ASSEMBLY AND SENATE COMMITTEES ON JUDICIARY
Minutes of Joint Hearing
February 13, 1969



The meeting was called to order by Chairman Senator Monroe at 2:45 p. m. in the Heroes Memorial Building.

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| SENATE COMMITTEE MEMBERS PRESENT: | Chairman Monroe<br>Senator Swobe<br>Senator Hug<br>Senator Young<br>Senator Dodge<br>Senator Christensen<br>Senator Bunker |
| ASSEMBLY COMMITTEE MEMBERS PRESENT: | Mr. Torvinen, Chairman<br>Mr. Lowman<br>Mr. Reid<br>Mr. Bryan<br>Mr. Fry<br>Mr. Prince<br>Mr. Kean<br>Mr. Swackhamer<br>Mr. Schouweiler |
| SUPREME COURT JUSTICES PRESENT: | Justice Thompson<br>Justice Collins<br>Justice Batjer |
| LEGISLATIVE COUNSEL PRESENT: | Frank Daykin |

SENATOR MONROE: I am Senator Monroe, Chairman of the Senate Judiciary Committee. On my left are members of my committee, Senators Coe Swobe, Proctor Hug, Vernon Bunker, Clifton Young, Carl Dodge and M. J. Christensen. I will call on Roy Torvinen, Chairman of the Assembly Judiciary Committee to introduce members of his committee.

MR. TORVINEN: I am Roy Torvinen, chairman of the Assembly Judiciary Committee. I have here, starting on my left, Dick Bryan Harry Reid, Rawson Prince, Zel Lowman, Tom Kean, Bart Schouweiler, William Swackhamer and Leslie Fry.

SENATOR MONROE: Thank you very much, Roy. This public hearing is set for the purpose of reviewing legislative reports of studies made by the Citizen's Committee appointed to study the Nevada Judicial system. These studies were divided into two secions, the north and the south and we have representatives here today from both groups and we will hear them during the course of the meeting. We have submitted as a result of this study four bills, SB 83, SB 84, SB 85 and SB 86 and the meat of the matter primarily is contained in Senate Joint Resolution #5. Our hearing today sill pick up the matter of SJR 5 which are proposed amendments to the constitution which emcompasses the basic major changes in the Court system of Nevada.

At this time I would like to call upon Tom Wilson, who was selected as the Chairman of the Joint Citizen's Group, to make the opening statements. Tom --

TOM WILSON: Senator Monroe and members of the committees, I am the active chairman for the two Steering Committees, one from the South and one from the North of our State. We have fourteen members of the Steering Committees here with us today. These committees were selected at meetings which were held in Southern Nevada and Northern Nevada, the majority of them last summer. There were approximately one hundred laymen attending each meeting. From all of these meetings last summer came consensive statements from each of the two meetings.

(Senator Monroe Requested Mr. Wilson to come up front and speak as the full power for the recording equipment was not ready.)

TOM WILSON: We have the two consensive statements, one from the North and one from the South, which we would like to place before you today. I am going to ask first that Mr. Fitz of the Northern Nevada Steering Committee give you the consensus statement from that end of the state.

BERT FITZ: Senator Monroe, Honroable Senators and Assemblymen of the 55th Session, I understand that all candidates of the legislature, subsequent to filing, have received copies of this statement, but to refresh yolur memory and to emphasize the purpose of the appearance of this Steering Committee following the initial conferences, I would like to hilight, if I may with your permission Senator, the text of this resolution.

The Nevada judicial system, created in 1864, has served us well for more than a century. Now, with the population growth and changed conditions of recent years, certain weaknesses have developed which should be eliminated or minimized.

It has been our good fortune to have many dedicated and competent judges, but the present election system deprives the people of the services of many excellent potential judges, puts unfair and unnecessary burdens on those who take judicial office, and denies them the security and independence which are essential for the best judicial service.

Our state suffers from lack of a unified system of courts and an effective administrative program.

In recognition of these problems, the 1967 Legislature ordered a study of the Nevada court structure by a subcommittee of the Legislative Counsel Bureau. We are in general accord with the recommendations of that committee as presented to us by its Chairman, Senator Carl F. Dodge, calling generally for a state-wide unified court system with effective

administrative provisions, a judiciary selected and retained in office on the basis of merit, with adequate provision for retirement, discipline and removal.

Court Organization: In order to meet present conditions and to fulfill the future requirements of the citizens of Nevada for an integrated, efficient judicial system, uniformly administered, we recommend replacement of Justice and Municipal Courts and that a two-level court system be adopted. Such a system should consist of a Supreme Court and District Courts. Magistrates subject to District Court supervision and direction should be appointed to assist in the performance of District Court functions.

We recommend a detailed study into the costs and income distribution inherent in such a two-level system and by appropriate agency under the direction of the state Legislature. Double appeals should be eliminated. Allocation of Matistrates should be governed by the needs of the areas to be served. Specially trained judges should be assigned to all juvenile cases.

Court Administration: In order to efficiently operate an integrated judicial system an administrative assistant to the Chief Justice of the Supreme Court should be appointed to assist the Supreme Court in fulfilling its responsibilities as the head of the Nevada judicial system. The primary qualification of such officer should be administrative ability, regardless of legal background.

Judicial Selection and Tenure: We recommend the adoption of a selection system which includes nomination by a non-partisan commission and appointment by the Governor, with tenure subject to periodic vote of the people.

The value of the judge ultimately selected by the Governor rests in large measure, if not fundamentally, upon the skill and dedication of the commission who nominate him. The commission should include lawyers because of their ability to assess the legal qualifications of a prospective candidate, and layment by reason of their ability to make wise judgments as to his character. We believe that competitive elections for judicial office, costing thousands of dollars in campaign funds, so e or all of which are contributed by others, should be eliminated. The solicitation of campaign funds is incompatible with the dignity and impartiality of the judicial office. We believe that judges should be freed from election campaigning, thereby making more time available to them for judicial duties.

Judicial Compensation: The salaries paid our judges should be commensurate with their responsibilities and sufficient to attract qualified and competent lawyers to the bench. Our Constitution should permit a judge's salary to be increased during his term in office, and

the remuneration of our judges should be reviewed periodically. In the proposed two-level court system we recommend that Magistrates should be made state employees and eligible for our state retirement program, and that these Magistrates should receive sufficient compensation to attract competent personnel.

Retirement: A fair and adequate retirement program should be maintained and reviewed periodically. A mandatory retirement age for judges should be fixed by the Legislature, and retired judges should serve on specific assignments as directed by the Supreme Court.

Discipline and Removal: We endorse the procedure for the discipline and removal of judges by the establishment of a commission made up of judges, lawyers and laymen to conduct confidential investigation of complaints and to recommend appropriate removal, disciplinary or retirement action by the Supreme Court.

Follows then the decision of the conferees to organize themselves into a statewide committee for education of the public on the subject of court revision and Mr. Wilson did notmention that a committee of whom 11 of the 14 of the Northern District are present in this room and have shgned this resolution.

Thank you very much for your time.

CHAIRMAN MONROE: I would like now to hear from Mr. Logan, who is chairman of the Steering Committee for the group in Southern Nevada and following Mr. Logan, Mr. Newton has some remarks on proposed legislation which is pending.

MR. LOGAN: Senators, Assemblymen, guests. After our study in the Southern part of the State I have our consensus report which I would like to read to you now.

The people of Nevada have been furtunate in having a relative efficient judicial system, with many able and dedicated judges. The Conference recognizes that changes must come if this system is to continue to meet the needs of the people in the future and that modernization should be planned to prevent crises before they occur. Certain problems now exist which have aroused concern among governmental leaders as well as the citizenry at larte. A preliminary report by a sub-committee of the legislative counsel bureau calls attention to these problems and suggests proposed remedies. We commend the sub-committee's study and endorse its recommendations in principal.

The judicial system of Nevada should be an integrated one, uniformly applying the laws of the state for all citizens. To achieve this goal, changes should be made in the present court structure to

provide for a two level court system patterned along the recommendations of the sub-committee's report. The two level court system would be composed of the supreme court and district courts. The supreme court would be the appellate court and exercise administrative control and supervision over the entire system. The district court would be the trial courts in all cases. District judges would be assisted in their duties by magistrates appointed by and responsible to the district court. Comprehensive study and comparative analysis of the financial structure of the judicial system, including costs and income, should be made. All judicial officers must be given the opportunity for training to achieve the highest degree of judicial performance.

In order for the Supreme Court of Nevada to fulfill its assigned role in the state government, it must accept supervisory powers over the judicial system. An administrative assistant should be appointed to assist that court in performance of this part of the judicial function. The administrative assistant ideally should be legally trained and must necessarily have a good administrative and accounting background.

The present method of election of district court judges and supreme court justices is not entirely satisfactory. The distraction created by engaging in frequent election campaigns is incompatible with the judicial process. The judicial power of this state must be entrusted only to competent, industrious persons who are able, experienced, highly trained and possessed of judicial temperament. Although the present system has produced a high caliber of judges and justices, it cannot guarantee that these goals will always be reached.

We recommend the establishment of non-partisan judicial selection commissions basically in conformity with the plan outlined in the sub-committee's report. These commissions, as recommended, should contain lawyers, judges and laymen. They should seek out, screen, interview and investigate potential justices and judges when a vacancy occurs. Of those so considerec, three nominees should be submitted to the Governor. Neither the nomination process nor the ultimate appointment should be governed by political considerations. Each judge should be required to submit himself and his record, at regular intervals, to the electorate for their determination as to whether he should be retained in office.

Salary and retirement benefits should be such as to attract able and qualified attorneys to judicial office, and should be reviewed periodically by the legislature. The constitutional limitation on salary increase during a judicial term of office should be repealed. It should be mandatory for a judge to retire at an age to be determined by the legislature, and the chief justice should be empowered to assign competent retired judges, with their consent, to active judicial duty as needed.

We strongly endorse the sub-committees' proposal for a commission to receive and investigate complaints regarding conduct and performance

of judges and make recommendations to the supreme court for their removal from office when necessary.

This is your consensus report from the Southern part of the State.

CHAIRMAN MONROE: Thank you. May we hear from Mr. Newton.

