members of each profession. This requires the full cooperation of the members of each profession.

12. No lawyer shall charge a fee to the physician for the collection of the bill for medical services collected in personal injury litigation for the client-patient.

13. It is suggested that in the event a proposed settlement or actual recovery is insufficient to cover all the expenses and the attorney on behalf of the client-patient wishes to propose a proportionate reduction of the medical or hospital bill, or both, the attorney should present in writing the proposed or actual gross receipt

of funds and the proposed plan of settlement, including the normal or contractual attorney fee and the actual amount the attorney proposes to charge in such instance.

The Committee moves the adoption by the Bar of this Statement of Principles I have just read.

MR. L. F. RACINE: I second the motion.

PRESIDENT RANDALL: It has been moved and seconded that the compact that has been read between the Medical Profession and the Legal Profession be adopted. Is there any discussion?

MR. SAM KAUFMAN: Would you read No. 3 again?

(Paragraph 3 reread)

MR. KAUFMAN: I wonder what the intent of that paragraph was?

MR. MAGUIRE: The doctors seem to feel quite strongly that these records of that particular nature should be their property, remaining available to them—in other words, for complete case history. In some cases the patient says, "That's mine and I want it," and the doctor says, "No, that's part of my case history or part of my records, and I am entitled to have that." It is just to clarify that particular aspect of it. They feel that if the records are allowed to be given out and the patient can take part of his file or part of his records, then that case history is lost and they are not able to give as complete a treatment in the future without them. It doesn't change anything, but merely clarifies what does exist now.

MR. KAUFMAN: If the physician considers that his own property, is there to be any trouble in a lawyer obtaining necessary copies of those records?

MR. MAGUIRE: No, that's merely so we will know where we are. That's all.

MR. RALPH BRESHEARS: Will you please tell me how this Association or the Medical Association can by adopting a set of principles of that kind determine the legal rights between the patient and the doctor?

MR. L. F. RACINE: My understanding as to the passage of this type of compact in Oregon is not to fix the property rights of third parties, of patient and doctor. This is simply a statement of principle between the doctors and lawyers in order to attempt to avoid misunderstandings between the two professions which frequently arise. Frequently the doctor tells the lawyer, when there is going to be an examination by a doctor appointed by some litigant to examine another litigant, that the attorney has no right to be present during this examination. There have been misunderstandings in that regard. I think this statement of principles attempts to avoid that sort of thing.

There have been frequent misunderstandings insofar as the doctor giving out reports to third parties as to a patient's history, clinical findings, and so on. I take it there is no way you can actually enforce them. It's an attempt to get an understanding between the two professions, and if there should be misunderstandings, this six-man committee will attempt to work them out. I believe it is a step in the right direction to get a better understanding between the legal and medical professions. I know a number of doctors in Pocatello are very sincere in that attempt. As a matter of fact, there has been some suggestion that the Bar Association and the Legal Association in Idaho have a joint meeting some year, because there has been a lot of feeling in the medical profession against the lawyers. Perhaps it has worked the other way as well. This is simply an attempt to try to get at some basis of understanding.

MR. REGINALD REEVES: Will you read Section 2 again, please? That is the one pertaining to the payment of fees by the Industrial Accident Commission.

(Maguire reads)

MR. REEVES: In Oregon it is a board. I don't know any case in which they ever make payment.

MR. MAGUIRE: That is true. They pay or order payment, but I think perhaps that should be amended to conform with the Idaho practice.

MR. RACINE: I think that means that the Board in all instances is entitled to the report.

MR. MAGUIRE: That is all it means, that there is to be no withholding of information to the Board.

MR. REEVES: Should not the report be limited to that, then?

MR. KAUFMAN: Maybe that is what it means but that is not what it says.

MR MAGUIRE: If you care to amend that, we can just change this to have it provide that. "This principle shall not affect the giving of written medical reports to the State Industrial Accident Board."

MR. REEVES: I move that amendment.

MR. KAUFMAN: Second the motion.

PRESIDENT RANDALL: You have heard the amendment. Is there any further discussion on the amendment? All those in favor of the amendment signify by the usual sign. The motion is carried.

Are you ready for the main question?

MR. JESS HAWLEY: How far does this resolution go or is it intended to go in our making arrangements for the payment of the fees of physicians? It seems to me the language was a trifle loose in the resolution. I wouldn't want to be in the position of underwriting the payment of the doctor's bills. What is the Committee's idea on that?

MR. MAGUIRE: There was no thought on the part of the Committee that we would be guaranteeing the doctors their bills, at all, but the thought was that if there are funds which the lawyer gets control over in the case, that he will see that the doctor is paid—not see, but use his influence and see that the fellow is paid his proper share or proper charges in the case. There is no intention that we are underwriting the doctors or guaranteeing them their fees at all.

MR. HAWLEY: It seems to me we are charged with the responsibility in that resolution of making the arrangements and if a client does not care to pay a bill, that he thinks is exorbitant, I don't see there is much we can do. We do want to protect the doctors who have cooperated with us, but if the client doesn't, I don't care about making those arrangements.

MR. MAGUIRE: Do you have any suggestions on how you would like to change it?

MR. HAWLEY: That a lawyer will use his best influence to see that the doctor is adequately compensated. I don't want to quibble about it. I don't think we can settle the legalities between third parties.

MR. REEVES: I believe that goes to the question of the lawyer ordering the

examination and testimony. In that case, perhaps, the committee was correct in that.

MR. MAGUIRE: That's right. That's where the lawyer has made the arrangements for the expert's testimony. That's what that one pertains to, where the lawyer has contacted a doctor and made arrangements.

MR. REEVES: In a case of that sort, I am not so sure it isn't the lawyer's responsibility, but in the next section—

(Next section read)

MR. REEVES: There was one concerning charging no fee for collecting a doctor's fee. I didn't understand that.

