

MINUTES OF JOINT MEETING - ASSEMBLY AND SENATE COMMITTEES ON JUDICIARY  
55th Session, March 5, 1969

Meeting was held in the Ways and Means Committee Room and was called to order at 7:15 p. m. by Senator Monroe, Chairman Senate Judiciary.

SENATE JUDICIARY COMMITTEE MEMBERS PRESENT

Senator Monroe, Chairman  
Senator Hug  
Senator Swobe (All present)  
Senator Dodge  
Senator Young  
Senator Christensen  
Senator Bunker

ASSEMBLY JUDICIARY COMMITTEE MEMBERS PRESENT

Mr. Torvinen, Chairman  
Mr. Fry  
Mr. Bryan  
Mr. Reid  
Mr. Prince  
Mr. Schouweiler

ASSEMBLY JUDICIARY COMMITTEE MEMBERS ABSENT

Mr. Lowman  
Mr. Kean  
Mr. Swackhamer

LEGISLATIVE COUNSEL PRESENT

Frank Daykin.

CHAIRMAN MONROE: Gentlemen, we are here to take a look at and have a discussion on the Court Revision Bills, the principal ones, and to try to find out what differences we have between our two committees. We do not want to process SJR 5 out of the Senate if there are a number of things the Assembly does not agree to and if we can get together and more or less generally agree it will save us all a lot of time and effort. If we can review our positions on it and have a general discussion perhaps we can make some progress on these bills. I will open the discussion and anyone that wants to start can go ahead.

SENATOR DODGE: I will give you a little background on this. I would like to say that while there are recommendations here and there that obviously won't meet with any uniform approval or maybe not even a majority approval, actually I think the sub-committee that studied this did try to evaluate it as objectively as they could and tried to make recommendations they thought best for the future of the State of

Nevada. It may not be in defense of the recommendations but in general the things that I think might be in contention is the appointment procedure of judges and some of the other things are matters which almost uniformly in any study groups have been recommended. They have been endorsed and recommended by the President's Crime Commission, by groups like the Economic Development which is not politically oriented but made of of business groups around the nation and make recommendations generally along the lines suggested in this study.

Obviously, whatever we do, will have to be viewed in line with what we think the political situation of Nevada will do as far as accepting these recommendations.

The appointive thing we went over pretty well at the hearing the other day. The Committee actually would not have recommended the appointive procedure without tying with it the discipline condition as was explained before and operates in California. Adversly, we may made the recommendation that if the procedure is not bought of appointing the judges they should not impose the Discipline Committee upon the Judges.

The Justice and upgrading of the court system (justice) and calling it by another name, it doesn't have to be called by another name, it can be called the Justice Court. We found that around the State there was a wide variance as far as the attitudes of the Justice Courts. In the small communities and rural areas there is a lot more respect for Justice Courts than there is, for example, in Las Vegas and in Reno. Obviously, a lot of these ideas would have greater acceptance in some areas than they would in others. I think what we need to do here is to try to make two or three decisions and from there I think we can take a look at the judicial article and either change by amendment or leave it the way it is.

One of the decisions we have to arrive at is the appointive procedure, whether we want to appoint all of these people, or whether we want to appoint part of them, or whether or not to appoint any.

I have mentioned to some of the lawyers and I mentioned it at the hearing, it seems to me that another problem we have and should face up to is the problem of how to get rid of the trial de novo. It really is not defensible. I don't know actually how many cases come up from the misdemeanor conviction but the fact is that a fellow only gets one shot at a trial and in this procedure he gets two, which is not defensible, but there is another serious reason it seems to me, and that is it is a very time consuming thing. We are jammed up in the court system now so what ever we can do to relieve the flow of cases in the courts would be a big step in the right direction.

Also, as was pointed out quite strongly in the Las Vegas Citizen's Conference, it is also hard for all the people that have to come in as

witnesses. If you have a couple of police officers who are the principle witnesses obviously they have to show up for the trial in the Justice Court and then show up a second time for the trial in the District Court.

I have stated before and I will state again, I don't know what the best solution is to try to correct this situation and I think this is where some of the lawyers that work with this system would be very helpful and try to get rid of the trial de novo. When we can rid ourselves of that, then we also will know what we want to do with the lower courts, the present justices, how much responsibility and jurisdictional authority we are going to give this court.

If I can answer any specific questions you might have about the sub-committee and its recommendations, I would be glad to do it. It seems to me that generally there are two or three important things that we should get some idea how we feel about and go from there.

ROY TORVINEN: If I might make this suggestion, there are lesser basic policy decisions to be made and greater policy decisions to be made. I would like to dispose of the lesser ones first and get those out of the way.

On page 5, line 14 it says "comprising a supreme court and a district court". This puts all judicial power in those two courts, and in talking about magistrates later on I don't think this does away with the magistrates courts. I think this wording says that there are only two courts as the magistrate does not appear in this wording so they can not make a judicial decision. He could possibly set day or I'm not sure he can even do that. I am very strongly opposed to this wording. I have had some experience as City Attorney with municipal courts and I do not see how we can do away with this court level.