ERNEST NEWTON: (Representing Nevada Taxpayers). Mr. Chairman, ladies and gentlemen. In order to familiarize this group with the effect of the various proposals which have been made in SB 83, 84, 85, 86 and SJR 5, I have prepared three charts.

The first one I will review rather briefly as it involves SB 83, 84, 85 and 86 and would not require constitutional revision in order to implement. The proposal you can see on the chart is that a Court Administrator and his staff and would be selected by the Supreme Court and would assist the Chief Justice who would operate with the consent and advise of the other Justices of the Supreme Court to carry out nine functions as outlined in SB 85. 1. Examine administrative methods and systems of all courts and make recommendations for improvements. 2. Examine dockets of district courts and determine need for assistance. 3. Recommend assignment of judges to districts. 4. Collect and compile statistical data on business of the courts. 5. Prepare budget estimates for state appropriations. 6. Prepare expenditure statistics. 7. Recommend improvements of judicial system by regulation or legislation. 8. Submit annual report. 9. Other duties assigned by the Chief Justice or by statute.

At the bottom of the list are two provisions and responsibilities which would be the undertaking of the court administrator, 1. Provide a school for new Justices' of the Peace and Police Judges. (a) Compel attendance (b) Pay them travel and per diem. 2. Provide school for all other Justices' of the Peace and Police or Minicipal Judges. (a) Pay travel and per diem. This would give them schooling in the operation of their court either in conference of trial judges at the University of Nevada or otherwise. He will also provide the Chief Justice with statistical information on which to base decisions that assign available judges where they will do the most good. It cannot be informal and on a hit and miss basis if the judge is to determine a critical need. The Supreme Court would make assignments to the various District Courts. The last provision is for the Supreme Court to assume responsibility for the adequacy and administration of the State Law Library which is provided for in SB 86. They would 1. Appoint the Librarian and staff. 2. Establish standards and 3. Establish County Law Libraries in counties needing them.

The second chart illustrates the effect of the general proposed legislation as set forth in SJR 5, which is the Judicial Article. This Article proposes to establish within the system of the Supreme Court not less than three justices and as many as the Legislature provides. The District Courts, which are a lower level of service,

are set by the Legislature. Currently we have 18 judges at the District Court level, however the Legislature can provide for more or less as needed. They can be assigned wherever desirable for special functions, that is on juvenile matters or any other sort of specialized cases in which some particular judge might show extraordinary competence.

On the left you will notice there is a provisions for Magistrates. These would be a part of the District Court system and we would place them in a catagory as something more than hearing officers and something less than a District Judge. We have left this up to the discretion of the Legislature to define after its adoption.

There are five ways in which a vacancy can be created. 1. By rejection of the voters at the end of a six year term. 2. By death of a Judge. 3. By retirement at the age of 70. 4. By retirement for disability and 5. By removal. The vacancies would be filled by a five-man commission, two members from the State Bar, two non-lawyer citizens, and the Chief Justice of the Supreme Court or his nominee. Each appointment is for a term of four years and each would be eligible for reappointment. If a new justice is needed, the Governor will select from three nominees, names of which are presented to the Governor by the five-member Commission. This article provides that if the Governor does not make the appointment within thirty days he cannot make an appointment to any public office until he has appointed a justice or judge from the list submitted.

On the District Bench, there is also a commission which is a temporary commission and operates on a one-time basis. This will include five members of the permanent commission and two others. One of these two others should be a lawyer in the district where the vacancy occurred and one a layman in the same district. Appointments in all cases would be for an unexpired term. At the end of the term, which would be established much the same as it is now, and appointments can not be for less than a one year period, the judge would go before the electorate on the question as to whether or not he should be retained.

The last chart describes how judges and justices are removed and how vacancies are created. 1. By rejection of the voters at the end of a six year term. 2. By death. 3. By retirement at the age of 70. 4. By retirement for disability. [By disability we mean any disability which would prevent the proper performance and which is likely to be a permanent condition.] 5. By Removal. [reasons for removal would be such things as habitual imtemperance, non-performance of duties, or even by a complaint that has been made against him.

When a complaint is filed, the Commission on Discipline may make a preliminary investigation. They may dismiss the case, or they may order a hearing. They must serve notice to the justice and ask him

if he desires a hearing. If a hearing is desired it is held, in which case counsel is required for both the Commission and the judge. A justice can not sit on his own case. The Judicial Commission will be the Chief Justice or some other justice if the Chief Justice is the one complained about. At the conclusion of the hearing, the Commission on Discipline may recommend either censure or retirement or removal. The filing action in every case is by order of the Supreme Court.

Procedure for retirement for disability is the same as for removal. The only difference is the grounds provided for these procedures.

SENATOR MONROE: The filing action would be with the Supreme Court but it seems to me the administrator has some right.

MR. NEWTON: This would be only in judicial discipline.

MR. WILSON: We have heard from the two committees. Individual testimony will come from the different people on the Steering Committees.

SENATOR MONROE: We want to thank all of you for the amount of work you have done on this. It was a fine act of citizenship. We will now open the hearing for general comments.

We would like to hear from Chief Justice Jon Collins.

CHIEF JUSTICE JON COLLINS: Senator Monroe and members of the Senate Judiciary Committee and the Assembly Judiciary Committee and Mr. Wilson and members of the Citizen's Committees. As the Chief Judicial Officer of this State, I am pleased to tell you that we are, at least on the behalf of the Supreme Court, unanimous in our opinion that there needs to be a very comprehensive revision of the judicial offices of the State of Nevada, and on behalf of the District Judges it is if not unanimous, nearly unanimous. Within the judiciary itself it is felt there is a great need for revising the judicial article of this State, the reason being that the present judicial article 6 of our constitution has served the people of this State for nearly some 105 years now with only two basic modifications. The fact remains that the judicial business of the United States and the judicial business of this State is going through rapid developments and a particularly rapid increase. The problems to be dealt with were not clearly contemplated to suffice for this day and age. All that is old is not bad, but certainly when it can be shown and demonstrated that there must be needed changes then certainly that is the desireable thing to accomplish. We are convinced that there is need, and serious need of changes today. The committee under the chairmanship of Senator Dodge has done a very broad study of judicial problems in Nevada. They have worked long and hard in trying to bring into proper prospective all of the elements that go to make up a truly strong judicial system. This is not something that can be done overnight

or in a hurry, and we are fearful that unless action is taken now when all of the study has been made, there might be some rapid checkmate type of thing done by future legislators. What we suggest is that this is the time for the legislature and for the people of this State to seriously consider a comprehensive revision of the judicial articles.

Thank you very much, Mr. Chairman.

CHAIRMAN MONROE: Thank you, Mr. Justice. Are there any other members of your Supreme Court that would give us a few words?

CHIEF JUSTICE COLLINS: I certainly believe we should call on the immediate past Chief Justice, Gordon Thompson, who also served as a member of this committee. It may be that he will have some thoughts to add that might be of help and assistance to you.

JUSTICE GORDON THOMPSON: Members of the Judiciary Committees, I did not realize that I was to be called upon today. I had the pleasure of working with Senator and many others for the past two years on the study of the Nevada Judicial system. I would like to make one or two comments that may be out of place. It was my lot to serve as Chief Justice over a period of four years and during that service, I learned of many, many, many roadblocks in the operation of our court system that are constitutional blocks that we cannot overcome unless we have a constitutional amendment. We have problems with transferring cases and we have problems of transferring judges within the districts, we have the complete inablility of using retired judges. We have absolutely no supervision over the judicial system. We do not know about the case loads and assignments and for judicial merit power at specific places at specific times. The result of this accummulation of many, many problems has led to really the retardation of our capacity to handle the ever increasing judicial business that comes before us.

You may have heard that some attorneys have expressed a disagreement or disaproval of at least part of these many proposals. This has always been the case among members of the bar. Members of the bar seem not to be able to agree on most any particular items and I want to urge these committees that are going to study the bills and joint resolutions that the Citizen's Conferences studied over a period of two days, two long days, incidentally, in both parts of the State and those wonderful people who took their time to do this did understand our problems and the consensus reports of those citizens are meaningful reports, the most meaningful reports you are going to receive. They are the result of deep study, deep concentration, and a genuine desire on the part of the people. One of the difficulties that we have always had, and I say this candidly, and I don't know if it is jealousy of the legislature or the courts or legislative function, I don't know what, but there seems to be some kind of a mistrust and perhaps this goes in both directions. We do want to try to obviate it and knock it out completely.

Some of the members of the legislature tend to look upon the judicial foundation as an attempt by members of the judiciary to feather their own nests. This is not the case. By results, every Judge serving in the State of Nevada was there initially by appointment, not by election. Secondly, may I call to your attention that for all practical purposes, we enjoy tenure. It is not written into the law but history shows that once you are put into judicial office you normally can stay there unless you are a horribly bad judge. You normally can, so the chances are that those of us who are judges and who are interested in improving the administration will remain, whether we are good or bad. What we are interested in is this, you must look forward, twenty years, thirty, and see what might be the situation at that time. As Nevada grows, we are going to have many, many new judges. We want to know if the new judges are to be good or bad. What kind of a judge is he going to be? What is the system that is most likely to appoint him as judge?

The study that Senator Dodge has been conducting has established beyond any refutation at all that in states with appointive systems such as has been suggested here, about 80% of the lawyers are interested in judicial offices. As contrasted with states having an elective system you will find that only about 18% to 20% of the attorneys are interested. What we want to do is to devise a system where most people, that is most of the attorneys, will be interested so that the appointing authorities will at least have the opportunity to select from a broader basis. As I say, honestly, we are not trying to feather our own nests. For the past 110 years we have been served magnificently by the judicial system, the report says. We have had some excellent judges, we now have some excellent judges, we have had some very bad examples and we now have some very bad examples. You know more than I know, but we will never be able to accomplish anything unless the members of the legislature will take the bull by the horns and give us at least the machinery and the opportunity to work this out.

ASSEMBLYMAN RIED: Chairman Monroe, may I ask the Justice a question? Justice Thompson, I would like your reaction on the mandatory retirement age. Why did you feel that this should be age 70?

