

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session ²⁻²¹¹
March 31, 1969

Meeting was called to order at 10:30 A.M. by Chairman Torvinen.

PRESENT: Torvinen, Schouweiler, Kean, Swackhamer, Fry, Prince, Reid, Bryan.

ABSENT: Lowman.

AB 449: Provides right of contribution for joint tortfeasors.

MR. REID: I move Do Pass AB 449.

MR. BRYAN: I second the motion.

MOTION CARRIED, RECEIVING SIX AYES. Mr. Fry Voted No.

SJR 23: Proposes to amend judicial article of Nevada constitution.

MR. DAYKIN: This is the revised proposal for the Judicial Article as it came out of the Court Study.

MR. KEAN: Whose brain child is this?

MR. TORVINEN: It came out of a joint evening meeting with the Senate Judiciary Committee.

MR. REID: In two hours we undid what it took two years to do.

MR. DAYKIN: I will explain how this differs from the original. The first and most important difference is that this would provide for a three-level court system. At the top would be the Supreme Court, the next is the District Court and the third level would be a County Court and would correspond, but only roughly, to our present Justice Courts. The limit of this last Court would not be prescribed by the Constitution but by the Legislature. The Legislature would be able to fix the money limit on civil actions and the punishment in criminal cases.

The County Court would be a Court of Record and an appeal from it would be from it to the District Court. There would be this one appeal only. A District Court could uphold the decision or it would order a re-hearing in full. There is nothing here to prevent that.

Small Claims jurisdictions would not have fixed limits as it does now because the Legislature could provide for claims tried here and set the limits.

MR. KEAN: No Municipal Court any more?

MR. DAYKIN: No. No need for it. A person violating a county or state ordinance should be tried in a different court than one who violates a City ordinance.

A County Court could have more than one judge if more than one was needed.

MR. SWACKHAMER: The lowest court will be a Court of Record in order to eliminate trial de novo?

MR. DAYKIN: Yes. There will not be a court without record.

MR. TORVINEN: Appeals may be decided on the record or the judge in

his discretion may say this record is not sufficient and allow another trial. Equipment may be electronic recording equipment.

Mr. Swackhamer; There are several small courts in my district in which they do not have the money to stand too much of this type of pressure.

MR. KEAN: We killed electronic equipment.

MR. DAYKIN: This new Court bill will not take effect until 1973 and by that time we should have some of it in use, if the constitutional amendment is enacted.

MR. KEAN: Do the lower courts have to have a lawyer?

MR. DAYKIN: The Legislature can take care of that. It isn't fixed in the Constitution.

MR. SWACKHAMER: We have only five attorneys in my whole district. Three are district attorneys, one is a judge, and one is just practicing law.

MR. TORVINEN: Does it provide in here for appointments of magistrates?

MR. DAYKIN: Yes, in one or more County Courts.

MR. TORVINEN: We would need only one court in the small counties. Each county would have to get one set of recording equipment.

MR. DAYKIN: The County Court is the most important change. The next most important provides for election of the District Judges. If a vacancy occurs, the nominating committee would still nominate. However, when a term expires, the District Judge doesn't just run against his record. Any other qualified person can file against him. The election of these judges has been restored.

MR. BRYAN: Notice the way the provision works if the Court consists of more than five judges.

MR. DAYKIN: We wanted to restore the right to create panels only if the court went beyond five judges.

MR. REID: They want the five to sit together.

MR. DAYKIN: That is included in the preamble to the bill that made it five judges.

The place for holding court is no longer confined to the seat of government.

MR. BRYAN: The governor makes an appointment when a vacancy occurs. Is that an ambiguity? What if the judge doesn't desire to succeed himself

MR. DAYKIN: The election would then take care of that situation. Over the last forty years between 80% and 90% of the judges have gone on the bench to fill a vacancy. It would mostly be a merit relation process. We have prohibited the Chief Justice from succeeding himself. He is elected by his fellow justices for a term of three years.

MR. SWACKHAMER: What was the rationale for having the court sit any place outside the seat of government?

MR. DAYKIN: It is not as they choose but as the Legislature chooses. If a panel of the court or the full court could be authorized to sit down in Clark County for six weeks or two months of the term, they could hear those cases and it would help. However, they cannot do that on their own. They must be authorized by the Legislature.

We enlarged the premanent nominating commission from five to seven members: three members from the State Bar, three members not lawyers appointed by the Governor, and one Supreme Court Judge.

For the Nominating Committee, we have provided further, that the State Bar and the Governor shall not nominate more than one resident from any county. Neither the State Bar nor the Governor could appoint more than one person from one county. This would make it so not more than two could possibly be from one county. And there can never be more than two of one party appointed by either the Bar or the Governor.

With respect to judicial discipline, we have provided that retirement rule or censure may be made by the Disciplinary Committee with the right of appeal to the Supreme Court.