The question of trial de novo, I disagree here with Senator Dodge. I do not think trial de novo is a real problem. It isn't a problem in Washoe County. They have only one or two cases in Washoe County and it is probably even less than that. Occasionally there are summary cases held by the justice of the peace. If you lump that work into the District Court level it would take more District Judges to handle that work and I do not think we would be saving anything. To my knowledge the two court system is not functioning anywhere in the United States, there might be one jurisdiction. This is a complete and radical departure from what is being done anywhere.

I think we have to overhaul the justice courts and have to raise their jurisdiction, but I think the jurisdiction should be reserved for the legislature so they can change the jurisdiction.

I agree with the training of the magistrates and see no reason to oppose lumping police judges and justice of the peace together and call them all magistrates or all justices of the peace and giving them equal training.

HARRY REID: The gentlemen who spoke at the hearing (Mr. Frankel) from California suggestion that it was impractical for the Chief Justice to be on the Commission and also on the Disciplinary Committee should be considered.

I am opposed to all of the language in SJR 5 which states that "the Supreme Court may provide by rule not inconsistent with the law" I don't think we need that we are either we are going to give the Supreme Court full power or we are not. In my opinion, we have to have some separation between the three levels of Judicial, Legislative and Executive. By putting this kind of language into the Constitution we are merging the Judicial and Legislative.

SENATOR DODGE: Are you saying you think we should to give it to the Supreme Court?

HARRY REID: I think in the constitution/<sup>if</sup> we want to give the rule making power we should give them a statute like we did in 1951.

SENATOR DODGE: Then you are saying that the legislature ought to reserve the authority under their Judicial Article?

HARRY REID: Not expressly reserve the authority. The Constitution ought to be solid there as to who does what. It should remain a Judicial Article.

Basically, without getting into the election or appointment of judges, those are the main areas of concern that I have.

SENATOR DODGE: May I respond to one thing about the language on the Supreme Court and the District Court? This language may be a little misleading as actually what we were talking about was that there would be one trial level and one appellate level. You will notice that recommendations were made about the magistrate system that they actually serve as an arm of the District Court.

FRANK DAYKIN: The Constitution of Illinois provides that Judicial Power be invested in the Supreme Court, Appellate Court and Circuit Court. That is a three level system but the levels are apart. In their Circuit Courts they do appoint magistrates and those magistrates do hear cases, and authorized the legislature to prescribe the jurisdiction of the magistrates and give them civil proceedings up to the amount of \$10,000.00. In other cases there are criminal cases assigned to the magistrate so it is constitutional under that language.

HARRY REID: Concerning some of the things stated by Senator Dodge said. In Las Vegas the trail de novo really is a problem. We have the appeals of the principle court heard on a Friday and it pretty well shoots a Friday for a District Court Judge just to hear the appeals from municipal court. I think it is a point well taken that if I'm charged with burglary and the only place I can go for a trial is the Supreme Court, but if I am charged with running a stop light I can go to municipal court and then to District Court and then I can go to the Supreme Court. I do not think this is fair. I agree with Senator

Dodge on the point that trial de novo, at least in Clark County, is just creating a real burden and instead of creating the necessity of appointing new judges I think it would cut down on the work load of the judges as they get a good share of the trials anyway.

I think the wisdom of the legislature originally in establishing appellate procedure was probably a good one and may still be a good one. For example, in Henderson and some areas I am familiar with as I was City Attorney for Henderson for a number of years and I can honestly say that maybe some of the people did not get a fair trial in Henderson. It was hard for me to loose a case over there because the judge was not trained in the law and it would have been a shame if these people had to go to the Supreme Court from there.

I would like to talk about elections just a little bit. No matter what this committee does it is my personal opinion that it will never pass the electorate if it gets to them. I do not think it will pass the Assembly to appoint the judges. It is in keeping with the temperment of the public now that the people are getting so far away from the Courts there only way to keep control and hold on the courts is to elect the judges. I am personally in favor of appointing some of the judges, but I think it would be wrong to appoint them all. That is just a personal opinion. If we do decide on appointing the judges I think we are really missing a point if we allow the District Court judges to appoint the municipal court judges. Number one this would scare the municipal court judges to death and number two I have talked to three of our judges in Clark County and they do not want this power. Maybe it is just because of tradition but they don't want that power.

ROY TORVINEN: In Las Vegas you have two municipal judges in Las Vegas, one in North Las Vegas, one in Henderson and one in Boulder City and two justices of the peace in Las Vegas.

HARRY REID: Yes, we have two justices of the peace in Las Vegas, one in Henderson, one in North Las Vegas, one in Searchlight, one in Boulder City.

ROY TORVINEN: Are the JPs in North Las Vegas and Henderson close to full time jobs?

HARRY REID: No, Boulder City is nothing and Henderson's doesn't have much to do.

ROY TORVINEN: If you took the trial work from all of the JP's and municipal judges would you have about five full time trial people.

HARRY REID: We would need 2½ in Las Vegas and could lump some of the others together, all acting on a summary basis as we very seldom have a jury trial. I think there has been only one jury trial. I

demanded one once and the JP didn't know what to do.

ROY TORVINEN: My point is obviously, is that five full time trial judges would put a load on the district court level. It might start out the same way of treating matters as they do in summary court or third level court but it won't be many years until they aren't treated in a summary way but will treat them like district court cases.