JUSTICE THOMPSON: It was not my idea that it should be 70, however I would say that the philosophy at the present time in the judiciary administration is to attempt to interest one in the judicial field after he has had about fifteen years of private practice and experience. Usually this would be directed to attorneys in the 40-45 age bracket. They have had a sufficient number of years in practice to be qualified to be on the bench and still they are young enough when they get there to devote a full twenty or twenty five years of service. The State gets its mileage out of a working judge if he is a good one and with that in mind, people have had about twenty five years in service by the time he is seventy. It is the general feeling that by the time one is seventy it is time to quit. I think that is the general underlying reason.

MR. REID: The way I read the proposed changes to the constitution, the magistrates would be appointed by the District Court. I have talked to some judges and they are not completely sold on this. Do you think it is absolutely necessary to have them appointed this way?

JUSTICE THOMPSON: No, I don't believe it is absolutely necessary. but it seemed to be the best way to go about it.

MR. REID: Do you think appointment by the governor would be better?

JUSTICE THOMPSON: Yes.

ASSEMBLYMAN LOWMAN: How about using the same commission or a like commission to appoint the district judges?

MR. TORVINEN: I think I would like to interject here. When we are talking about district court appointment magistrates we are not talking about trial magistrates, we are talking about administrative magistrates or something less than a top magistrate. If we were talking about trial magistrates I would agree with you. But when we are talking about administrative magistrates that is something else again.

MR. REID: Are we talking about persons who presently conduct traffic courts comparable to justice of the peace?

MR. FRANK DAYKIN: /The constitutional provision says that -- the legislature may provide by law and the Supreme Court could provide by rule are not consistant, for the appointment and qualifications of magistrates. The provision was deliberately made flexible because it was felt that as conditions changed in the state or in different areas of the state, different systems might be necessary. Therefor the constitutional provision is flexible enough to permit either trial magistrates to be selected by a selecting process or by appointment other than by the district judges, or a purely administrative magistrate would then ordinarily be responsible to the judge who made the appointment. This would be a matter that would be within the power of the legislature to determine and there is indication that there are a number of possible alternatives that could be considered.

SENATOR MONROE: I would like to thank Justice Thompson for his remarks.

JUSTICE COLLINS: There is one other member of our court that it might be desireable if we heard from. That would have to do with the public elections in the judicial process. The most recent from our court that has had that experience is Justice Batjer and I think he could give us something of the effect on the Courts of campaigning.

JUSTICE BATJER: Members of the Senate and Assembly Judiciary Committees. No one warned me that I might be considered to be Exhibit A. I don't know if this means I am a good example of the present system or an example of why we should do away with the present system.

Probably from a financial standpoint I have heard it mentioned in the report that Judges should not go scurrying around the country soliciting funds. Certainly everyone here is aware that they do not have those kind of funds themselves and they have to come from somewhere so there is no other place to get it except from your friends and associates. Sometimes they may come from sources that seem to be rather undesireable. My financial wounds are not healed yet.

It has grown with the present election process to where it now is a tremendous cost and it almost to the point of being ridiculous to have to campaign at a state-wide level for this office. From the standpoint of the inconvenience of the other members of the court, the court itself and to the Justices that have had the experience of campaigning, there is a great deal that has to be done. You are taken away from your job. You are appointed to be there on a continuous basis, almost every day and if you are gone for six months out campaigning you certainly can't do much good on the job, so the work falls to the other justices. From my experience, for at least the last two months or month of the campaign, I did not participate in any of the opinions because it seemed that at that particular time and up to about the 4th of November that my chances of remaining were not to certain. They did not want to have important cases not decided on and still pending From a very practical standpoint, it has an adverse effect on the court. From my own standpoint there were some important matters heard in September and October that I did not get to work on until November and December. If anyone has any specific questions, I will be happy to answer them.

SENATOR MONROE: Thank you Justice Batjer. I think we had better move on. We have with us today Mr. Jack Frankel, Attorney at Law from California and Secretary for the California on Judicial qualifications,

MR. JACK FRANKEL: Ladies and Gentlemen, it is a pleasure to be with you and to discuss these problems in so far as they relate to the work our commission does. I have brought some copies of our current report and they might serve some purpose and of course I am available to answer any questions since the commission that I am with in California is closely comperable to the proposal before you. What I thought that I would do would be to raise a few questions that I see in this proposal of yours and then be available for any questions you might have.

I think this is a magnificent opportunity that you have to get a re-structure and revision in your system. It is a very rare opportunity because the conditions are simply not right and if you are able to get this kind of a package enacted you will be one of two or three/states in the United States as far as the judicial system is concerned. You will certainly be well ahead of California.

I want to compliment all of you on the tremendous work you have done. I am going to be specific and feel that I can be most helpful that way. There are certain aspects of the displinary commission. Generally I think that it is well drawn and the terms of what is put into the constitution is very balanced so you have the flexibility and at the same time it is clear at to the intentions. I have a question on the composition. I would wonder whether you would want the Chief Justice to be on the Commission and chairman of the Commission. It seems to me that I suppose the theory is that you have the head of the Judicial system and he sits at the head of all in the judicial structure. Here I think you are putting an unusual burden on the Chief Justice because he is head of the court system he is going to be head of the administrative aspect as well as the judicial aspect. He is going to be hearing about problems involving judges and may be contacting these judges in an administrative way. It would be a very difficult position to put anyone in. He is bound to get criticism from both sides, if he acts or if he doesn't act. He would have to disqualify himself in a serious case and of course has to keep up on the cases as a reviewing agency and he could not participate in it. I feel the Chief Justice would be carrying too much weight. He would be the only non-appointive member of the Commission and the only permanent member - where would that leave the other members of the commission? Any information he had he could easily give to the chairman of the commission and he would be able to be much franker with the commission if he were not sitting on it.

A minor thing, but I am wondering if you need seven on this in a state the size of yours. I am wondering if one citizen, two lawyers and two judges would be enough. I don't think there is anything wrong with it. I am wondering if five would not be enough where you have only 25 judges. Even if it grew to 100 judges, a total of five could do it. In event there should be at least two lawyers and two judges, whatever way you go.

I don"t believe"confidentiality" is mentioned, although the Supreme Court would presumably act confidentially, I am sure. I would recommend that the word "confidentiality" be put into the constitution so the Supreme Court could rule it had to be that way. It seems to me this should be specifically stated.

Concerning the grounds that are listed for removal as set forth in #4 and basically we are talking about taking action on misconduct. That is only in terms of removal so that censures is apparently intentionally omitted there which, I would gather would mean the action of the commission shall not extend further than to remove and they have given the authority to recommend for censure and this would apparently leave the way open for there to be discipline for other men as they appear. It seems to me that this should be clarified, either there should be a break of power for the Supreme Court to adopt further disciplinary grounds to which censure would apply if that what is intended. That would be one possibility. A second possibility is to put further language in here saying what the censure

is applicable to. The way it is now it is to vague and would possibly be void under due process. The public might say just what is a judge to be censured for . You might want to itemize something as conduct inappropriate to the administration of justice or gross incompetence or rules of ethics or so forth that could be added.

One other point, on the magistrates, this is language applying to judges and justices. Is it intended later on to possibly include whatever the lower court is going to be? It seems to me that even though the magistrates would be closer to supervision by whoever it would be, whether it would be a District Court or whatever the system is, if there is a magistrate acting as a magistrate, even if we are talking about minor claims such as traffic, it would be well to have him subject to the authority of this commission too. I would think that if you felt that, rather than have it being picked up at some future time, by statute to say that magistrates shall be included under this jurisdiction altho they may also be subject to other supervision that may be provided by law. You are not restricting some later supervision but also you are having them covered in this way.

I have one little question about the name. I don't think our name is particularly good in California, "Judicial Qualifications Commission" because it is misleading. It seems to me that "_____ Discipline" might be a little on the heavy side. There are many matters that they check on. If a person receives a letter from the commission on Discipline it seems already that he is in trouble. If you could find a slightly less harsh name such as "Commission on Tenure" or "Commission on Fitness". This wouldn't be quite so strong. If you come on too strong on some of these things the commission is afraid to act. It is better to start out with the power and authority there but not to show it so much.

I think those were the only reflections I had on this and I think that generally it is very well done and I approve heartily of what the basic structure is.

SENATOR DODGE: Mr. Frankel, we thank you. I might say to those of you gathered here that Mr. Frankel appeared before a meeting of the sub-committee in which this matter was considered fully of what we wanted to incorporate a recommendation about this type of a commission in Nevada and really the thing that I think these people would be interested in knowing, Mr. Frankel, is what statistically the result of your work in California has been. How long the commission has been in existance, how many matters have been called to your attention by citizens, and how many people have retired voluntarily and how many people have resigned as a result of your proceedings?

MR. FRANKEL: I will go over some of this very quickly. You have to take into account the numerical situation. We now have 1,030 judges and this includes about 250 of the lowest or the justice court judges.

The 1968 figures really are somewhat up to the others, so I can mention that year, although we have been in existance since 1961. We have had 132 specific complaints filed with the commission. These were not idle questions but either the commission itself or someone actually started something and it resulted in a complaint against the judge. 48 of these resulted in some investigation or inquiry by the commission, that is most of them were closed without any investigation at all, because the complaints were obviously not valid. In 35 of of these instances the judge was contacted, either by letter or by interview - mostly by letter, stating what the complaint was and not always the name of the person making the complaint, and asking for any explanation. Some of these were comparitively minor, some of them were extremely major. There were two cases in which during the course of the investigation before his hearing started the judge resigned or retired. Those were quite serious but one was a disability case. Other years there have been more. The average has been about four or five a year. There were none actually brought to any hearing and there was this great "in-between" where some communications indicated something should be corrected or this was not the expected conduct or something of that kind. Those were a large number of the cases and that is where most of the actual work is done. We have only had one formal hearing all the way through since the commission began. The judge prevailed before the Supreme Court and the removal recommendation was not followed. When you have a permanent commission set up like this, the greatest advantage of it is that it shows what is expected and what the intent of the public and the judiciary really is. If these things do happen, then action can be taken. Of course action can only come about as a means of correction if a situation really exists.

MR. REID: Can you tell me how the judges of justice and municipal courts are chosen in California?