Related to that, we have provided that the Supreme Court shall spell out by rule the conditions of censure.

MR. REID: I don't think we should make one mandatory retirement age of 70. Some of our very best judges have been over 70 years of age. For example, Jeff Marshall, who is now 69 or 70. He is one of our best and is as alert as could be.

MR. FRY: The entire California Supreme Court is over 70. They have some of the finest minds in the country.

MR. REID: We know that the average age of a judge who takes office is 50. Generally speaking, they have made enough money so they can afford to be a judge. On the District Court level, they have to shoot from the hip. They have a very limited use of law clerks.

I would rather have someone older on the bench. If one of them becomes old and infirm then someone can ask that he be removed. I would like to take out this retirement at age 70 entirely. Justice Hugo Black is 83 and is still the owner of one of the finest legal minds we have.

MR. BRYAN: I think Harry has a good point there.

MR. TORVINEN: For every judge that has worked well between 70 and 80 there are two that have not.

MR. REID: We have had one of the younger judges of our courts that has slept through cases. We have a good screening committee. Let them consider age along with these other things.

MR. TORVINEN: Semi-retirement: the practice should be to call in an alternate retired judge rather than a District Judge.

MR. DAYKIN: The Supreme Court would have the power, under this article, to call back a retired judge to sit on the Supreme Court or the District Court.

MR. REID: Sometimes we go too far in our laws. I don't think ²⁻²⁴⁴ this 70 years mandatory retirement is necessary.

MR. DAYKIN: This was inserted by the Study Committee at its very last meeting. Someone brought it up. I don't think they feel too strongly about it.

MR. SCHOUWEILER: The Committee met with the two citizens groups in Reno and Las Vegas and they wanted this retirement age of 70 quite definitely. We have to sell this thing to the public. I personally don't like it, but if it needs something like this to sell it to the public, I would be willing to compromise. As a whole, these groups are quite adamant in wanting this requirement.

MR. DAYKIN: It was also true that this desire was less strong in Las Vegas. This did not come from the Study Committee.

There are three approaches to this thing: 1. Total silence on it; 2. Empower the Legislature to set the retirement age; or 3. You could establish a Constitutional retirement age.

MR. BRYAN: Could we set this by leaving it up to the Legislature?

MR. SCHOUWEILER: No, this would not settle the matter.

MR. SWACKHAMER: We could add some language to the bottom of page 7 to set out that when a person because of senility could no longer perform his duties, that can be added to the reasons for removal.

MR. REID: Our Judge Bancroft is only 54 and is just learning to be a judge. He takes very good care of himself and I feel that by the time he is 70 he will still be a good judge.

MR. SCHOUWEILER: We would lose many fine judges if we set retirement at age 70.

MR. BRYAN: I would hate to compromise the whole damn reform by this one thing.

MR. REID: I don't think we would.

MR. SCHOUWEILER: I think Mr. Swackhamer's suggestion is well taken

MR. DAYKIN: I think maybe we have covered the point with "mental or physical disability." We could add "by reason of age or mental or physical disability which prevents"

MR. FRY: I think you will have to take it all the way down from section 2

MR. KEAN: I move that we take out the mandatory retirement age of 70.

MR. REID: I second the motion.

MOTION CARRIED UNANIMOUSLY.

MR. SWACKHAMER: Lines 12 to 18?

MR. DAYKIN: On the Disciplinary Commission we have removed the Chief Justice of the Supreme Court and have increased the number of persons not lawyers to three.

Two Justices or judges appointed by the Supreme Court, two lawyers appointed by the Board of Governors of the State Bar, and three members who are not of the legal profession, to be appointed by the Governor.

MR. TORVINEN: I still don't see how members of the Supreme Court can sit on the Committee and then sit again on what they do.

MR. BRYAN: I don't either. I would think they should not be on the Disciplinary Committee.

MR. DAYKIN: This is provided for. No Supreme Court Judge can sit on removal proceedings for any Supreme Court Justice.

MR. TORVINEN: I made two points: One is taken care of; the other is that the Commission has no power of its own. It can only recommend to the Supreme Court.

MR. DAYKIN: Justice X sits on the Disciplinary Committee. The man removed appeals to the Supreme Court and here sits Justice X again. I see what you mean.

MR. BRYAN: Either delete Justices from the Disciplinary Committee or provide that in appeal the Justice who served on that Committee shall disqualify himself.

MR. TORVINEN: That sounds like a reasonable compromise.

MR. FRY: Page 8, paragraph 7, line 12:

MR. BRYAN: I move that page 8, line 12 provision be expanded to provide that when there is an appeal taken from the Disciplinary Decision of the Commission, any judge who sat on that Commission shall disqualify himself.

MR. REID: I second the motion.