HARRY REID: I don't think it will go that way. There is a world of difference between an arraignment in a district court and an arraignment in a municipal court but I think Roy's point is well taken. The municipal court leaves you so you don't know whether your client has entered a plea or not where in a district court before you can enter any kind of a plea at all you have to chat for a few minutes.

ROY TORVININ: I think we should make every effort to do away with the trial de novo, I agree there.

SENATOR DODGE: We don't necessarily differ. We make another recommendation and there are other possibilities whereby you do give some authorities to the justice court, make him a court of record, and another suggestion we made was that the appeal would be in the district court but not an automatic appeal, it would be by a writ of review, and the district court could grant an appeal from a trial which was held in the justice court.

We had another thought that you could have a summary proceeding leaving the choice up to the person involved and if he wanted a simplified procedure close to home where there is a justice court and he did not want to retain an attorney, he could resort to a summary procedure in the justice court, for which there would be no appeal, for lack of a decision.

There are lots of possibilities and I do not have an idea as to which is the best to do at this point.

HARRY REID: A point that has been bothering me. We are talking now about cutting out one of the appellate levels and making a magistrate under the district court judges. Did you discuss what would be done administratively? Are these people going up and sit with the district court judges or are they going to stay where they were before? You have the same clerical help.

SENATOR DODGE: Stay where they were before. Here is one of the things you face, and I am sure one of the reasons we got into the trial de novo. In the small mining camps around Nevada they would set up the jurisdiction and have the trial then if the client lost and wanted to appeal he would then have a trial in a court of record in a district court. They were not made courts of record and actually did not have a record from which to take the appeal. One of the problems

today in the outlying areas about making this court a court of record is the problem of getting it properly recorded. We did review this and thought maybe we could use recording devices but then you can run into the problem of distinguishing voices. Someone suggested at one time that you make them a court of record in the rural areas and not in the other areas. I don't know whether you could do it.

HARRY REID: How would get to a trial de novo if you didn't have a record.

SENATOR DODGE: That is where you have to make your decision. You either have to have a summary proceeding with no appeal where if you don't have much of a record, maybe a skeleton of a record that you can go on a writ of review to the district court and ask for an appeal which would be a trial de novo, but not automatic. The district court could or could not grant it. Or you could go into the justice court and if he plead not guilty and wanted to make an issue of it, transfer the case on to the district court.

SENATOR YOUNG: I think you would crown the courts if you did that. If you make the justice courts a court of record it will become much more formal, with objections, quoting the law, etc. To me it sounds bad. I don't think I have ever taken an appeal from the justice court to the district court. I don't know how many records throughout the state would show how many were taken to the district court.

FRANK DAYKIN: We were able to get the figures from the outlying counties and found that there were virtually none. On the other hand, in the two larger counties, Washoe and Clark, the clerks of the court did not keep a record in the district court so as to reflect that information and they were unable to dig it out.

RICHARD CLARK: In Las Vegas they aren't handled that way. You just submit it on the record and the judge finds you guilty and you take an appeal. You don't even have a trial.

CHAIRMAN MONROE: Let's take a look from a layman's point of view. What kind of a case do you take into a district court where you can afford all the legal procedures that are available. Say that I get arrested for speeding in Lovelock and get a court case filed in Lovelock I don't have any recourse of justice at all. I do not have the opportunity to go into court and present my case. I have to hire an attorney in Elko and take him to Lovelock and pay him a legal fee and when I get thru I will be found guilty anyway and pay a \$10.00 fine. There is a justice of the peace in Imlay who has never once had a rule against the district attorney in a case. I am a taxpayer and why should I have to pay all the fees to get something tried like this in a district court. Where do we get justice?

SENATOR DODGE: We were not trying to look at this from the viewpoint of the lawyers or judges but was trying to look at it from the standpoint of the people that would use it. We feel that there is a lot of improvement that can be made and hope we can come up with

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a system that would put qualified men into these positions. No matter how big or how small a matter might be, it is important to the person even if it is a small vagrancy charge or a traffic violation.

HARRY REID: With the motor vehicle point system it could be rough.

CHAIRMAN MONROE: This just gives you some kind of an idea what people are up against in trying to get justice out of a justice court. A justice court in a county seat could probably take care of the system but you get out into the rural areas, Jackpot, Wells, Mountain City, etc. you would really have problems.

HARRY REID: Mr. Chairman, one thing that has been bothering me. The district court will appoint a magistrate, but I don't see how we are going to get better people than we have now. Those that were elected, some are not balls of fire but they went into their job because they wanted to do it.

SENATOR DODGE: They are grandfathered in. Those they felt were doing a good job would be retained.

HARRY REID: I can say from experience that some of the justices are lousy. I don't see how we are going to improve the municipal or justice of the peace judges.

SENATOR DODGE: I can tell you one way, and I guess I scared some people to death by this observation but I will still stand by it and the more I think about it the more I think it would be feasible if you really wanted to do it. You could do away with everything except the district courts. You could only do this in the areas where the people are resident and the judges are resident. It wouldn't work where you don't have the district court available all of the time. You are talking about making the justice judge a lawyer, why couldn't you make them all district court judges. You have to have enough district court judges to take care of the load. It can be done and I know it is feasible. Out in the rural areas you would still have to have the magistrate who could fix the bail and do other things on the spot but I am talking about the trial work where you have to have quality men. This is far out but this is a way it could be done. I don't think it would cost any more money than to pay municipal judges a good salary and the JP's if you are going to require them to be lawyers.