MR. MAGUIRE: No lawyer shall charge a fee to the physician for the collection of the bill for medical services collected in personal injury—

MR. REEVES: That's specific enough. Does that refer only to the particular client, the particular patient, who was examined, or the examination of the opposing parties?

MR. MAGUIRE: I think that refers to the specific case.

MR. REEVES: I don't believe it says so.

PRESIDENT RANDALL: I don't want to cut off debate, but we are going to be here all day. May I say in answer to Jess' remarks that our canons of ethics covers that situation. Any time a lawyer guarantees the payment of a witness fee, he might find himself up for discipline before the Bar Commission if he doesn't come through. Are you ready for the question?

(Voted by Bar associations)

PRESIDENT RANDALL: The results are 482 in favor and 64 against, so that motion is carried.

Resolution XII of the 1955 Proceedings called for a committee to be appointed to report on the selection of jurors, and I am going to ask Karl Jeppesen if he will make that report.

MR. JEPPESEN: Pursuant to Resolution No. XII approved by the Idaho State Bar annual meeting at Sun Valley, Idaho, on July 9, 1955, the undersigned were appointed as a committee to make a study of the existing system for selection of trial jurors and to make recommendations designed to improve the system.

This committee has reviewed the system for selection of trial jurors as outlined in Title 2, Chapters 3 and 4 of the Idaho Code, and we are of the opinion that the statutes as they now stand are adequate for insuring a fair and competent jury for the trial of both criminal and civil actions. The committee also recognizes that much of the time we do not have juries that meet the standards that should be expected in the trial of a lawsuit. We are of the opinion that the fault lies rather in the manner of carrying out the functions delegated by law to the Board of County Commissioners, the probate judges and the district judges rather than in the procedure set up by law.

Section 2-301, Idaho Code, as amended by Chapter 191, Section 1 of the 1951 Session Laws, provides that the Board of County Commissioners must, at their first meeting in January, make a list of persons to serve as jurors in the

District Court of the county for the ensuing year. Most of the fault in quality of jurors lies with the County Commissioners of the various counties. So long as the County Commissioners use the jury list to aid decrepit and disabled veterans of the party to obtain part-time employment, we cannot expect much in the way of alert and able jurors. On the other hand, if an attempt is made by the County Commissioners to place on the jury list citizens from all walks of life and with a view to provide a cross-section of the community both in age, sex, education, and training, then the drawing from that list by the Probate Judge, the Sheriff, and the District Judge is an easy matter.

It appears that what needs to be done is not the enactment of a new law but that concerted effort on the part of the Bar should be undertaken to educate the County Commissioners and perhaps the Sheriff and judges as well to the necessity of careful selection of high quality personnel for the jury list.

This can be done. In Ada County a committee of the bar met with the County Commissioners and with the District Judges on this problem with the result that within the last year a marked improvement in the quality of jurors has been noted in Ada County. One additional point has been made in Ada County. That is, at the suggestion of the local Bar Association the County Commissioners place a sufficient number of names on the jury list so that *no* jury panel will be called for longer than 30 days. Prior to this time, many jury panels became almost professional hy hearing dozens of automobile accident cases during their term of service. Many of them would form fixed opinions as to whether or not plaintiffs or defendants should win, as to whether or not defendants were covered by insurance, etc.

It is the recommendation of this committee that each local bar association organize its own committee to work with the County Commissioners and with the other officials responsible for the jury panel with a view to improve the quality of persons placed on the jury list rather than attempt to pass a new law trying to guarantee high quality jurors.

The committee has received the suggestion that a statute be proposed which would require the County Recorder to obtain from each juror whose name is placed on the panel the following information:

1. His residence;
2. Occupation;
3. Married or single;
4. Whether he has had previous jury experience;
5. Whether such person has served in a public office.

The committee makes no recommendation with regard to requiring the above information to be given by the jurors to the County Recorder. It is mentioned here so that if the Bar Association or the various local bar associations feel that it is of importance, further action can later be taken.

Respectfully submitted,

KARL JEPPESEN, Chairman
JESS B. HAWLEY
GEORGE GREENFIELD

MR. RANDALL: Thank you, Karl. Is there any formal action you wish the convention to take?

MR. JEPPESEN: I think it should be left entirely to the local bars. I feel it is a matter entirely for the local bar associations.

PRESIDENT RANDALL: Thank you. Since no formal action is being required, I will just order the report approved and filed.

Resolution XII of the 1955 Proceedings called for a committee on fees of jurors and witnesses. Is Jim Cunningham in the hall? I will then ask the secretary to read it.

MR. ENNIS: The question of the adequacy of fees of jurors would appear, logically, to divide itself into two parts:

(1) To what extent, if any, do the fees paid to jurors tend to affect the caliber of jurors who serve and the worth of the jury's deliberations?

(2) Does equity to the individual who serves on the jury demand an upward adjustment in the amount of fees paid to jurors?

The Committee mailed questionnaires to approximately 400 persons who recently served as District Court jurors throughout the State of Idaho. Approximately half of the questionnaires were returned. In some instances the answers created a basis for logical conclusions, while in other instances, opinion was so evenly divided that no definite opinion could be formed.

168 jurors stated in answer to a true or false type question that the fee paid had no bearing whatever on their willingness to serve as jurors. 19 jurors stated that the fee paid did have a bearing on their willingness to serve. It would seem reasonable to conclude therefrom that citizens are willing to serve as jurors and fulfill their civic duty regardless of the amount paid them for jury service. On the basis of the questionnaire it appears that raising or lowering the juror's fee will not affect the availability of jurors one way or the other, the caliber of jurors or the worth of the deliberations of juries.