MR. DAYKIN: In other words, he cannot review his own acts.

MR. FRY: You are leaving them on the Commission and taking them off the appeal if there is one?

MR. DAYKIN: Yes. The appeal is not automatic, but if there is one, then yes.

MR. BRYAN: Also, there may not be a Supreme Court Justice serving on the Commission.

MR. SWACKHAMER: Why do we have to have them sitting on it in the first place?

MR. REID: You have to have someone that knows what these people are supposed to do. We need laymen, lawyers and a judge. It started out where there were less laymen than we had decided to put on this board.

MR. SCHOUWEILER: Three, and one of them is the chairman.

MR. DAYKIN? It isn't a pure question of facts like a jury trial. In this provision the issue is going to be whether Roy's watch was made right, not whether someone did or did not steal it.

MR. SWACKHAMER: That makes sense.

MOTION TO ADD THE AMENDMENT CARRIED UNANIMOUSLY.

MR. KEAN: When you have a seven-member Board, can the Chairman break the tie?

MR. DAYKIN: Yes. On these Commissions, everybody votes.

MR. TORVINEN: He should also direct it so that he votes last.

MR. DAYKIN: We have also provided for the Disciplinary Commission the same limits as for the Appointing Committee. Neither may appoint more than one resident from any one county and the Governor may not appoint more than two members of one political party.

Then the Supreme Court is required to make appropriate rules for confidentiality of all the proceedings and hearings.

I might say that throughout this we have taken out the alternative power of the Supreme Court to provide by rule where we have given the Legislature the power to provide by law.

We have provided that the Supreme Court, rather than the Chief Justice, will appoint the administrator.

MR. REID: We elect the District Court Judges and appoint the Supreme Court Justices.

MR. TORVINEN: And we provide by law for the County Court Judges.

MR. BRYAN: Page 7, line 7, paragraph (b) of subsection 4.

MR. TORVINEN: Do we need constitutional authority to set jurisdiction on these magistrates?

MR. DAYKIN: No. By being silent, you said it.

MR. REID: I move Do Pass SJR 23 as amended.

MR. KEAN: I second the motion. I think it is a hell of a good job.

MR. DAYKIN: They are fighting about this Court Administrator in the Senate. The Judges wanted to be able to get going on this right now and this piqued the Senate committee.

MOTION TO DO PASS SJR 23 CARRIED UNANIMOUSLY.

MR. TORVINEN: Mr. Daykin, have you read through the material Judge Collins gave you on electronic equipment?

MR. DAYKIN: Yes, I have read it.

MR. TORVINEN: Shall we make a note on this for the Legislative Counsel Study on this to be ready for the 1971 Legislature?

MR. DAYKIN: May I respectfully suggest it would be more appropriate to study it and report to the 71 Legislature, rather than the 73, because if they give this Resolution its second go round, they should provide for the County Courts at that time and this would be part of it.

If they reject this, we will still be faced with the question of what to do about the appeals from the Municipal Courts to the District Courts. They might be able to provide for the use of this in the lower courts in a way that will alleviate the problem.

MR. REID: I think in addition to this thing about reporting, we would need to go into many things between 1971 and 1973 and I think we could do this better and with more experience if this goes into effect. By next time there is nothing we can do, other than to develop something at the Justice level. To do anything on a large scale will have to wait until 1973.

MR. DAYKIN: If this is approved in 1971 and submitted in 72, it will become effective on the first Monday in 1973 and this County Court will spring into existence before the Legislature meets, so I think the 1971 Legislature should be the one which drafts the statutes concerning the County Courts.

MR. REID: I will buy that.

MR. KEAN: I move a Resolution to have this Study by the 1971 Legislature

MR. PRINCE: I am wondering if this should be proposed to the people in two questions.

MR. DAYKIN: It is almost impossible to break it down because so much of the working on the improved Court System depends on the methods of selecting the judges.

MR. SWACKHAMER: I have been dead set against appointing judges for years, but have become convinced that running on a state-wide basis is too much for these judges to do on their own, and it is bad policy for them to go out and solicit funds.

If this is presented in a halfway decent way to the people, I believe they will buy it.

MR. BRYAN: The appointive system will enable us to get better people.

MR. SCHOUWEILER: But will we be able to get this?

MR. REID: I have seen three newspaper editorials against this.

MR. TORVINEN: I saw five last summer from the same newspapers.

MR. SWACKHAMER: I would rather go with the right thing and take a chance.

MR. REID: I would like to enlarge Mr. Kean's motion. They should go into many more things than recording equipment.

I would like to make a new motion, an ACR, that the Legislative Counsel Study draft an Assembly Concurrent Resolution for Study of a County Court Statute, including electronic equipment.

MR. SWACKHAMER: I second the motion.
MOTION CARRIED UNANIMOUSLY.