SENATOR YOUNG: I think that would cost a lot more money. It would be more time consuming and you would have delays with the judge being out of town. There would have to be a lot more clerical work too. Are they going to have a higher type justice in Reno and Vegas and lower type in rural areas where they can't afford to pay a good salary?



SENATOR DODGE: We did have another recommendation to try to streamline the justice court even more because he is not a trained man, to a people's court idea to give in jurisdictional areas and up to \$1,000 on civil claims, a simplified procedure even before the district court would come in where you wouldn't have to have all the formalities but the case could be stated to the district judge and the ruling could be made. The forms and procedures would be simple. We now have limited ability and knowledge with the justice of the peace and have never like extending the jurisdictional area.

CHAIRMAN MONROE: Would it be possible to have the lesser courts in the outlying areas and the district courts in the larger areas? What do they do in California? Do they have the justice courts?

FRANK DAYKIN: SJR is flexible enough that you could provide for jurisdiction as a magistrate and it would not have to be the same magistrate. There are any variety of plans that could be made as this is very flexible.

SENATOR YOUNG: That is one objection most attorneys have about it. It is too broad and they would like it spelled out.

SENATOR DODGE: If you are going to sell it to the public you have to have a concrete plan or you have no chance to sell it.

ROY TORVINEN: I don't think we should give up the idea of using electronic devices. You could have a microphone for each and a secretary to take some notes to keep track of who talks. I don't think we should rule this out.

SENATOR DODGE: We have not ruled it out. We asked several court reporters about it when we were discussing it and they said in their opinion it was not a workable system, but we should have asked further. We were not talking at that time about the rural areas but where secretaries lived and were available.

HARRY RIED: Mr. Chairman, would you favor a motion at this time to the effect that we have Mr. Daykin arrive at something along the lines you suggested? I will move that we the justice or magistrate courts in the outlying areas, the higher level or district court in the urban areas and retain the three court system.

Senator Swobe seconded the motion.  
Motion carried unanimously.

CHAIRMAN MONROE: Do you want to take up other minor matters before we go into the appointing or electing of judges?

RICHARD BRYAN: Will you entertain a motion to exclude the Supreme Court Chief Justice from the commission.

SENATOR DODGE: There isn't any argument on that. That was a point well taken.

RICHARD BRYAN: How about discussing the panel of justices?

SENATOR DODGE: That can be changed. We now have five justices and when this went in it was presumed they would sit en banc. We might write a provision in that if we ever expand the court beyond the five that we might permit them within certain jurisdictional limits set by the legislature to set panels of three and in more serious cases to be heard en banc. You could set it that a panel could hear certain types of cases and those types that are more serious and more of public interest would sit en banc. I think this could be done. One of the alternatives that we might face is that as the work load might get heavier with the increase in population in Nevada, we could do like Arizona and have an intermediate appellate court so it is a question as to whether this type of procedure would give us an opportunity to take care of the work load without going to another level of a court system. We could say that if the court was expanded beyond five we could give them constitutional authority within jurisdictional limits set by the legislature could sit on cases in panels of three. Would that be acceptable?

RICHARD BRYAN: I would say that one they would have to hear en banc would be a capital case. There will be a lot of others, too. Is there any reason why the court could not sit en banc other than in the seat of government?

SENATOR DODGE: We discussed that and had some requests for flexibility to permit the Supreme Court to sit in places other than the seat of government but we decided there would be mechanical problems involved. Trying to move them around would present a problem, but this would be subject to review by the legislature. We discussed this with the court and they felt there would be problems taking them out of the seat of government to hear cases.

SENATOR YOUNG: I have a certain amount of sympathy for witnesses that have to come from Las Vegas. They have a lot of appeals now from the district courts but I can see a lot of problems for having the court sit away. We are talking about equal justice for all why should someone have to pay an attorneys more to litigate up here in Carson City, it just doesn't seem right to me. They will probably have three quarters of the appeals from Southern Nevada and I don't see where there is justice in making the people come up here.

SENATOR DODGE: What did we write into this about sitting en banc?

FRANK DAYKIN: It says "For the hearing and decision of cases by panels of no fewer than three justices, the resolution by the full court of any conflicts between decisions so rendered, and the kinds of cases which must be heard by the full court. For the holding of court by panels of justices, but not by the full court, at places other than the seat of government."

RICHARD BRYAN: I think Senator Young has a good point. The Supreme Court of the United States has required automatic appeal for all criminal decisions, in every criminal case where an adverse decision is reached must be appealed irrespective of the if the client wants it, virtually every case where there is a conviction in Clark County is automatically appealed. This is hard on the taxpayers as there is a substantial cost involved.

SENATOR DODGE: This would have to be decided. If the legislature feels it should provide flexibility in this area it could be done.

FRANK DAYKIN: I am not aware of any state that provides that the Supreme Court leaves the seat of government.

SENATOR DODGE: We should envision a time there may be other growth areas in Nevada, perhaps in the Eastern part of the State, and I think you might get into a situation where you would have legitimate demands from a lot of places within the State, even from a circuit court.