MR. FRANKEL: Yes, it is an elective system, however when there are vacancies, which is a normal situation, the justice court judges are chosen by the County Supervisor. Normally they have been appointed because of a vacancy, but technically it is an elective office because they can be opposed each six years. About 90% of them get into office by being appointed and they just stay on by being re-elected. Yours are appointed by the County Commissioners. The full time or municipal court judges are appointed like the other trial court judges that is an elective office but most of the time they reach office thru appointment of the Governor, The only time they would not be appointed by the Governor would be if judge did not wish to give the Governor the appointment, in this case he would fill out his term and would not file for re-election. There would be no vacancy and there would be some contesting for it or if someone ran against the judge and defeated him.

SENATOR DODGE: An observation was made to me the other day that while the commission might work well in California as it is a large state and the procedures are of a more impersonal nature down there than they would be in Nevada where we have a small judiciary and where everybody knows everybody. There was a statement that just because

it worked well in California was no reason that it would work well in Nevada. Would you comment on that?

MR. FRANKEL: I think it is true that one of the advantages is not being right in the middle of it and being able to be impartial, impersonal and objective. If you are talking about one court you could not have a system like this work very well because it would be too much like a family. To some extent I think you do have this problem. That is why I made such a point about the Chief Justice as he would be into the problem so much anyway it would be like he had already decided the case and he would be just getting it for investigation. It would help to insullate it and there should be some system that should be able to work but I cannot think of a better one. The fact that this is a state institution having the say rather than an arm of a local court should give it the stature to achieve the goal.

SENATOR DODGE: How long has your commission been in existence in California?

MR. FRANKEL: Seven and one-half years.

SENATOR DODGE: Have you been with it since it's inception?

MR. FRANKEL: Yes.

SENATOR DODGE: Could you make an observation to us,aside from the documentary cases where thru your procedures people have voluntarily resigned or retired, about what the effect has been in general work performance of the judiciary of California by the existence of the commission?

MR. FRANKEL: There are three things I would say about it. First, you cannot expect too much of it. This is not a supervisory commission and it should not be expected to be. It should only get into the picture when there is a specific problem not just general mal-administration or performance. People tend to think that this can do more than it is actually capable of doing, so in that respect it is not to function and should not function. That is where the administrative side of the court should operate.

There are two ways where it can do a good job. One is where there are specific instances comeup - ticket - fixing, favoritism and loosing temper and kicking people out of court and being over bearing, these things are just occupational hazards in the judicial profession. These things do happen. Here is a way of zeroing out somebody who is in court. They might tell a horrible tale which is verifiable. If someone can shrug his shoulders and do nothing, it is a travesty of law and order. A judge might say "I don't care what anybody says, this is my court and I will run it the say I want to." There should be a way of doing something about this. With this way you are able to ask

for an explanation and if it is wide-spread you can do something about it. The other think I would say about this, is that it has raised the whole level of the judges looking at his role. If there is a standing body to which a complaint can be made it effects the way a judge can look at himself, at his own performance, even if he is a very dedicated person. In Mark Mayer's book called "Lawyers" he said that "Everybody should have someone looking over his shoulder." I think that if you think about it, that is right. He should know that if he goes off of the deep end on something it can come back at him.

The normal day to day working ability I think this has been proven.

SENATOR DODGE: One final question. You know that in our recommendations we made a suggestion of turning the appointive procedure to the Disciplining Commission and then if we don't set up the commission we do not go with the appointive machine. Now, I would like to read a paragraph from a central Nevada newspaper in the editorial column last week in which the editor said "True enough there are numerous fine intentions spelled out on the proposal but most of the examination of the fine print reveals that the people of the State of Nevada are being asked to give up their right to not only select the judges who will sit in judgment upon them if they should ever have to appear in Court, but to give approval to a form of a virtual judicial dictatorship."

Now, my specific question to you, is, could you comment upon the ability of this commission, if we created it, in preventing a virtual judicial dictatorship?

MR. FRANKEL: This is in cases that are significant where you have something that has really happened and are not just evaluating something. This is a much more direct and effective way of acting rather than thru an election. The elector is giving up his right to vote in a contested election. I do not think that is anything when you are talking about these cases. I have observed Nationally that the electors are capable of doing things that would shock the voters, intoxication in court, or not deciding cases for years and years. The voters don't know anything about this. If stories ever do get started there is an immediate defense on any attack of the judiciary. There might be senility or early mental incompetency or even illness and these things are not decided by the public satisfactorily. This is an effective way of dealing with it.

The other side of it where you are trying to weigh the ability of two individuals, that is a different situation because this commission can't very well say that Judge Jones has been a mediocre judge and there are other people that can do a better job, so we would like to remove him from office. The commission can not do that.

MR. KEAN: You recommended reducing the commission to five members from the seven. There would be two lawyers and two judges. In our small state, there might be two lawyers sitting in judgment on a judge for a disciplinary action and perhaps that same day he might have to appear in court as an attorney before that judge. Wouldn't that cause

problems?

MR. FRANKEL: I think there is a theoretical possibility and it has not existed at all in California largly due to the size of the state. I can see in some instances where different people are going to have to disqualify themselves. A Judge might be his colleague, the attorneys that is, and would not be able to sit so there could be something like that come up. Are you asking that this might be a reason not to have five members sit or not to have lawyers on the commission?

MR. KEAN: Not to have lawyers on the commission

MR. FRANKEL: I think lawyers are indespensible. As far as appearing in the court of a judge that close, I don't think that possibility would happen often enough. Whatever disadvantage there might be through that kind of a possibility would be more than compensated through the advantages. Not only do the lawyers contribute something themselves but the judges sitting on the case would behave differently.

MR. KEAN: I have one final question. You said there were 132 complaints filed. Who makes the filing?

MR. FRANKEL: Anybody can. Any citizen. Most of them come in from just citizens. Not necessarily someone who has been in that court but has heard about the local judge or some case has come to their attention. The more significant ones come from someone connected with the judicial process somewhere along the line. Local public officials, district attorneys or the mayor or even perhaps a member of the grand jury. There are a lot of these complaints floating around now. I would think that your committee would be getting some of them.

That is all I have to say, Mr. Chairman, and thank you very much.

CHAIRMAN MONROE: I would like to express our appreciation to you for being here today. The information you have given us has been very interesting.

We also have with us today Mr. Charles Springer representing the Washoe Bar Association.

CHARLES SPRINGER: Mr. Chairman and members of the Senate and Assembly Committees. My purpose here today is only to file in triplicate, if I am allowed to do so, copies of recommendations adopted by the Washoe County Bar Association. I am a representative of a special committee appointed for the purpose of studying the proposals which are now under consideration. The recommendations as I am submitting them to you were adopted and approved by the Washoe County Bar Association and I might comment that there was certainly not the same degree of unity and consensus that was passed by the Citizen's Committee, neither

was there the disagreement that was indicated. Most of the provisions in here were approved by a 2 to 1 majority of the members attending the meeting of the Washoe County Bar Association. Thisprovides a substantial body of dissent and we ask that you carefully consider and also ask that this material be made available to the two committees. Since we debated the matter in our Association for some three hours we ask that we not be required to make any further comment on it until after the Committees have considered it and then please feel free to invite me or any number of our committee to give you any explanation you might desire.

MR. DAYKIN: How many members of the Washoe County Bar Association were in on this?

MR. SPRINGER: There were sixty-five or seventy members of our Bar Association there, which I would say was the highest number of members to be gathered by that group at any one meeting.

CHAIRMAN MONROE: Thank you very much, Mr. Springer. Now is there anyone else to be heard at this time?

MR. TORVINEN: I would like to just throw a question out for anyone to answer. I have some reservations about doing away with the justices court or the lower court level. In the long run, I have grave concern about the matter. I think in the short run, the transition period directly from the Justice to Municipal Court system directly to a two level court system within a period of several months would cause a very chaotic condition. I would like to comment to the people here of the possibility of leaving the constitution more flexible to allow more clearly for a third court system to be established by the legislature and their jurisdiction be set by the legislature.

SENATOR DODGE: I would like to speak on this because I think this should be directed to the committees primarily. The problem here seems to me is how do we get rid of the trial de novo, which in my opinion is not defensible. As far as I know most of the people I have talked to do not in any sense defend it. I think the reason that we have it is that we have had some inherent problems over the years and we haven't bentourselves to try to solve it and get rid of the idea of two trials in certain types of cases, first in the justice court and secondly, by virtue of an automatic deal, again in the district court. If we could answer all of the problems about making this lesser court a trial court, a true trial court, and make it of court record so that you would have a record to go up on appeal with, then we could in effect have a three level system. But I do not think that is generally what we are trying to accomplish here.

Under that concept I suppose that the appeal would lie with the District Court and would either be an automatic appeal or could be a writ of review. If we were to make this lower court level a court of record then I think we have to review the method of selection, the tenure of discipline and the qualifications of that judge at that level much differently than if we make it more or less of a ministerial type court. We really don't have all of the answers on this and are looking for advice and I want to say to all lawyers in particular that are present that we want your help in solving this. What we do with all the rest of the recommendations really revolves on how we are going to accomplish this one. We suggested as a first recommendation that all contested matters be transferred to the District Court and this would be the level where you would actually have the trial and have the records.We are trying to develop reliable records that could be used on appeal. If that were done there would still be certain functions that would be performed at that lesser level, misdemeanor cases, arraignments, minor civil cases where a trial is not demanded.

In the alternative if the Legislature determines that magistrate should exercise trial jurisdiction the provisions should be made for the selection, tenure and discipline accordingly and for appeal from their decisions. The sub-committee would then recommend that the District Court could be given discretion upon interview and could grant a new trial.

I want to point out that more specifically about Assemblyman Torvinen's question that we thought we were leaving enough latitude within the language of the judicial article to go either way because we have said in effect in Section 1 that the Legislature may provide by law or the Supreme Court may provide by rule not in consistent with any such law for geographical districts, the assignment of judges, and thirdly the appointment of one or more magistrates and the jurisdictions and qualifications of these magistrates.

Again I want to point out that when we talk about a two-level Court system, we are talking about a system where you have one trail procedure and one appellate procedure. You can do it either of two ways. You could have the district court as the original court of trial jurisdiction with an appeal to the Supreme Court or you can do it with three levels where you have the lesser courts as original jurisdiction for evidence and appeal it to the District Court, but the point is, under that system, you still have a two-level concept and you have three courts involved. You still only have one trial and one appeal. We surely did not come to anything that we thought was the overwhelming course of action that should be taken with reference to these lesser courts, but I think that the sub-committee did deal very strongly with the fact that we needed to face up and make the attempt to create a solution of the trial de novo, which for several reasons is not defensible.