As to equity to the juror, 89 jurors felt that the present fee schedule was adequate, while 81 jurors thought the present fee schedule was too low. The amount of monetary loss to jurors seemed to have no bearing on the individuals' opinion of the adequacy of the present fee schedule. Many jurors suffering considerable financial loss because of their service considered the present fee schedule satisfactory, while some jurors suffering no loss considered the present fee schedule inadequate. One per cent of those answering thought the present fee schedule too high.

It is your Committee's opinion that the present fee schedule of six dollars per diem, in the light of our present day economy, is inadequate and that the Legislative Committee should make some effort to have Section 2-601, Idaho Code, amended to provide compensation of $10.00 per day for jurors in District Court and Section 2-602, Idaho Code, amended to provide compensation of $5.00 per day for jurors in inferior Courts.

It is your Committee's opinion that it would be well to take a more realistic view of jurors' travel allowance. Jurors are presently allowed, during each term, a sum equal to 25c times the number of miles between the juror's home and the

Court House. It would appear that under present day conditions, when practically all jurors drive to Court each day, it would be more equitable to allow the juror his actual mileage traveled during the term at the rate of 7c or 10c per mile. Under our present law, the juror who lives any great distance from the Court House receives but a fraction of his actual traveling expenses.

Associated with the question of adequacy of jurors' fees is the question of the adequacy of witness' fees. An answer to this question is more difficult to arrive at than is the matter of jurors' fees, for the reason that there are no ready lists of witnesses available to whom questionnaires can be sent. For that reason resort has been had to the district judges and others for their opinion in the matter.

It is the feeling of the Committee, based upon its study, that the present scale of witnesses' fees is too low and while witnesses still may be required to testify regardless of the amount of the fees, that in all justice some effort should be made to inerease witness fees to ameliorate many cases of actual hardship. Our attention has been invited to situations where women have been required to hire baby sitters to take care of their children while they were witnesses in actions before courts, where the witnesses' fees were insuffieient to pay baby sitters.

Cases were called to the Committee's attention where individuals were forced to hire someone to replace them while they testified in court. The diserepancy in the witness fees paid and the wages of a replacement were completely disproportionate. Several specific cases of hardship of this kind have been pointed out.

It is the recommendation of the Committee that witnesses in actions in cases in the District Court should be paid at the same rate as recommended for jurors, to-wit, a per diem of $10.00 per day plus the actual mileage of the juror at 7c or 10c per mile. The Committee also reeommends that witness fees in inferior courts be increased to $5.00 per day plus actual mileage at the same rate as in the District Court.

Respectfully submitted as of the 14th day of July, 1956.

JAMES A. CUNNINGHAM, Committee Chairman
WILLIAM H. BAKES
BEN SHUEY

MR. ENNIS: I presume the chairman would have moved the adoption of the report, and I so move.

MR. MARCUS J. WARE: I seeond it.

PRESIDENT RANDALL: Is there any discussion? I thing the normal procedure if this is adopted will be to refer it to the Legislative Committee for action, but where definite recommendations are made, it is again neeessary to show in the record we voted by bar associations.

MR. ROBERT E. BROWN: The Committee should know that last year at the International Union of Mine, Mill, and Smelter Workers, in their demand made at the eontract negotiations was one that the employees of the company should be paid their regular wages when they were ealled for jury services. I don't know what action this group will take on it, but we took a position.

PRESIDENT RANDALL: Anything further?

(Vote by bar associations)

PRESIDENT RANDALL: The motion is unanimously carried. The next is Resolution XIV of last year's proceedings, the judges' retirement.

REPORT OF JUDGES' RETIREMENT COMMITTEE

MR. PRESIDENT, AND MEMBERS OF THE IDAHO STATE BAR:

At the 1955 meeting of the Idaho State Bar the following resolutions were passed:

"BE IT RESOLVED That the Idaho State Bar sponsor legislation looking toward the redrafting and improving of the Judges' Retirement Act."

Pursuant to this resolution this Committee was formed for the purpose of studying the present Judges' Retirement Aet in force in this State, and to determine, if possible, what aetion could be taken toward its improvement.

Some of the objections that have been made to the present law are as follows:

1. That the widow of the deceased Judge is not proteeted.
2. That if the Judge chooses not to run, or is defeated, he loses all right in the fund toward a retirement, except after fifteen years.
3. The age limit for retirement is too high.
4. The cost of the program is higher than the contribution.
5. That a Judge who retires because of disability is not adequately provided for.
6. That dependents, other than widows of deceased Judges, are not provided for.

These are some of the major objections to the present Idaho Judges' Retirement Act.

Your Committee received from the Conference of Chief Justices held April 27, 1956, a synopsis of the Judges' retirement laws of the various States. There is a tremendous variance in the provisions of retirement laws.

Minimum age requirements varying from no minimum to eighty years;

The number of years of service likewise varying from no minimum to thirty years of service for maximum annuity benefits;

Benefits varying from one hundred dollars a month to full pay.

The report we have, however, is very sketchy and does not touch upon some of the objections to Idaho's present Retirement Act. Further detailed study and research along this line should be made particularly for benefits for widows and other dependents.

Several States have adopted a Federal Social Security Program for benefits to State employees which was made possible by the 1950 amendment to the Social Security law. The first law, however, permitting State employees to participate in Social Security excluded from participation any employees under a State retirement act. In 1954 Congress amended the law to permit such groups of State employees to beeome covered under the Social Security Act. Generally speaking the law can be put into effect for State employees by the following general procedure: the class of employees must be defined and must qualify under the 1954 amendment; the Governor of the State then takes a referendum

vote by secret ballot of all State employees coming under such classification, after ninety days notice of such ballot. If a majority of the eligible employees vote in favor of the Old Age and Survivors Insurance coverage, then the State is permitted to enter into a contract with the Federal Government for such coverage. This of course necessitates legislative action to permit the State to participate in the Federal Social Security Act, which was done by the Legislature of this State in 1949 and which has been amended by each successive Legislature since that time.