RICHARD BRYAN: I think it should be left to the flexibility of the legislature. I would oppose any constitutional limitation. I think this is something we should be able to review periodically in the legislature as the demand presents itself.

SENATOR DODGE: I made the suggestion if the court were to expand beyond the five we could rewrite that and say that in the event we expand to where we permit the panel system. Does this meet with everyone's approval? The legislature would retain flexibility. Is everyone in favor of that?

RICHARD BRYAN: Should we strike the prohibition from having the constitution silent as to where they can sit?

FRANK DAYKIN: If you strike the prohibition from the constitution it will be open to the legislature.

SENATOR YOUNG: If you are going to give the power to the legislature, why not put it in? I am sure that some of the judges feel now that then can sit en banc. I personally would like to spell it out at least indicate that the legislature has the power if it so desires or indicates to sit outside the seat of government.

I so move that we spell it out that the legislature has power if it so desires to permit sitting outside the seat of government.

Seconded by Senator Swobe.  
Passed unanimously.

CHAIRMAN MONROE: What would you like to discuss next?

SENATOR SWOBE: How about the rule making situation by the Supreme Court. I don't like the "or the supreme court may provide by rule not inconsistent with any such law".

HARRY REID: I can say now they way the judiciary committee has been going in the Assembly that if we did recommend it the way it is written it would not get by.

SENATOR SWOBE: I move we strike out "supreme court may provide by rule not inconsistent with any such law".

HARRY REID: I second the motion.

RICHARD BRYAN: Where are you going to strike it. I think I am going to agree with you as I would like to see the court have the power to assign more and more judges.

FRANK DAYKIN: May I quickly summarize what Mr. Swobe's motion is directed to? In the area of creating and modifying geographical divisions; assignment to specialized functions or perhaps a provision that legislature may enact by law or the court may act by rule not inconsistent with any such law. Senator Swobe wants to restrict this to "legislature may provide by law". It also occurs in the matter of setting what cases may be heard by panels. That would be restricted by law. It occurs again under transfer of actions from one geographical division of district court to another.

SENATOR YOUNG. Why don't you spell it out? If the court had the power to assign judges I would like to have this stated specifically. I am in accordance with Coe's motion other than that particular part.

CHAIRMAN MONROE: We have a motion, all those in favor.

Motion carried.

SENATOR DODGE: There was another point brought up about keeping the same Chief Justice for a three year term. It is set so that he has to be reconfirmed by the other justices each term. The theory of this was that we wanted to try to get an administrator. Not every judge is admittedly an administrator even tho he may be a good judge. There has been a suggestion made that we rotate as we do now, but that a judge may pass or defer to one of the other justices as far as designation of the chief justice. He does not have to automatically assume this on the rotation system. You may want to consider that. I am not trying to perpetuate someone for a chief justice, but the idea we had here was the main weakness in our system today is that there is no boss. No one has to answer to anybody except to the voters who elect them. We figured that if there was going to be any

performance in this system there had to be somebody who was the boss, and he should be a good administrator. I don't think it would be destructive to the system if you left it on a rotation as it is now.

RICHARD BRYAN: How about saying that a Chief Justice would not succeed himself. One of the criticisms against this would be that the chief justice could become a judicial czar. I think there would be more power if we say the chief justice would not succeed himself.

I so move.

Roy Torvenien seconded the motion.

Motion carried unanimous.

ROY TORVINEN: Mr. Frankel suggested that the name Judicial Discipline was harsh and for public relations reasons he thought it should be changed to Judicial Tenure or some other word.

FRANK DAYKIN: It is a good point to have the Discipline when you have to go to the people for approval.

Everyone agreed it should be left as Discipline.

CHAIRMAN MONROE: Lets get to the elective and appointive system.

HARRY REID: Mr. Chairman, I think we should start at the top, the Supreme Court, and work our way down. I think it is possible that some of us believe the Supreme Court Justices should be appointed, yet the district court judges should be continued to be elected as would the other magistrates.

SENATOR DODGE: I would like to offer a comment on that. I feel more strongly about that level than the others. I think there is a real good case to be made for the complete appointive system but I think I am more concerned with the rural areas. In reality they are going to have very little chance of ever getting a person who has some potential for being a judge ever being elected from some place out in the boondocks. He might be running against one from a larger area with any support at all he wouldn't have a chance of being elected over the one from the more populated area even tho" he may be more qualified. I feel there is certain merit in being able to consider someone out in the rural area for a supreme court judge. Judge Batjer pointed out what is going to become an increasing problem at the Supreme Court level if their election is continued. He has to leave the bench and go out and campaign for a couple of months and we require that the court sit en banc. The whole court procedure comes to a halt. I do feel this should be considered at the Supreme Court level. We are looking for quality on the supreme court level. The person that has the real knowledge and ability of valid decision on appeal and this is very important. It is a screening procedure to have him appointed that we do not get in an

elective procedure. It is not the one that has a good television personality or who has the money behind him for a campaign that would necessarily make the best judge.

HARRY REID: After we had the first hearing I received a letter enclosing a copy of an article in Assemblyman Prince's newspaper and it set out something that was quite interesting to me. I talked about a commission such as we had and cites that a number of years ago that some state appointed all of their judges as they said it would be non political but as it turned out, they have had a Republican administration there the committee appointing them was composed of less than 10% democrats and it was more political than ever. It turned out that 8% of the judges appointed were Democrats and 92% were Republicans.