CHAIRMAN MONROE: Are there any other questions? Does anyone have any comments on the other bills we have presented?

TOM COOKE: Mr. Chairman, members of the Assembly and Senate and ladies and gentlemen:

My name is Tom Cooke, member of the Board of Governors of the State Bar and also a minority member of the Washoe County Bar. I am speaking here only for myself with reference to these resolutions and amendments to the constitution. I feel this is the guts of the whole business. We have to try and find a better method of selecting our judges, based on a merit system. We must have the assurance that if we make a mistake that mistake can be rectified by a system of removal. It seems to me that the proposals submitted by the sub-committee does that. I realize that when you go through a report as comprehensive as this there could be all kinds of things to object to, but that does not answer the problem. Criticism is all right but we need suggestions and help. I think some of the suggestions made here today by the other speakers could be considered in conjunction with the report but I do want to go on record, at least, as being strongly in favor of the proposed method of selecting judges and of taking care of the possibility of removal.

CHAIRMAN MONROE: Thank you Mr. Cooke. I might tell you a little of these other bills. SB 83 removes restriction on days when justices' and minicipal courts may be held. This certainly is a minor piece of legislation. SB 84 provides for investment of moneys deposited in court which I think we will have to have a judicial hearing on. SB 85 provides for court administrator and improvement of justices' and municipal courts, which will have to be considered. SB 86 places state law library under direct control of supreme court and provides for improvement of district court libraries.

If anyone has any comments on these at this time we would like to hear from them.

MILDRED HYER: Members of the committee, Mr. Chairman, I am the State Law Librarian. I would like to comment on Section 3 of Senate Bill 86 and also section 6 of Senate Bill 86, which is the bill to remove the Law Library from the State Library and place it under the jurisdiction of the Supreme Court.

Section 3 of this bill provides for the exemption of the state law librarian and other employees of the proposed state law library from the provisions of chapter 284 or the Personnel Act. This could create a morale situation, ~~It would be the end of~~ All the State Library employees at the present time are related in so far as salaries, hours of service, leave of absence, etc. To select a part

of this fairly large group and set them aside and make them eligible for higher classification is not conducive to good morale. "To select one librarian out of four and make him or her eligible for a higher classification seems some what arbitrary and discriminatory.

Section 6, the State Library has been a Federal Document Depository for more than a century with the stipulation that the Depository materials should be made available to the public. Materials transferred to these proposed state law libraries would be less available to the public if for no other reason than the general public is reluctant to go into a special library. The State Law Library could become a selective depository under its own right by requesting that status. Five depository openings do exist at the present time and and the State Law Libraries depository collection could be initiated immediately.

Such selective materials that are presently in the State Library could be acceptable to the State Law Library and could be placed there at any time. That is what many of them were purchased for. Many of our materials were purchased for and were intended for the interest of the general public and for the service of the residents of the State of Nevada. An example might be a History of the Divorce in the United States or the History of Crime and Justice in America. If retained in the State Library such materials are available to anyone whether that person has an individual or legal problem or just researching. Present practice calls for retention of the material in the State Library and a card being placed in the Law Library or by mutual agreement it is placed where it will be most useful. Such a procedure is acceptable and would not result in depleting the State Library collection and denuding the Library of these materials.

The State Library would cooperate with the State Law Library's placement of material, but objects to giving any other Library the right to arbitrarily select material from the State Library collection. Provisions of SB 86 are contrary to the principles under which Nevada Libraries must operate if there is to be even minimum service available to the government and to the people of Nevada. ~~Not-only the-public-but-also~~ The states of Washington and California among other states have endorsed the comprehensive plans where libraries form a network for promoting increased sharing of resourses of equipment for maximum use. The trend is toward increasing coordination rather than toward separation. A committee of the Nevada Library Association at the present time is working on a formal outline for such exchange of resources. It is not believed that sufficient funds are available for each library to be sufficient unto itself so there must be cooperation and coordination in the use of scarce material.

The State Library does oppose the separation of the Law Library from the State Library, among other things because it will be more

costly to the State of Nevada and will result in lesser service to all.

JUSTICE COLLINS: Mr. Chairman, may I state a few comments on some of the points raised by Mrs. Hyer?

First of all I would like to say that Mrs. Hyer is a very grand lady and I hate to have to take a position contrary to Mrs. Hyer because she is a very fine librarian and an excellent friend of all of the members of the Court.

Referring briefly to section 3, I would point out to the committees regarding the personnel of the Supreme Court being in the unclassified service that all of the clerk members of the Court's employees are in the unclassified service and would include at this time some 14 people and in the event the Law Library was transferred to the Supreme Court it would include possibly two more, making a total of 16 persons in that role. I really wonder if that is the type of objection that would justify the defeat of this measure, which otherwise has a very important role in the court function.

Next, the library, that is the Law Library, is a principal tool of the Court. The material for research is something we certainly cannot get along without and while we do respect Mrs. Hyer for the cooperation we also feel that that specialized library should be under our control. 99% of the use of that library is made by the Court and by lawyers. As far as any citizen wanting to use it, not only would he be permitted to but we would be happy to help him use it for any private or personal research.

With regard to the other objections under section 6, I am satisfied there would be absolutely a minimum of difficulty in that regard because I can assure the committee that the Court would work very closely with Mrs. Hyer and it is possible that some of the books or documents which she feels should not be removed from the State Library might well be left there instead of becoming part of the Law Library.

There is a rumor, and I do not know how much truth is in it, that the State Library might possibly be moved across the street to the legislative building in which event it would be very difficult for us to allow the Law Library to be moved over there simply to make more room for everyone.

SENATOR DODGE: The hour is late and I am only going to say one thing to you. I do thank you all for your attendance here today and I think this will be of interest to all of you because this was a fairly late development after the Citizen's Conference was held but we explored with Judge Hyde the poossibility of setting up

seminars for lay type judges, the Justice of Peace and Municipal judges that were not professional and wanted to be educated in this procedure.

SB 85 has two very important facets and one is the court administrator, and I call you attention to page 2, section 9, arranges for instruction. I do want to say if the legislature receives this piece of legislation favorably and supports it we can institute a course of instruction beginning this fall for these lay judges. You will notice over on page 4 on the back, there is an appropriation of $15,500 for the first year of 1969-1970 and $11,000 for the second year and for that amount of money, we can pay travel expenses and per diems of all of the municipal judges, house them for a three or four day seminar in Reno, pay what ever constructional costs would be involved and I think we stand in an unique position as far as instituting a program which as far as I know does not exist elsewhere for the education of lay judges. I am sure this will be of interest to all of you.

SENATOR MONROE: Thank you very much. I want to express my appreciation to everyone here today and want to take the time to give special recognition to Senator Dodge for his leadership in this program.

If there is nothing further we will adjourn the hearing.

Adjourned at 4:45 p.m.

Respectfully submitted,

Jeanne M. Smith, Secretary.

Approved:_____

# REPORT TO THE WASHOE BAR ASSOCIATION UPON THE PROPOSED CONSTITUTIONAL AMENDMENT TO THE NEVADA CONSTITUTION

MR. PRESIDENT: Your committee submits the following unanimous report upon the proposed constitutional amendments.

It is the conclusion of the entire committee that the proposal, in its present form, is defective and should either be altered or disapproved by this Bar Association, and that the areas of our disagreement and reasons therefor should be conveyed to our legislative delegation. This decision was not lightly arrived at, but was the result of numerous meetings and much thought by the members of your Committee.

Initially, we will note that proponents of the legislation have contacted various individuals upon the Committee and suggested that if the basic theme of the proposed constitutional amendment was proper then we should overlook any disagreements which we might have to individual portions of the report in order that the proposal might be presented to the Legislature without opposition. The Committee gave serious consideration to this suggestion, but concluded that something as important as completely redesigning the Constitution of the State of Nevada, as it applies to our court structure, should be critically studied in detail prior to passage, and if there are any areas in which it may be improved, it should be done now.

The Committee has noted what it considers to be the most important defects in the proposed amendments and in this report will discuss them in the order in which they appear in the proposal.

First: Notice was taken by the Committee of the radical change proposed in the Constitution of our State relative to the judicial department of our government.

Article VI of the Constitution of Nevada is entitled "Judicial Department." It sets forth in some five pages of detailed provisions the court structure of this State. In this Article we find three state courts authorized, a Supreme Court, District Courts and Justices' Courts; we find the composition of each court, the jurisdictional limits of each court, and other matters properly describing the composition of courts in Nevada.

Article VI of our Constitution has effectively served the people of Nevada for over a century. It has provided certainty and stability to the administration of justice while at the same time allowing for some necessary modifications necessitated by changing times.

The subject study, "Nevada's Court Structure" proposes an amendment to our Constitution which would, paradoxically, remove the constitutional description of our "court structure" from Article VI and placing it in the changing makeup of subsequent legislatures and supreme courts.

In lieu of some five pages of text delineating our court structure, the proposed amendment substitutes a single sentence, to-wit:

"The judicial power of this state is vested in a unified court system, comprising (sic) a supreme court and a district court."

What about other courts and their jurisdiction? The amendment provides only that,

"The legislature may provide by law, or the supreme court may provide by rule not inconsistent with any such law" for the creation of geographical divisions of the district court, assignment of judges to specialized functions, and, most importantly, for the appointment of "one or more magistrates in one or more divisions, and the jurisdiction and qualifications of such magistrates."

We must clearly understand, then, that the essential purpose of "Nevada's Court Structure" is to eliminate Nevada's court structure as constitutionally proclaimed and place its future formulation in the hands of subsequent legislatures or supreme courts. Although the new proposal does specify that the Supreme Court should have appellate jurisdiction, and the District Courts original jurisdiction, all other direction is omitted.

The Committee anticipates the argument that in a fast-growing and progressive state a great deal of elasticity should be allowed in such matters so that the Legislature or Supreme Court might effect changes immediately. After consideration, it is the Committee's unanimous conclusion that the makeup of our courts is such a fundamental matter and so much a part of the very foundation of our government that it should be established at the constitutional level.

Our position should not be understood, of course, as anything in the nature of opposition to change in the Constitution, or as an assertion that the present Constitution has achieved a level of perfection. We assert only that change of our judicial structure should be achieved only with the utmost of prudence inherent in the process of

constitutional amendment, and with the exact proposal submitted in advance to the public.