AB 753: Prescribes procedure for eviction of tenant for nonpayment of rent.

MR. REID: This gives a guy five days free rent before you can get him out.

MR. SWACKHAMER: I move we Indefinitely Postpone AB 753.

MR. PRINCE: I second the motion.

MOTION CARRIED WITH MR. REID VOTING NO.

SB 299: Provides that news media need not disclose source of information

MR. REID: This bill has merit.

MR. TORVINEN: It needs to be amended. How about "no reporter or editorial employee employed by any newspaper, periodical, etc.?"

This kind of legislation encourages sloppy reporting. Just say an undisclosed source. If you are a public figure you don't have a cause of action anyway.

VICKI NASH: The trend today is to train reporters to have positive statements based on fact and then there will be no grounds for trouble. Our newspapers and wire services have fits if you quote "undisclosed sources."

MR. REID: I move to Do Pass SB 299 with the amendment suggested by Mr. Torvinen.

MR. BRYAN: I second the motion.
MOTION CARRIED UNANIMOUSLY.

MR. REID said he would take care of getting the amendment.

AB 349: Provides certain exemptions from execution.

MR. REID: They finally did the amendments on this execution and it is good. Let's get this out.

MR. TORVINEN: Let's have a discussion on them first.

MR. BRYAN: These are exemptions and executions. Let's go through them one by one.

Page 1, section 1, line 4 : Insert open bracket after "(a)".

Page 1, section 1, line 5: Insert after "debtors" a close bracket and: "Private libraries not to exceed \$500 in value, and all family pictures and keepsakes."

Page 1, section 1, line 6: Insert open bracket after "(6)".

Page 1, section 1, line 14: Insert after "rifle" a close bracket and "Household goods, appliances, furniture, home and yard equipment not to exceed \$1,000 in value belong to the judgment debtor to be selected by him."

Page 1, section 1, line 15: Insert open bracket after "(c)".

Page 1, section 1, line 23: Insert after "business" a close bracket and: "Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$1500 in value."

Page 1, section 1, line 24: Insert open bracket after "(d)".

Page 2, section 1, line 13: Insert after "business" a close bracket and: "Professional libraries, office equipment and supplies not to exceed \$15 in value and the tools, instruments and materials used to carry on the trade of the judgment debtor for the support of himself and his family, not to exceed \$1500 in value."

Page 2, section 1, line 14: Insert open bracket after "(e)".

Page 2, section 1, line 23: Insert after "\$1,000" a close bracket and: "The cabin or dwelling of a miner or prospector, not to exceed \$500 in value; also, his cars, implements and appliances necessary for carrying on any mining operations, not to exceed \$500 in value; also, his mining claim actually worked by him, not exceeding \$1,000 in value."

Page 2, section 1, delete 24 and insert: "(f)" [Animals and motor vehicles as means of travel. Two horses, 2"].

Page 2, section 1, line 32: Delete "motor".

Page 2, section 1, line 32: Insert brackets around "poultry."

Page 2, section 1, delete lines 35 and 36 and insert: "(h) [Earnings of judgment debtor. The earnings of the judgment debtor for his personal services rendered at".

Page 2, section 1, line 38: Delete open bracket.

Page 2, section 1: Delete lines 45-49 and lines 2-3 page 3 and insert: "garnishment or attachment to safety debts so incurred.] For any pay period, 25 percent of the disposable earnings of a judgment debtor during such period, or the amount by which his disposable earnings for such period exceed thirty times the minimum hourly wage prescribed by section 6 (a) (1) of the Federal Fair Labor Standards Act of 1938 and in effect at the time the earnings are payable, whichever is less. The exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or Federal tax."

Page 3, section 1, line 3: Insert brackets around "Fire companies."

Page 3, section 1, line 7: Insert brackets around "Arms, uniforms and accouterments."

Page 3, section 1, line 10: Insert brackets around "Public property."

Page 3, section 1, line 20: Insert open bracket before "Building."

Page 3, section 1, line 32: Insert close bracket after "(n)".

Page 3, section 1, line 38: Delete "(o)" and insert "[(o)] (m)".

Page 3, section 1, line 39: Delete "(p)" and insert "[(p)] (n)".

The title on the 1st line by deleting "provides for certain exemptions" and inserting "Revising provisions relating to certain exemptions from execution."

MR. TORVINEN: In subsection 2 we took out the word "necessary" and I believe it should be left in there.

MR. REID: I agree.

MR. BRYAN: This is Regulation Z, the exact language of the Federal Statute.

MR. TORVINEN: Read from AB 711 to resolve the definition and understanding of "disposable earnings."

MR. BRYAN: This Federal Statute will be the law in 1971.

MR. REID: I move Do Pass AB 349 as amended.

MR. BRYAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

Meeting was adjourned at 12:10 P.M.