SENATOR DODGE: This would be taken care of in our proposed legislation. The nominating committee gives three names to the Governor, they might be three Republicans or three Democrats or some of each according to the names the nominating committee submitted. There might be a situation where he did not want to appoint any of them but we insisted that he had to select from that panel and we have the provision stated that if he doesn't select one within thirty days he cannot make any other appointments until he makes a selection from those three.

SENATOR YOUNG: I would go for the appointment for the Supreme Court but I am a little concerned as to what to do about the state level.

RICHARD BRYAN: I make a motion that the justices of the supreme court be made appointed.

HARRY REID: I second the motion.

Motion carried.

RICHARD BRYAN: May I ask Senator Dodge if there is a compelling reason for the Justice of the Supreme Court sit on the nominating committee or commission to fill a vacancy in the high court?

SENATOR DODGE: There is no compelling reason. We decided to put him in there because he was head of the system but if you want to take him off of there I think the point is well taken. Who would you want to replace him?

RICHARD BRYAN: How about having three members of the State Bar?

SENATOR DODGE: How about the Discipline Commission. Do you want him off of both of them?

RICHARD BRYAN: Yes.

SENATOR YOUNG: I think there should be some lawyers on there and some lay people.

FRANK DAYKIN: There should be someone that has the qualification to judge.

SENATOR DODGE: I guess there might be some chance of "cronyism" but they would be outnumbered four to one. I still think there is a lot to be said for a judge being part of this process. We are selecting people to be judges and I would think that somewhere along the line we would want someone on there to represent the judiciary.

RICHARD BRYAN: A lawyer could make a fair decision in picking a member for the Supreme Court. Many feel now that the Supreme Court has too much power. How about another layman?

SENATOR DODGE: If there is going to be validity to this nominating procedure there is still a lot to be said for having a judge involved in this. I don't say it has to be the chief justice it could be one of the associates.

SENATOR YOUNG: I move there be three laymen, three lawyers and the Chief Justice or another justice appointed by the Justice to take his place.

RICHARD BRYAN seconded the motion.

Motion carried.

FRANK DAYKIN: Would you then want to prolong their terms so that one Governor does not get to appoint too many?

SENATOR YOUNG: How about two, four and six?

SENATOR SWOBE: You can't avoid it.

RICHARD BRYAN: Mr. Chairman, on the election of the District Judges. We have gone about as far as we can to sell this program to the public. I honestly feel that if we tried to do what a lot of people think should be done, that is to make it completely appointive, it will blow whatever we have tried to accomplish. I believe we have taken a real big step in saying that the Supreme Court shall be appointed. I personally feel that if we are going to get what we have already said should be done over to the people we should stop right now.

Before we get too far away from it has anyone thought that we might put in the restriction that the composition of the commission that not more than two laymen or not more than two lawyers should be from the same party?

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SENATOR DODGE: I think that would be very good. Let's put it in.

RICHARD BRYAN: I so move.

SENATOR DODGE seconded the motion.

Motion carried.

SENATOR CHRISTENSEN: Mr. Chairman, I am a lay member, I am not an attorney, but I listened attentively at the last hearing and it seems to me that if you elect the lower judges you have thrown your cause out of the window. I think that, because I can understand that it is necessary to appoint justices that the lay members that vote can also understand. I think that it is a far better system to have the whole system complete if you nominate, no not nominate, but if all judges are appointed rather than being elected. Some think the judges should get out and mingle with the people and they can't do that unless they are elected. I don't think that is good for a judge. I think a judge is a better judge if he doesn't mingle with the people. If I am on a jury and they say to me do you know so-and-so, I might know the judge and I am off of the jury. I believe that if you want to sell this package as a package, and to me it is a mighty good one, you better not elect anybody.

SENATOR DODGE: Senator, I sure agree with you and the more I have gotten into it the more I believe in the validity of it, but I don't want to argue against my own proposals, but one of the things I have to do is not get a little gun-shy. I have had a couple of bills shot down already that were important. I have never been in the habit of fighting lost causes. I want to pole the Senate as I am not sure we can carry the Senate on this basis. It has been indicated that on an informal pole it is doubtful if we could carry the Assembly. Whatever the cross thinking of the Legislature is indicated it will be approximately the same with the general citizenry. It might not be all that we aimed for as an ideal system, but it is a start. I think we should try to get some idea as to the feeling before we go too far with this. I have had some Senators tell me they were going to oppose appointment of the district judges.

SENATOR CHRISTENSEN: What are you going to do with your Disciplinary Commission and also the Administrator if you elect the judges?

SENATOR YOUNG: There is no conflict there. You still have to have a removal commission. Some judges do not want the disciplinary commission but if they are fair judges and doing their work, why do they fear them? There is a different situation in California and Nevada. California is on an impersonal basis and we are on a first name basis here. Before we give up the right to vote for our judges we want to be sure the Disciplinary Committee will work. Everyone on the Committee in Nevada will probably be on a first name basis with a lot of the judges and it might have a little of the country club



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atmosphere prevail and they might say "We can just talk to old Joe and straighten it out". We would have given up the right to vote and we want to be sure this committee is used as a whip and will work efficiently.