We believe that some change may be in order for our court structure, but proposed changes should be carefully delineated and when finally approved invested with the permanency and dignity of constitutional enactment. We do not believe that the people of this State would be served by removing the judicial matters from them. Rejection of this portion of the report is recommended, with the intent that a clear statement be included in the Constitution setting forth with particularity what the proposed court structure will be so that the electorate may vote on a particular system.

Second: The selection and retention of judges. A great deal of attention was given by the Committee to the central question of the election of judges, or the proposed alternative of removing this right from the public. Members of the Committee weighed the various arguments for each system, and the Committee was divided as to which was the preferable system. It was felt that substantial legitimate arguments could be presented for each position. No member was unalterably opposed to the changing of the elective system, given the proper safeguards. However, the Committee was unanimous in its opinion that the elective system should be continued until it is proven by experience that the appointive system, accompanied by a strong disciplinary commission, will serve the needs of the people of this State.

In making this recommendation the Committee considered the following factors:

A. A constitutional amendment providing for creation

of a commission for supervision of the judiciary has already passed one session of the Legislature. This is Assembly Joint Resolution 5 of the 54th Session. We favor this amendment and believe that the Association should go on record as supporting it. Upon passage of this Act, we shall have the opportunity to observe the activities of the judicial review commission and be able to judge accurately the workability of such a commission under the special circumstances existing in Nevada. At this point we insert the cautionary reminder that the situation in our State is much different from that in neighboring California and the larger states. Here judge knows judge and lawyer knows judge on uniquely close and personal terms. This situation must be conceded to be a possible impediment in the field of judicial discipline and provides additional reason to believe that we should proceed to observe the judicial review committee in action before taking any action on the subject.

B. The elective system does provide safeguards to the public. The historically minded will recall examples of judges being replaced apparently because of some fault in their performance. We can recall no instance in which a clearly competent judge has been replaced by a clearly incompetent one. This is not to argue the merits of the elective system, but to maintain that it does provide some safeguards for the public. Some members of the Committee believed that the present proposed judicial review commission contains no real safeguard. All members of the Committee believed that more assurances should become evident before precipitously eliminating a system that has served us quite well for over one hundred years.

C. The Committee saw no real hazard in continuing the present system for a reasonable period of reflection, evaluation and experience with a judicial review commission. The Committee notes that in the last election in Washoe County, four of the five judges, all incumbent and competent, were up for election. None was even opposed. We must remember that only members of the Bar are eligible for judicial office, and we must credit our own members (demonstrated by the above example) with some good sense in these matters. The Committee feels constrained to note that under our present system Washoe County has an excellent judiciary, and we do not feel that an emergency change is required in order to provide the County with a high quality of justice. The Committee does not see any chance that our judicial system will fall at the hands of an improvident electorate were we to follow this Committee's recommendation of prudent delay and observation.

The Committee unanimously concluded that until this judicial review commission is established and operating, with a demonstrated record of achievement, the Bar should not support a change from the elective process.

Third, and finally, we noted various other objections of more modest significance and will mention several such problems.

A. The Act places a portion of the function of the state library system under the jurisdiction of the Chief Justice of the Nevada Supreme Court. We feel that the Chief Justice has enough in the way of administrative duties, coupled with his judicial functions so that it is unreasonable

NOT APPROVED

to expect the Chief Justice to enter into the further administrative duties of librarian, and that we should not compound any further administrative duties upon the Court.

B. Our present system provides for the rotation of the Chief Justice of the Nevada Supreme Court every biennium. The Act as proposed would provide that the Chief Justice be elected by his fellow Justices, and it was proposed that this be for life. The Committee does not feel that popularity or seniority should be a factor in the administration of the Court's work or the judicial system of the State of Nevada, but believes that five men sit on the Court whose talents for leadership and administration could be well used, and in doing this on a two year rotational basis over a period of ten years, each one of our judges can contribute in this regard.

C. A further proposal is made that the Court sit in panels. We note that when the additional two judges were added by the Legislature only two years ago, they specifically placed in the legislation that it was their intent that the Supreme Court sit in bank, the idea being no doubt that the State would have the benefit and wisdom of the thinking of the entire Court. We believe that such recent legislative intent should be honored, and that it would be improper for us to change the legislative policy only two years after securing their assistance in achieving the additional Justices of the Supreme Court. The Committee is certain that it need not remind this Association of the need for respectful co-operation with our Legislature.

In conclusion, we believe that one of the most real

and important problems facing our judiciary has not been met in the statutory proposals presented, namely, that of assuring adequate compensation for the judiciary. If we are to maintain the current caliber of our judges and continue to attract such men, it is imperative that their compensation be brought to a realistic level in line with our sister states.

We support the request made by Chief Justice Jon Collins that the salary be established at $35,000 for the Supreme Court and $30,000 for the trial court. If the continued eminence of our courts is to continue, we must initiate and pass such a measure at this Legislature, and we feel that this is the single most important contribution that this Association can make to the administration of justice at this time.

We would urge that this is the direction and aim which this Association should pledge itself to during this legislative session.

Respectfully submitted.

John Squire Drendel
Peter Echeverria
Leslie M. Fry
Frank R. Petersen
Charles E. Springer
Eugene J. Wait, Jr.
Jerry Carr Whitehead

CITIZENS CONFERENCE ON NEVADA COURTS

Reno, Nevada, July 10-11, 1968

CONSENSUS STATEMENT

The Nevada judicial system, created in 1864, has served us well for more than a century. Now, with the population growth and changed conditions of recent years, certain weaknesses have developed which should be eliminated or minimized.

It has been our good fortune to have many dedicated and competent judges, but the present election system deprives the people of the services of many excellent potential judges, puts unfair and unnecessary burdens on those who take judicial office, and denies them the security and independence which are essential for the best judicial service.

Our state suffers from lack of a unified system of courts and an effective administrative program.

In recognition of these problems, the 1967 Legislature ordered a study of the Nevada court structure by a subcommittee of the Legislative Counsel Bureau. We are in accord with the recommendations of that committee as presented to us by its Chairman, Senator Carl F. Dodge, calling generally for a state-wide unified court system with effective administrative provisions, a judiciary selected and retained in office on the basis of merit, with adequate provision for retirement,

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discipline and removal.

COURT ORGANIZATION

In order to meet present conditions and to fulfill the future requirements of the citizens of Nevada for an integrated, efficient judicial system, uniformly administered, we recommend elimination of Justice and Municipal Courts and that a two-level court system be adopted. Such a system should consist of a Supreme Court and District Courts. Magistrates subject to District Court supervision and direction should be appointed to assist in the performance of District Court functions.

We recommend a detailed study into the costs and income distribution inherent in such a two-level system by an appropriate agency under the direction of the state Legislature.

Double appeals should be eliminated. Allocation of Magistrates should be governed by the needs of the areas to be served. Specially trained judges should be assigned to all juvenile cases.

COURT ADMINISTRATION

In order to efficiently operate an integrated judicial system an administrative assistant to the Chief Justice of the Supreme Court should be appointed to assist the Supreme Court in fulfilling its responsibilities as the head of the Nevada judicial system. The primary qualification of such

officer should be administrative ability, regardless of legal background.

JUDICIAL SELECTION AND TENURE

We recommend the adoption of a selection system which includes nomination by a non-partisan commission and appointment by the Governor, with tenure subject to periodic vote of the people.

The value of the judge ultimately selected by the Governor rests in large measure, if not fundamentally, upon the skill and dedication of the commission who nominate him. The commission should include lawyers because of their ability to assess the legal qualifications of a prospective candidate, and laymen by reason of their ability to make wise judgments as to his character.

We believe that competitive elections for judicial office, costing thousands of dollars in campaign funds, some or all of which are contributed by others, should be eliminated. The solicitation of campaign funds is incompatible with the dignity and impartiality of the judicial office. We believe that judges should be freed from election campaigning, thereby making more time available to them for judicial duties.

JUDICIAL COMPENSATION

The salaries paid our judges should be commensurate

with their responsibilities and sufficient to attract qualified and competent lawyers to the bench. Our Constitution should permit a judge's salary to be increased during his term in office, and the remuneration of our judges should be reviewed periodically.

In the proposed two-level court system we recommend that Magistrates should be made state employees and eligible for our state retirement program, and that these Magistrates should receive sufficient compensation to attract competent personnel.

We recommend that the fees derived by the judiciary from performing civil marriages should go directly to the state.

RETIREMENT

A fair and adequate retirement program should be maintained and reviewed periodically. A mandatory retirement age for judges should be fixed by the Legislature, and retired judges should serve on specific assignments as directed by the Supreme Court.

DISCIPLINE AND REMOVAL

We endorse the procedure for the discipline and removal of judges by the establishment of a commission made up of judges, lawyers and laymen to conduct confidential investigation

of complaints and to recommend appropriate disciplinary or retirement action by the Supreme Court.

ACTION PROGRAM

The conferees are in [illegible] agreement that a state-wide citizens committee composed of representatives from the Northern Nevada Conference and representatives from the Southern Nevada Conference should be formed to immediately implement a state-wide program of public information in support of the proposed changes set forth in the Dodge Committee report.

The proposed changes in the judicial system will require Constitutional amendments. This will take time. The citizens committee must take action now.

To insure that the work of the citizens committee is timely and appropriately taken, a steering committee should be formed. The initial membership of this steering committee should be selected from the conferees attending this Conference. Selected from Group No. I are the following:

Joseph McMullen
Mrs. L. Curtis Farr
Byron Stetler
Neil Plath
Mrs. Esther Nicholson
Del T. Landing

From Group No. II:

Thomas Wilson
Bert Fitz
Ernest Newton

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From Group No. III:

Edward Manville
Chris Sheering
Mrs. William Knudtsen
Charles Munson
Mrs. Elizabeth Helgren
And a representative of the Nevada Parent Teachers Association, who will be named later.

(First Draft)

The people of Nevada have been fortunate in having a relatively efficient judicial system, with many able and dedicated judges. The Conference recognizes that changes must come if this system is to continue to meet the needs of the people in the future and that modernization should be planned to prevent crises before they occur. Certain problems now exist which have aroused concern among governmental leaders as well as the citizenry at large. A preliminary report by a sub-committee of the legislative counsel bureau calls attention to these problems and suggests proposed remedies. We commend the sub-committee's study and endorse its recommendations in principal.