The cost of such participation until 1959 is two per cent for the State of the salary paid and two per cent for the employee, the next five years two and one-half per cent, the next five years three per cent, the next fiv years three and one-half per cent, then commencing 1975 four per cent for the State and four per cent for the employee.

The 1954 amendment to the Social Security Act permits additional benefits from State retirement to be received in addition to Federal Social Security benefits.

Your Committee feels that a more detailed study of the various State Retirement Acts participating in Federal Social Security, and Retirement Acts not participating in Social Security should be made before any specific recommendations for proposed legislative changes to our law are made.

You have heard, or will hear, the report of the Bar Association Judges' Salary Committee and are no doubt appalled, as this Committee was, to learn that Idaho Judges receive less pay than any of the Judges of the forty-eight States and the Territories of Hawaii and Puerto Rico. If the Judicial Branch of our State Government is to maintain a high degree of respect and position your Committee feels that it is of utmost importance tbat these salary inadequacies be remedied and action to accomplish this end is the first responsibility and should be the first objective of the State Bar.

Your Committee, therefore, recommends that a Judicial Retirement Committee be continued and should make periodic reports to the State Bar Commissioners of its progress, and that such Commissioners should furnish to the Committee necessary funds for an actuarial study of the present retirement program and any proposed retirement program if in the opinion of said Committee and Commissioners such a study is necessary.

Respectfully submitted,

Z. REED MILLAR
FRANK DAVISON
Chairman

PRESIDENT RANDALL: Apparently no action is necessary so I am going to rule it is ordered filed.

At this time we arc going to have another drawing. It is a six-volume set of Bancroft's Probate Practicc. We are not going to raffle off the U. S. Supreme Court Digest until the very last thing. Ray McNichols, will you make the drawing, please. No. 151

MR. McNICHOLS: I drew my own number.

PRESIDENT RANDALL: We will let an honest man keep his own number. We will go right on through and get this meeting over with, rather than taking a break. Isaac McDougall of the Junior Bar Section has requested a very few moments for a report.

MR. ISAAC McDOUGALL: Ladies and gentlemen. In the interest of seeing all of you repair to the golf links or go home or whatever you want to do in short order, I will not go into very much detail, only making a general outline as to the situation in the State of Idaho with regard to the Junior Bar Conference of the American Bar Association.

As you probably are all well aware, every person who is a member of the American Bar Association of the age of 36 years or younger automatically becomes a member of the Junior Bar Conference. In the State of Idaho, because of our geographical peculiaries, we have never had a formal state J.B.C. organization. The national organization asked me to take the matter up, and I was informed that several years ago the matter was tried by Sam Kaufman of Boise, and that the results were negative.

I am happy to report that yesterday morning, despite the early hour, and despite the disabilities which some of our brothers were suffering from, we had approximately 12 young men at a breakfast meeting at 8:00 o'clock. It was the unanimous opinion of all persons present that there should be some formal organization on a state level only, to provide a sounding board for the younger members of the Bar, and to help all of the activities of the Senior Bar itself. They asked me at this time to ask for the acceptance of a resolution by the State Bar authorizing the formal organization of the Junior Bar Conference as such, and at this time I would like to place that resolution before you for your disposition.

PRESIDENT RANDALL: Mr. McDougall, would you state your resolution or motion?

MR. McDOUGALL: I think the resolution should perhaps read as follows: "Be it hereby resolved that the State Bar, that the Idaho State Bar, is in favor of the formal organization ot an organization to be known as thc Junior Bar Conference of the State of Idaho, said organization being composed of members 36 years of age or younger, and that the purposes of said organization shall be to aid the younger members of the Bar to express their opinions and views and bring them before the State Bar itself, and to help the State Bar in its various works."

PRESIDENT RANDALL: Is there a second to that?

MR. RALPH JONES: I second that motion.

MR. BROWN: I am very sorry, Mr. Chairman, but I would like to oppose thc motion for this reason only—I takc the position that we in this state have enough difficulty getting our lawyers to our own conventions. Actually, about 50% of the people who attend these conventions are men undcr 36 years of age. They arc required by our law to be members of this organization. They have as vital a part in it as we do. This is not a Seuior Bar. This is a Bar for all the lawyers. I cannot see segregation of this organization. I think it is the part of every young lawyer to take his position here, with us. If we were a metropolitan area, I can see some value in it, but I cannot in this state.

PRESIDENT RANDALL: Thank you, Bob. Is there any other discussion? We will proceed to vote on this matter by Bar Associations.

(Voted by Bar Associations, as follows):

VOICE: Shoshone County Bar Association, 22 votes against the resolution.

VOICE: Clearwater Bar Assoeiation, 64 votes no.

VOICE: Third Distriet Bar Association, being bound by the unit rule, as I count it, we vote in favor, but there appears to be a strong dissent; 175 votes yes.

VOICE: Fourth and Eleventh District Bar Assoeiations vote 86 no.

VOICE: Southeastern Bar Assoeiation, with 90 votes, according to our majority here, votes no, except for some of the younger attorneys.

VOICE: Seventh District Bar Association with 58 votes, votes against it, with a strong dissent.

VOICE: Eighth Distriet Bar, with 51 votes, votes no.

VOICE: Ninth District Bar with 56 votes, votes no, with a strong dissent.

PRESIDENT RANDALL: I believe the motion is lost. I do hope the younger members of the Bar will not consider this vote as a slap in their faees. I tlunk all it is, is that we want them to become a part of our own organization.