SENATOR CHRISTENSEN: I feel the Disciplinary Committee have the whip if they need it. I want it in.

SENATOR DODGE: The study group considered carefully the possibility of doing away with the Disciplinary if you elect the judges. You don't have to buy their recommendations but you could institute the Disciplinary Commission and have the elective system. California has this now and Idaho retained the elective system but did want to institute the disciplinary system also. Obviously we should not want to go for the appointive system without the disciplinary and we said we did not feel that a judge should run continuously for election without opposition and that he should be subject to other types of removal. There is a real short coming in the attraction of good men to the bench with the elective system. Do you suppose this will throw another road block on that man. In addition to having to campaign for election which is expensive and takes a lot of time he will still have to expose himself to whatever complaints might come from the Discipline Commission.

SENATOR YOUNG: I think that if this works out for a few years and the lawyers and the public see that this is a realistic system with the discipline we could come back and say it works in the state level and it will work in the district level. It would be much more saleable.

CHAIRMAN MONROE: Suppose a judge is dismissed for cause. He could run for election again next time.

SENATOR YOUNG: Yes, and could be dismissed again. But I think this is good. He might overcome his problems and become a good man and then make a good judge the second time.

RICHARD BRYAN: I move the adoption of the elective system of the District Court Judges with the Disciplinary Commission.

SENATOR YOUNG seconded the motion.

Motion carried.

HARRY REID: Is this disciplinary commission going to be a constitutional commission or a statutory.

SENATOR DODGE: This is in the article.

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ROY TORVENIEN: There has been a bill proposed over in the Assembly. AJR 5 we passed last session, which if we proceed with it might get confusion. I think we had best throw it out.

HARRY REID: I move "do kill" AJR 5

RICHARD BRYAN: I second the motion.

All Assemblymen voted aye. Motion carried.

CHAIRMAN MONROE: Is there anything else now?

SENATOR DODGE: The lower court idea is something that we Frank to see what he should explore by way of some plan to maybe set up a more sophisticated system and give them responsibilities in the urban areas. If you are going to elect at the District Court level you couldn't do anything else here, that goes without saying.

ROY TORVINEN: I have several matters here actually in the make up of judicial discipline. First of all, we have removed the Chief Justice and it makes only disqualification of the Chief Justice and makes no provision for judges. I think there ought to be an automatic disqualification of judges within the same judicial district for which they qualified, or something to provide for disqualification of judges at this level.

RICHARD BRYAN: Starting on page 7, line 12 the only disqualification here is line 22 where the Chief Justice is disqualified. I would assume by the rule that you can only disqualify the Chief Justice.

FRANK DAYKIN: We will have to provide who will replace him if he is disqualified. If someone else is qualified, for example, the judge that replaces him, he would automatically be off of the commission but there is no provision for replacing him on it.

RICHARD BRYAN: Who disqualifies him?

SENATOR DODGE: Is this something that as whatever his disqualifications might seem, could we spell this out in the article or could we provide that the legislature can establish conditions for disqualification?

FRANK DAYKIN: The Supreme Court should make the rules for this procedure. You could say that the power for the disqualifications rests with the power of the legislature.

RICHARD BRYAN: Don't you think it would be wise to provide in the constitution that no other Justice of the Supreme Court should be on the discipline commission?

FRANK DAYKIN: You ask if it wouldn't be wise. I am not sure that I do. I think the Justices of the Supreme Court should be, and probably are of sufficient integrity to discipline one another

RICHARD BRYAN: Couldn't we provide that if the Justice of the Supreme Court is the one being considered that the Commission should not include another Justice of the Supreme Court and if the District Court Judge is being considered that no other District Court Judge from that District be on the Commission?

FRANK DAYKIN: We could certainly so provide.

SENATOR DODGE: Frank, why don't you rewrite that then. I think these things we are seriously considering should be changed so we can see how they look.

SENATOR CHRISTENSEN: Did we finally decide that we should have two laymen, two attorneys and two judges on the Disciplinary Commission. I don't like any attorneys on there. I believe that if you had four laymen on there a laymen would make his mind up and not be influenced by the judge. The attorneys might not want to stand up against the judge.

SENATOR DODGE: The study felt this should be weighted to the people in the profession because we felt they should be best to pass judgment on the judges. We thought they would be more qualified than a lay individual on a judicial performance.

SENATOR YOUNG: I think Senator Christensen has a point. Is there anything wrong in increasing the laymen?

ROY TORVENIEN: I move that we increase it to three laymen.

Seconded by HARRY REID.

Motion carried.

ROY TORVINEN: Mr. Chairman, did we vote on a motion on the disqualification of Justices of the Supreme Court?

FRANK DAYKIN: I took that as mutual consent. I thought back a moment to this. The members of the Discipline Commission only recommend action to the Supreme Court. The Supreme is ultimately going to sit and try them whether it would be a judge or justice.

SENATOR DODGE: I don't think we should do that. There is danger in that. After all you are dealing with someone's character and future and I think he has to have recourse to the court. This would be like setting up an administrative board, giving them this authority and I hope it would never happen but I could see a situation where a court could be heavy handed in a decision.