COURT ORGANIZATION

The judicial system of Nevada should be an integrated one, uniformly applying the laws of the state for all citizens. To achieve this goal, changes should be made in the present court structure to provide for a two level court system patterned along the recommendations of the sub-committee's report. The two level court system would be composed of the supreme court and district courts. The supreme court would be the appellate court and exercise administrative control and supervision over the entire system. The district court would be the trial courts in all cases. District judges would be assisted in their duties by magistrates appointed by and responsible to the district

court.

Comprehensive study and comparative analysis of the financial structure of the judicial system, including costs and income, should be made.

All judicial officers must be given the opportunity for training to achieve the highest degree of judicial performance.

COURT ADMINISTRATION

In order for the Supreme Court of Nevada to fulfill its assigned role in the state government, it must accept supervisory powers over the judicial system. An administrative assistant should be appointed to assist that court in performance of this part of the judicial function. The administrative assistant ideally should be legally trained and must necessarily have a good administrative and accounting background.

JUDICIAL SELECTION AND TENURE

The present method of election of district court judges and supreme court justices is not entirely satisfactory. The distraction created by engaging in frequent election campaigns is incompatible with the judicial process. The judicial power of this state must be entrusted only to competent, industrious persons who are able, experienced, highly trained and possessed of judicial temperament.

Although the present system has produced a high caliber of judges and justices, it cannot guarantee that these goals will always be reached....

We recommend the establishment of non-partisan judicial selection commissions basically in conformity with the plan outlined in the sub-committee's report. These commissions, as recommended, should contain lawyers, judges and laymen. They should seek out, screen, interview and investigate potential justices and judges when a vacancy occurs. Of those so considered, three nominees should be submitted to the Governor. Neither the nomination process nor the ultimate appointment should be governed by political considerations.

Each judge should be required to submit himself and his record, at regular intervals, to the electorate for their determination as to whether he should be retained in office.

COMPENSATION AND RETIREMENT

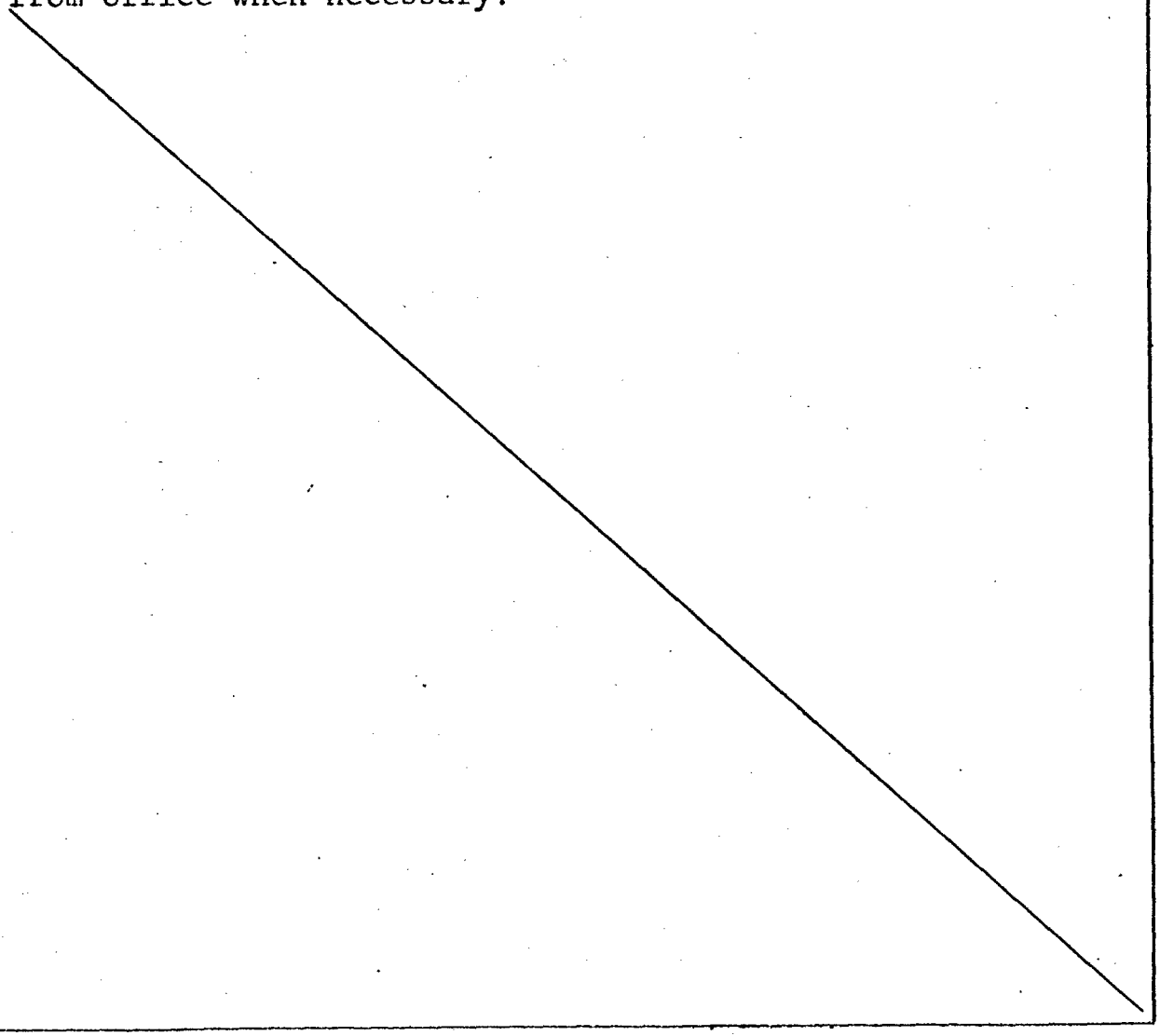
Salary and retirement benefits should be such as to attract able and qualified attorneys to judicial office, and should be reviewed periodically by the legislature.

The constitutional limitation on salary increase during a judicial term of office should be repealed. It should be mandatory for a judge to retire at an age to be determined by the legislature, and the chief justice should

be empowered to assign competent retired judges, with their consent, to active judicial duty as needed.

DISCIPLINE AND REMOVAL

We strongly endorse the sub-committees' proposal for a commission to receive and investigate complaints regarding conduct and performance of judges and make recommendations to the supreme court for their removal from office when necessary.



## HOW JUDGES ARE REMOVED

1. By rejection of the Voters.

2. By retirement at age 70.

3. By death.

4. By retirement for disability.

   A. Upon complaint of anyone.

   B. Commission on Judicial Discipline.

      Composed of

      1. The Chief Justice
      2. Two other Justices
      3. or Judges
      4. Two members of the
      5. State Bar of Nevada
      6. Two laymen appointed
      7. by the Governor

      1. Makes preliminary investigation

         a. Dismisses or
         b. Orders a hearing

      2. Recommends

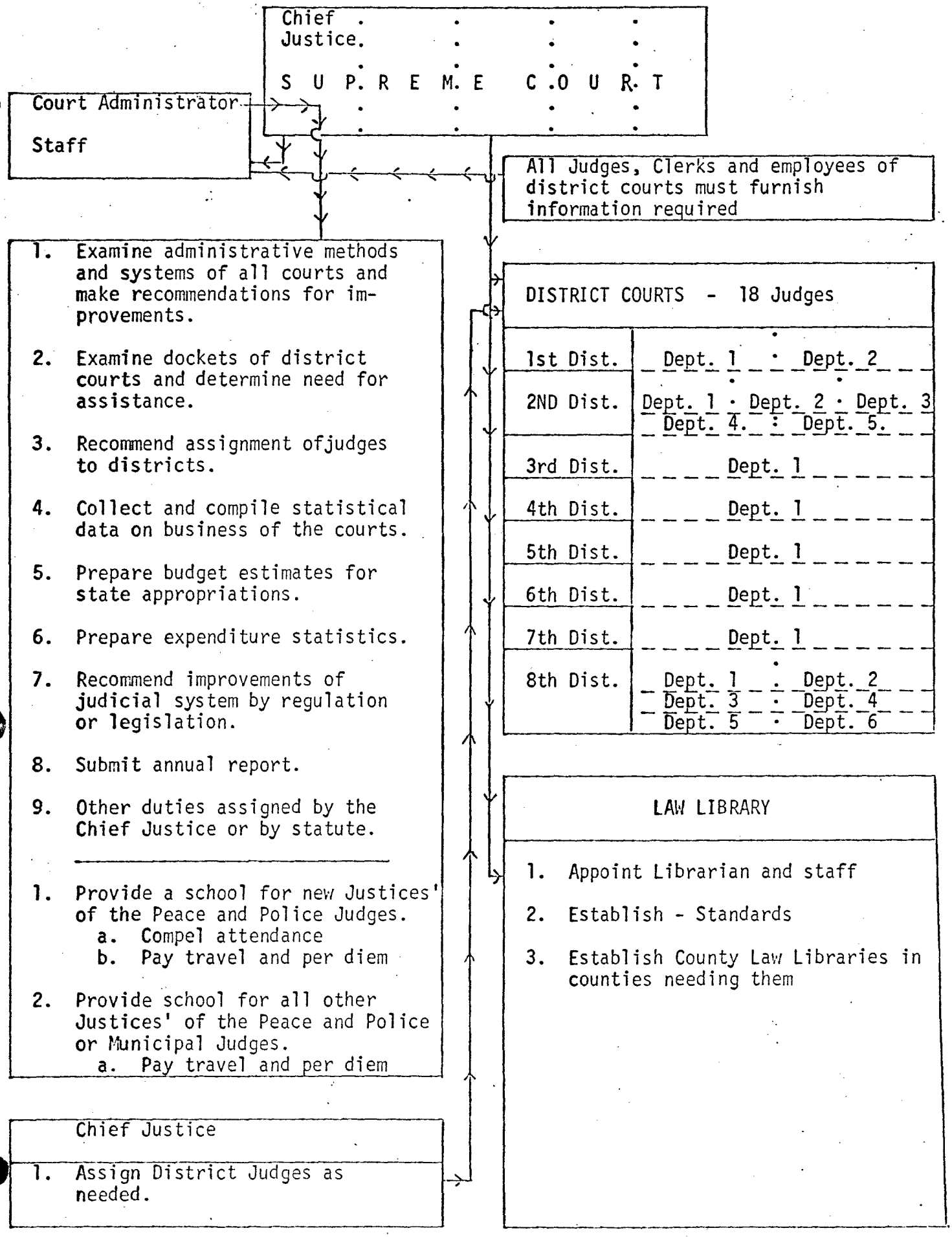
         a. Censure
         b. Retirement
         c. Final Action is by Supreme Court