PRESIDENT RANDALL: The next order of business is the report of the Resolutions Committee, Dale Clemons, of Boise, Idaho.

MR. CLEMONS: Mr. President, Members of the Idaho Bar. Your resolutions Committee consisting of nine members met yesterday afternoon in session. You understand that this committee was appointed and has had only one meeting. We took under consideration all matters submitted to us, and either acted or refused to act upon them, and we are submitting herewith nine formal resolutions for your consideration.

RESOLUTION I

BE IT RESOLVED THAT The Idaho State Bar Association extend to Governor Robert E. Smylie, Wilfred R. Lorry, John J. McDevitt III, Fred E. Inbau, Dean Edward S. Stimson, and Judge Alexander Holtzoff our most sincere thanks and grateful appreciation for honoring us by their personal appearances at our convention, and delivering to us their inspiring, interesting and instructive addresses.

Mr. President, I move the adoption of Resolution I. (Whereupon the motion was seconded by Randall Wallis, put to a vote, and carried unanimously).

MR. CLEMONS:

RESOLUTION II

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 our convention here.

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

(Whereupon the motion was seconded by Charles Herndon, put to a vote, and carried unanimously).

MR. CLEMONS:

RESOLUTION III

BE IT RESOLVED THAT The Idaho State Bar Association express its most sincere thanks, appreciation, and commendation to Russell S. Randall, President,

Paul B. Ennis, Secretary; Willis E. Sullivan, Vice President, and Gilbert C. St. Clair, Commissioner, and the various committees appointed for the very efficient and excellent way in which they have conducted and managed this convention, with partieular 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 that resolution.

(Whereupon the motion was seconded by Melvin Alsager, was put to a vote, and earried unanimously.)

MR. DALE CLEMONS:

RESOLUTION IV

WHEREAS West Publishing Company, Bender-Moss Company, Bobbs-Merrill Company, Inc., Bancroft Whitney Company, and Carl Kitchen Publications have courteously donated various legal publications for door prizes at the convention;

BE IT RESOLVED THAT The Idaho State Bar extend its thanks and appreciation to these companies for their generous prizes which contributed to the interest of those attending the convention.

Mr. President, I move the adoption of Resolution No. IV.

(Whereupon the motion was seconded by Ray McNichols, was put to a vote, and carried unanimously).

MR. DALE CLEMONS:

RESOLUTION V

WHEREAS The University of Idaho College of Law is an integral part of the administration of justice in the State of Idaho, engaged in teaching, research, service and the improvement of justice;

NOW, THEREFORE, BE IT RESOLVED THAT The Idaho State Bar Association recommends to the Board of Regents and the Idaho State Legislature that adequate financial support be given to the College of Law.

Mr. President, I move the adoption of Resolution No. V.

((Whereupon the motion was seconded by Herb Smith, was put to a vote, and carried unanimously).

MR. DALE CLEMONS:

RESOLUTION VI

BE IT RESOLVED THAT All members of the Idaho State Bar are encouraged to work for the adoption of the constitutional amendments relative to probate and justice courts which amendments were originally proposed to the 1955 Legislature by the Idaho State Bar in accordance with the resolutions adopted at the 1954 annual meeting.

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

(Whereupon the motion was seconded by Melvin Alsager, was put to a vote, and carried unanimously).

MR. DALE CLEMONS:

RESOLUTION VII

WHEREAS The proposed new Rules of Civil Procedure for Idaho published by Bobbs-Merrill Company under the auspices of the Idaho Code Commission and Bar Commission are commended to the members for their careful study;

BE IT RESOLVED That after full opportunity for consideration the Board of Commissioners be instructed to determine the consensus of opinion of members of the Bar with respect thereto by referendum or by such other means best adapted to reflect such opinion aud that the results thereof be reported to the members of the Supreme Court for its action.

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

(Whereupon the motion was seconded by Marcus Ware).

PRESIDENT RANDALL: I might explain that under our rules there can be no referendum to the lawyers unless that has been authorized at the previous annual meeting, and that is the purpose of this resolution. I think this is something that requires a roll call vote. We are going to do it as rapidly as possible.

(Whereupon the motion was put to a vote by the various Bar Associations, called in order, and was passed).

MR. DALE CLEMONS:

RESOLUTION VIII

WHEREAS, The Canons of Professional Ethics impose a positive duty upon attorneys to work actively for the elevation and retention of qualified persons in judicial office, and

WHEREAS, It is the sense of the Idaho State Bar that C. J. Taylor and E. B. Smith have the necessary qualifications to serve as members of the Idaho Supreme Court and are now candidates for that office.

NOW, THEREFORE, BE IT RESOLVED That the Idaho State Bar Association endorse the candidacy of C. J. Taylor and E. B. Smith for Justices of the Idaho Supreme Court and urge the individual members of the Bar to work for their election.

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

(Whereupon the motion was seconded by T. M. Robertson).

MR. McDOUGALL: Regardless of my personal feelings in the matter, which are quite strong, I feel that it is very improper for this group to go on record in effect against one political candidate, and I would like to make my views . . .

PRESIDENT RANDALL: I wonder if you misspoke yourself when you said "political candidate?"

MR. McDOUGALL: I meant that there are two gentlemen running for an office, and in endorsing one and failing to endorse the other I think that you are entering an arena that is entirely improper.

MR. T. M. ROBERTSON: I think that the resolution as submitted involved quite a bit of soul searching on the part of the Resolutions Committee. I think that the Committee members and I think every member here is extremely jealous of our organization as a non-political and objective organization. On the other hand, I don't think we can back away from the duties that are imposed on us by

our canons of professional ethics. I think that if anyone felt that there was any possible belief on the part of any member of our organization attending this meeting that all of the candidates for the Supreme Court in this present election were qualified, I don't think anyone would be urging this resolution. I don't think that this action is a precedent. I think in another year that the same thing would be approached in exactly the same manner, that if all the candidates were qualified, we would back away from the question completely, but I think we are presented with a clearcut situation here where the third candidate for the Supreme Court is not a practicing attorney, and it is our duty to the public to do what we can not only as individuals but as an organization, to adopt this resolution.

MR. McNICHOLS: I think in the specific situation most all of us are in agreement. However, I should like to point out to you that this is a matter of an election, not by the lawyers of the State of Idaho, but by the electorate. Already a certain candidate has taken the position that certain entrenched attorneys around the state will oppose him. I think if this goes on public record and is so done, it will be used for the purpose of defeating the incumbent candidate and may be entirely a dangerous situation.

PRESIDENT RANDALL: May I go off the record for just a second.

(Discussion off the record).

PRESIDENT RANDALL: The Chair is going to rule that this is a matter of policy that will have to be voted by roll call vote. Shoshone County Bar Association with 22 votes.

VOICE: Shoshone County Bar Association, although we feel that is an individual matter rather than an organizational matter, are not opposed to this particular resolution, and we therefore cast our votes in favor of the resolution.

VOICE: The Clearwater Bar Association (with 64 votes) feels its sentiments are pretty well expressed by Mr. McNichols; however, under the peculiar circumstances, we cast our 64 votes for the motion.

VOICE: Without regard to the unit rule the Third District votes 170 votes for the resolution, and also if I may, the Third District plans independent action to follow that up.

VOICE: Fourth and Eleventh District Bar Association 86 votes in favor.

VOICE: Southeastern Bar Association, we would like to have a few minutes to talk about it.

VOICE: Seventh District is talking about it.

VOICE: Eighth District Bar votes in favor of the resolution.

VOICE: Ninth District Bar votes in favor of the resolution.

VOICE: In the Southeastern Bar Association, the opposition is strong against this resolution. While there have been a number of the members vote in favor of it, the majority votes against, so we will have to cast our ballots against the resolution.

VOICE: The Seventh District is split 50-50, and we will abstain from voting on the question.

VOICE: The Southeastern Bar would like to change their vote and have the record show that we abstain from casting any ballots for or against the resolution.

PRESIDENT RANDALL: Very well. The motion is declared carried.

MR. BROWN: I hope and trust that in view of the foregoing action of this Bar, that it does not become a principle of this organization to follow this practice in the future. I appreciate the circumstances as such this year that this may be good action. However, in view of the fact that the resolution has been adopted by this group, it becomes imperative on the members of this organization to realize that at the primary election in August this will be determined, and we must be conscious of the fact that we must do our work now, not prior to November.

PRESIDENT RANDALL: Thank you, Bob. I think it is very important that the lawyers remember that the final action on this election is going to be in the primary.

M. JOHN CARVER: The matte has now been submitted and acted upon, as a non-politicy matter. I think that this group can be on record that the individual lawyers here feel the responsibility which has been so capably outlined in the resolution by Mr. Robertson, and will, in furtherance of their professional duties undertake a positive program of advising the lay public of the nature of the judieial function, the importance to the laity of having qualified judges, the stake they have in this, and that they do that by writing, not to other lawyers, but to their clients, where they have that personal relationship, and take that positive step.

PRESIDENT RANDALL: Are you making that in the form of a motion, John?

MR. CARVER: I am.

PRESIDENT RANDALL: Is there a second to that motion?

MR. CARVER: That it is the sense of this convention that the lawyers act in accordance with their conscience in this matter.

M. SAM KAUFMAN: I second the motion.

MR. RALPH BRESHEARS: The resolution itself urges the individual lawyers to work for the election of these men that we have endorsed.

MR. CARVER: All I meant was that since there were two associations that abstained that you now put it to a vote of those here and go ahead and let the lawyers act that way.

PRESIDENT RANDALL: Are you ready for the question? All those in favor signify by saying "aye." Opposed the same? The motion is carried.

MR. DALE CLEMONS:

RESOLUTION IX

RESOLVED, That the commissioners of the Idaho State Bar appoint a committee of three to draft legislation or rules, as the case may be, to accomplish the following:

1. Providing that the time for taking an appeal from the District Court to the Supreme Court from a judgment and the orders described in Section 13-201 Idaho Code be thirty (30) days.

2. Adding to said Section 13-201 I.C. the right to appeal from an order granting or refusing a motion for judgment notwithstanding the verdict.

3. Providing for an automatic stay of execution of ten (10) days from entry of judgment as provided in Federal Rule No. 62.

4. Providing that time for taking an appeal be tolled until an order has been entered in the following cases where a motion therefor has been made within ten (10) days from entry of judgment:

(a) A motion to set aside the verdict preceded by a motion for a directed verdict;

(b) A motion is made requesting an amendment to findings of fact or additional findings;

(c) Motion is made to alter or amend judgment;

(d) A motion for new trial is made.

BE IT FURTHER RESOLVED That the Legislative Committee be instructed to use its best efforts to cause legislation to be enacted to accomplish such of the above objects as can be accomplished by legislation, and the Bar Commission submit rules or amended rules to the Supreme Court for the remainder (Trials to the Court, Chapter 3, Title 10 I.C., and New Trials, Chapter 6 Title 10 I.C.).

(Whereupon, Marcus J. Ware seconded the motion).

MR. SAM KAUFMAN: I merely wonder what the effect of this motion has on a previous resolution or motion which was adopted in which reference was made to a 60-day period on an appeal.

PRESIDENT RANDALL: What motion was that, Sam?

MR. KAUFMAN: I forget now. A portion of a motion was 60 days on appeal. Now this was a 30-day, and we have already approved the 60 days. Now, what are you doing here with 30?