5. By Removal (same procedure as 4, supra.)

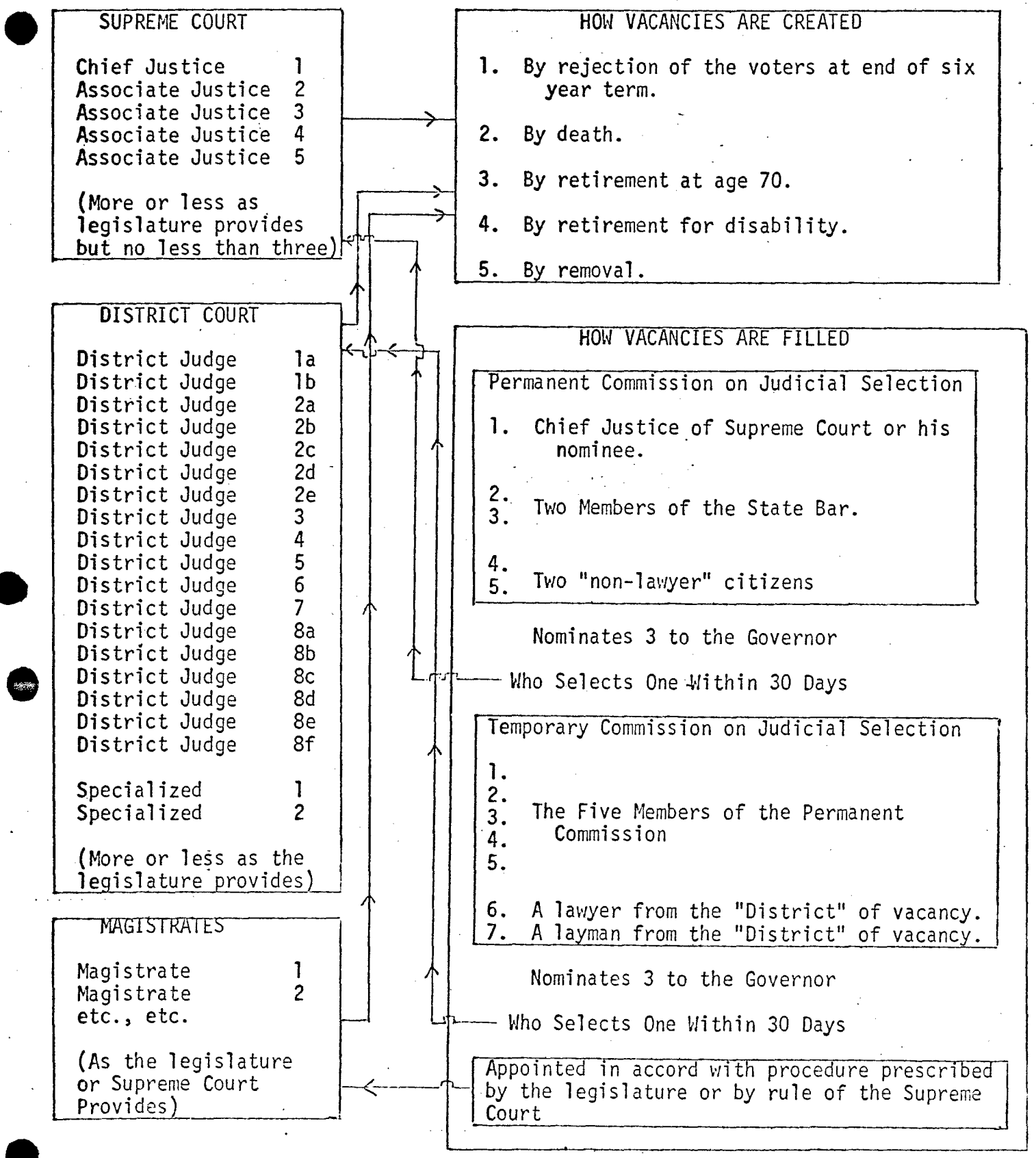
Grounds for Retirement or Removal

4. Mental or physical disability which prevents proper performance of judicial duties and which is likely to be permanent in nature.

5. Willful misconduct, willful or persistent failure to perform the duties of his office; or habitual intemperance.


Chief Justice.
S U P R E M E C O U R T
Court Administrator
Staff
All Judges, Clerks and employees of district courts must furnish information required
1. Examine administrative methods and systems of all courts and make recommendations for improvements.
2. Examine dockets of district courts and determine need for assistance.
3. Recommend assignment ofjudges to districts.
4. Collect and compile statistical data on business of the courts.
5. Prepare budget estimates for state appropriations.
6. Prepare expenditure statistics.
7. Recommend improvements of judicial system by regulation or legislation.
8. Submit annual report.
9. Other duties assigned by the Chief Justice or by statute.
1. Provide a school for new Justices' of the Peace and Police Judges.
a. Compel attendance
b. Pay travel and per diem
2. Provide school for all other Justices' of the Peace and Police or Municipal Judges.
a. Pay travel and per diem
DISTRICT COURTS - 18 Judges
1st Dist. Dept. 1 · Dept. 2
2ND Dist. Dept. 1 · Dept. 2 · Dept. 3 Dept. 4. · Dept. 5.
3rd Dist. Dept. 1
4th Dist. Dept. 1
5th Dist. Dept. 1
6th Dist. Dept. 1
7th Dist. Dept. 1
8th Dist. Dept. 1 · Dept. 2 Dept. 3 · Dept. 4 Dept. 5 · Dept. 6
LAW LIBRARY
1. Appoint Librarian and staff
2. Establish - Standards
3. Establish County Law Libraries in counties needing them
Chief Justice
1. Assign District Judges as needed.

# THE NEVADA COURT SYSTEM



# 1968 REPORT OF THE
# COMMISSION ON JUDICIAL QUALIFICATIONS
# TO THE GOVERNOR

## MEMBERS

Hon. Murray Draper (Chairman)
Presiding Justice, Court of Appeal
First Appellate District, Division Three
San Francisco

Hon. Wm. Biddick, Jr.
Judge of the Superior Court
Stockton

Hon. Harold F. Collins
Judge of the Superior Court
Los Angeles

Hon. Martin J. Coughlin
Associate Justice, Court of Appeal
Fourth Appellate District, Division One
San Diego

Theodore E. Cummings
Public Member
Los Angeles

Hon. Gerald K. Davis
Judge of the Municipal Court
Bakersfield

John J. Goldberg
Attorney Member
San Francisco

Benjamin H. Swig
Public Member
San Francisco

Ronald L. Tiday
Attorney Member
Garden Grove

Jack E. Frankel, Executive Secretary
3041 State Building
350 McAllister Street
San Francisco

# LETTER OF TRANSMITTAL

To His Excellency, Ronald Reagan
Governor of the State of California

The 1968 Report of the Commission on Judicial Qualifications is presented herewith, pursuant to the provisions of Section 11091 of the Government Code.

February
1969

Murray Draper, Chairman

# 1968 REPORT OF COMMISSION ON JUDICIAL QUALIFICATIONS

## I

The Commission has now completed seven and a half years of regular operation. The concept of a tribunal always available to receive and investigate charges against judges, which ten years ago was hotly debated, has long since received approval and support among all ranks of the judiciary. During 1968 Pennsylvania, Louisiana, Michigan, Alaska, Oregon and Idaho changed their state laws to put comparable programs into operation, all patterned after the successful experience in California. The relevant provisions from the California Constitution are on the last page.

## II

The statistical side of the year's work can be quickly stated. As of December 1, 1968, 1030 judges were within Commission jurisdiction as follows:

| | |
|---|---|
| Appellate Courts | 52 |
| Superior Courts | 406 |
| Municipal Courts | 324 |
| Justice Courts | 248 |

During 1968 132 complaints were filed with the Commission of which 48 warranted some inquiry or investigation. In 35 instances this included asking the judge for his explanation and reply. In two cases the judge resigned or retired from office thus terminating the investigation. This is but a fraction of the total retirements this year. The great majority of retirements and resignations are by judges who have never been brought to the attention of the Commission. There was no recommendation during the year to the Supreme Court for censure, removal or retirement. The number of valid complaints is small.

The great majority of the communications to judges for their comment were not major accusations but involved matters which the Commission concluded were of sufficient significance to deserve the particular attention of and, in some cases, correction by the judge. Often the judge's response absolved him of any fault. In several instances, after receiving their explanations, judges were admonished; in some cases the inquiry itself had the effect of a cautionary notice. In such matters the precise Commission action depends upon such factors as the nature and extent of the infraction and the attitude and cooperation of the judge. Some of these cases were terminated after an exchange of letters while others have required extensive investigation and review extending over many months. A substantial contribution to better judicial performance is being rendered by the ability of an impartial body comprised of representatives from the public, the legal profession, and the judiciary to act promptly, effectively and confidentially.

## III

The word "Qualifications" in the Commission's title is to some extent a misnomer. Jurisdiction is limited to specific conduct, condition or activity which falls within one of the five grounds spelled out in the Constitution, i.e., wilful misconduct in office, wilful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice that brings the judicial office into disrepute or disability that seriously interferes with the performance of duties and is or is likely to become permanent. Unless allegations come within one of these five areas a problem or situation is outside of the Commission's purview.

The power to act against a judge for misconduct or wrongdoing is totally different from the power to act for or against a prospect for judicial office during the selection process.

# California Constitutional Provisions

## Article VI - Judicial

Section 8. The Commission on Judicial Qualifications consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years.

Commission membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

Section 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his removal or retirement.

(b) On recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States he pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If his conviction is reversed suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the Supreme Court shall remove him from office.

(c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court he is suspended from practicing law in this State.

(e) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.