MR. CLEMONS: I could only say we are submitting a resolution that was proposed in the committee last evening. We had no knowledge at that time of the proposed matter that Mr. Furchner brought up. I think there is undoubtedly a direct conflict on that one point. The other resolution provided for a 60-day appeal on all judgments and orders, and this is a 30-day appeal from judgments and orders. I believe this was worked out by Mr. Worthwine, very carefully, in the past several months, to supplement the new proposed code that is being adopted, which does not cover the appellant procedure, as I understand it. This should be reconciled, someway, with the other resolution.

MR. KAUFMAN: Let the Legislative Committee reconcile it.

MR. ROBERTSON: I suggest that if there is a possible conflict that maybe we can pass over it and let the Legislative Committee resolve any ambiguities that may appear. Bill's Committee was to recommend changes in publication requirements, which doesn't necessarily involve the length of time to take an appeal.

PRESIDENT RANDALL: Frankly, I didn't catch that part of Bill's report, but his report was referred to the Legislative Committee, and I think the suggestion that the Legislative Committee can resolve any conflicts is very well taken. This resolution is again a roll call vote.

(Whereupon, the motion was put to a vote by the various Bar Associations, called in order. All voted in favor but the Seventh District, which voted no).

PRESIDENT RANDALL: The motion is carried.

MR. CLEMONS: Mr. President, that concludes the resolutions to be submitted by the Resolutions Committee, and we wish to thank those who submitted resolutions to us for our assistance and deliberation in the committee meeting yesterday. (Applause)

PRESIDENT RANDALL: Any resolutions to be offered from the floor?

MR. BILL GALLOWAY (Boise): In connection with our work on the minimum fee schedule, you will recall from our report a year ago we had worked out a schedule which has been submitted around the state, and we recommended at that time its adoption as an advisory fee schedule on a statewide basis. Last year we ran short of time exactly as we are now. We decided not to bring this matter to the floor because of that. This year we are in a different situation, because during the year we have taken this schedule up with the various associations over the state. Were it not for that fact, I would not put the matter on the floor at this time, but I think that it can be disposed of in less time that it would take to make a formal report, which you will notice the committee did not occupy itself with at this session.

So, at this time, I would like to put a resolution that the convention adopt the proposed minimum fee schedule submitted a year ago to the convention in connection with our report, on advisory basis, with the provision that any local association may amend it to suit its own desires.

Now, I think that is the wording of the resolution as I want it. I would like another word or two.

PRESIDENT RANDALL: Is there a second to the motion?

MR. MARCUS J. WARE (Lewiston): I second the motion.

MR. GALLOWAY: I would like simply to say that we have had much discussion over the state of this particular schedule. There have been people opposed to schedules individually, individuals who are opposed to schedules, as such, I should say. However, as a general reaction, we understand that some sort of schedule is desired by the various associations in the state. There have been criticisms of this schedule by the associations with respect to specific items. We would not ask that it be adopted on an advisory basis if basically it had not been approved. Now, Idaho seems to be following the general trend that we observed in our study of a year ago, and which has been brought to our attention during the last year, by the adoption of schedules throughout the United States. The reason is that studies of statistics with respect to lawyers' income as compared to other vocational groups show that we need to do a lot of work to improve our position, especially considering the increase in the other vocations since the war. That, briefly, is the result of our work, and the reasons why we propose that the schedule be adopted on an advisory basis. Thank you very much.

PRESIDENT RANDALL: Any further discussion on the matter? As I understand it now, you are voting to approve a fee schedule that was submitted last year, on an advisory basis, with the right of the local bars to change that fee schedule in any way they see fit, to fit local conditions. Is that a fair statement?

MR. GALLOWAY: That is correct.

PRESIDENT RANDALL: This is a matter of policy and it will have to be voted by roll call.

(Whereupon, the motion was put to a vote by the various Bar associations, called in order, and unanimously carried. NOTE: The schedule as adopted is reprinted in the Appendix).

PRESIDENT RANDALL: We will now have the drawing for the U.S. Supreme Court Digest. No. 68. No. 50, Justice C. J. Taylor. No. 5, Sam Kaufman. We have one more, McCormick on Evidence. No. 74, George M. Bell, the evidence teacher! No. 123. No. 95, Dean Stimson. No. 128, Carey Nixon. He won one yesterday. No. 66, Charlie Herndon.

Any further business to come before the convention? If not, it becomes my duty to turn the chair over to your next president, and I do so with a deep feeling of appreciation for having had the opportunity to serve you as president. It is a pleasure to turn it over to Willis E. Sullivan, whom I have worked with for many years, and I know he is going to do an outstanding job for you in the ensuing year. Bill Sullivan. (Applause)

PRESIDENT SULLIVAN: Members of the Idaho Bar. I am extremely proud to have the opportunity to serve as president of this Association. That feeling is thoroughly mixed with humility and I think in appreciation of the problems that are entailed.

It has been a very real and sincere pleasure to have had the privilege of serving on this Commission with Russell Randall. He has been wonderful and outstanding as president. Never since the Idaho Bar was integrated has this Association had the leadership such as under Russell Randall, nor undertaken so much activity nor accomplished so much.

There are a large number of items that I would like to discuss with you at great length; however, I think that my popularity would be enhanced by dispensing with them *in toto*. (Applause)

I will merely say, thank you for this opportunity, and I assure you that the Commission will do its utmost to carry out your program as instructed by you.

Is there any further business to come before this session? If not, the annual convention of the Idaho Bar will stand adjourned.

(Adjourned at 12:30 p.m.)

APPENDIX

IDAHO STATE BAR
Advisory Minimum Fee Schedule

1. UNITED STATES CIRCUIT COURT OF APPEALS
   - a. Appearance and brief ---- $350
   - b. Oral argument ---- 250

2. UNITED STATES DISTRICT COURT
   - a. Appearance and pleading ---- 100
   - b. Per diem, pretrial and trial ---- 100

3. STATE SUPREME COURT
   - a. Appellant; perfecting appeal, abstract and briefs ---- 250
   - b. Respondent; appearance and brief ---- 200
   - c. Oral argument, either side ---- 100
   - d. Petition for rehearing ---- 100
   - e. Original proceeding in Supreme Court (either side) ---- 200

4. DISTRICT COURT
   - a. Original appearance, civil or criminal ---- 75
   - b. Preparation of case and pleadings ---- 100
   - c. Trial per day ---- 100
   - d. Civil appeal from Probate or Justice Court ---- 50
   - e. Criminal Appeal: Probate, Justice or Police Court ---- 75
   - f. Dissolution of corporation or partnership ---- 125
   - g. Divorce and Separate Maintenance:
     - (1) Plaintiff: Default, without alimony, support or division of estate - 125
       Default, with alimony, support, or division of estate ---- 150
       Default, with alimony, support, or division of estate with one appearance on preliminary motion ---- 175
     - (2) Defendant: negotiating settlement, no contest ---- 100
     - (3) Contested cases, either side (plus per diem) ---- 150
       Case shall be deemed contested whenever an appearance is filed by opposing counsel.
     - (4) Abandoned cases: after drawing complaint and before negotiations for settlement ---- 75
     - (5) Modifications of decrees and contempt proceedings ---- 50
   - h. Foreclosure of real estate or chattel mortgage, mechanic's lien, conditional sales contract or bond issue--minimum ---- 150

	Bracket	Percentage	Total Fee
First	$ 1,500	10%	$ 150
Next	3,500	7%	395
Next	5,000	5%	645
Next	15,000	4%	1,245
Next	25,000	2%	1,745
Next	25,000	1%	1,995
Next	25,000	½%	2,120
Over	100,000	¼%	

5. JUSTICE AND PROBATE COURTS
   - a. Appearance in civil, criminal or insanity matter ---- $ 25
   - b. Preliminary hearing. Misdemeanor ---- 50
     Felony ---- 75
   - c. Trial of misdemeanor or civil case:
     With jury ---- 50
     Without jury ---- 25

6. PROBATE COURT
   - a. Adoption proceeding ---- 75
   - b. Guardianship:
     Person only ---- 50
     Person and estate ---- 75
     Accounting, Annual ---- 35
   - c. Proceeding for approving compromise of settlement of claim of minor 50
   - d. Probate of Estate (To be based on all the separate property, all the community property up to $10,000 and one-half the remaining community property)
     - (1) First $1,000 ---- 7%
     - (2) Next $4,000 ---- 5%
     - (3) Next $5,000 ---- 4%
     - (4) Over $10,000 ---- 3%
     - (5) Contesting probate of will (plus per diem) ---- 150
     - (6) Drawing and presenting exceptions or objections to report of executor or administrator ---- 100

   Note: Additional charges shall be made for extraordinary services or when estate must be probated over an extended period of time.

7. EXECUTIVE OR LEGISLATIVE BODIES
   - a. Federal or Stato (plus per diem) ---- 100
   - b. County or City (plus per diem) ---- 50

8. ATTORNEY FOR RECEIVER OR TRUSTEE
   Minimum ---- 100

	Bracket	Percentage	Total Fee
First	$ 5,000	5%	$ 250
Next	10,000	3%	550
Next	25,000	2%	1,050
Over	40,000	1%	

Note: Additional allowance shall be made for litigation and other extraordinary services.

9. CONTINGENT FEES (includes damage cases and collections)
   - a. Settled without action ---- 25%
   - b. After action, before trial ---- 30%
   - c. During or after trial ---- 35%
   - d. Upon appeal ---- 40%

10. OFFICE BUSINESS

a. Abstracts: First 50 pages	$ 15
For each additional 25 pages or fraction thereof	5
b. Affidavit	5
c. Corporations:	
Organization to do business	200
Dissolution (not including tax problems)	125
Amendment of articles	75
Merger	200
Annual meetings and minutes	50
d. Depositions, not part of case pending in attorney's own office	35
e. Lease:	
Residence property	15
Business property—½ of first month's rent, minimum	25
f. Liens, preparation and filing	7.50
g. Mortgage and Note:	
Arranging transaction	1%
Minimum	25
Assignment of mortgage	5
Release of mortgage	3
h. Oral advice	3
i. Partnership:	
Formation	50
Dissolution	35
j. Sales:	
Contract of sales—of amount involved	½%
Minimum	25
Minimum—If escrow and deed	35
Note: Extra charges shall be made for extra work performed in connection with arranging or closing the sale and for preparing instruments such as deeds, bills of sale, or bulk sales affidavits, a minimum charge of $5.00 each should be made.	
k. Will	15
l. Written opinion	10

In addition to the foregoing schedule of minimum charges there shall be added costs which shall be paid in advance and any other special direct expenditures made in connection with handling the matter.

The foregoing schedule is intended to fix a minimum below which the simplest kind of case cannot be handled in justice to the lawyer or members of the Bar generally. It should be used as a guide in fixing a reasonable fee for services in connection with any matter whether specifically covered in the schedule, or not.

With respect to a basic time charge the Committee simply passes on the following suggestions contained in the Seattle and Oregon minimum fee schedules. The Seattle schedule suggests an hourly charge of not less than $12.50 per hour. The State of Oregon minimum fee schedule urges lawyers to compute their monthly overhead, add that to the reasonable income which they should receive for their services and divide this amount by the 100 hours they can figure on charging for during a month—this should give the hourly charge. Reports from several offices indicate that the overhead per lawyer runs approximately $3.00 to $5.50 per hour.

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