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SENATOR YOUNG: All the others that I know of make recommendations to the Supreme Court but by the mere fact that you mention this also indicates that the Justices have a little something extra going and some people might say that they are willing to be appointed in but then they still want the protection of the Supreme Court. They take very little heed to the recommendations made by the Board of Pardons, Board of Governors, etc. After a while if no one pays attention to the recommendations made by a Board, you are going to loose heart and say "what is the use, they don't listen to us anyhow."

SENATOR DODGE: Let me point out one thing. Mr. Francel from California said they had this system in for seven years and only had one case come up before the Supreme Court, but they had a lot of deals where the jusge resigned and these were all open and shut cases. The man knew he couldn't prevail and simply resigned.

RICHARD BRYAN: I think there is an argument for the Court accepting the recommendation of the Advisory Commission. I think the court wants this system and I think they will make it work too and beinclined to support the recommendations.

SENATOR CHRISTENSEN: Which way will it sell best to the voters?

SENATOR DODGE: If the Commission is left with the final say you loose all confidence in the entire system. We have delegated a lot of responsibility to the Board but I think they should just be the review group. They must do a respectable job and I think they will do it.

SENATOR YOUNG: Why not give the Supreme Court the final review.

SENATOR DODGE: I wouldn't object to that as long as there is some recourse. I do not want the Administrative Board to have the final say.

SENATOR YOUNG: I move the Commission have the power of review subject to review by the Supreme Court.

Seconded by RICHARD BRYAN.

Motion carried.

CHAIRMAN MONROE: Is there anything else with SJR #5?

SENATOR DODGE: There is one thing I think still remains. If we take the Chief Justice out of this does anyone have any suggestion as to how they would pick a Chairman? Designated by the group or ---

RICHARD BRYAN: Leave this up to the individual group. How about leaving it that the Chief Justice calls the Committee together and let them select their own Chairman.

FRANK DAYKIN: May I suggest that the Chief Justice convokes the initial meeting and the Chairman calls the meeting at the end of his term to pick his successor?

SENATOR DODGE: We did provide that the Administrator would be ex-officio Secretary of the Commission so he would maintain the stability.

HARRY REID: What would happen if the Chairman was a judge and being disciplined? We could say that the Chairman was not to be a judge and restrict this to a layman or lawyer.

RICHARD BRYAN: I move that the Chairman be a layman or a lawyer.

Senator Young seconded the motion.

Motion carried.

ROY TORVINEN: If the judge is disqualified who would fill the vacancy on the Commission?

FRANK DAYKIN: The Governor appoints him as he does now when there is a vacancy.

SENATOR DODGE: As long as we decided to have the appointive system for the District Judges why not have the Commission handle the replacement and extend it to the District Court too.

After a general discussion on this Mr. Daykin was asked to provide this in the changes.

CHAIRMAN MONROE: Any more discussion on this SJR #5? If not. lets take a look at SB 85. This has been amended and we will discuss it when it has been returned with the amendments.

SENATOR DODGE: This bill has two provisions. For the Court Administrator and also provides for the instruction for the municipal or justices of the peace, which we intended to start this fall.

ROY TORVINEN: What is the amendment?

FRANK DAYKIN: I think I can sketch them very quickly. First in lieu of making the Administrator respond directly to the Chief Justice he will respond to the Supreme Court as a whole. The other is with respect to the instruction to be given to the Justices of the Peace, it is spelled out so that it corresponds in full with the

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Justice of the Peace and the matter of required attendance. Their attendance is required unless the municipal judge or justice of the peace is excused in writing by a District Judge of his district.

SENATOR DODGE: Let me point out that there is an appropriation in there which is intended to cover the transportation and living expense of those attending the seminar. \$15,500 the first year and \$11,500 the second year.

We will have to refer this bill to the Finance Committee and we provided for but did not set up an amount for the Court Administrator but thought he should be paid the same salary as the District Court Judge. As for staffing, etc., this will have to be reviewed by the Finance Committee.

I think the Finance Committee will favorably consider this and I will tell you why. They keep getting requests for additional judges and they don't know what the work load is and there is no way to project the work load in years to come until they can begin to develop some statistical information and I think they are going to have to face up to the expenditure of this kind of money as against the continued request for additional judges.

RICHARD BRYAN: I have a question. What if the Administrator starts telling the District Court justices where they should be, and they just don't want to be bothered. Then what?

SENATOR DODGE: This goes back to the idea that actually there isn't a constitutional official authority to enforce that and that is why you will have to have a judicial article to make the Supreme Court the boss of this system.

HARRY REID: SB 85 will not be effective at all until SJR 5 is passed.

SENATOR DODGE: That is right.

CHAIRMAN MONROE: If this is all the discussion, gentlemen, I want to thank you all for coming. I think we accomplished quite a bit tonight.

# Appointment Plan Means More Politics in Judiciary

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We note with considerable distaste that there is a move afoot in Nevada to further limit the prerogatives of the voters -- this time by taking away the privilege of electing district judges and Nevada Supreme Court justices.

The Senate Judiciary Committee has proposed a constitutional amendment that allegedly would "take the judges out of politics" by making them appointive, not elective. This so-called "Missouri plan" would allow the governor to appoint the judges from three nominees selected by a judicial committee. If the appointee sought a second term he would run on his record without opposition, the ballot reading to the effect "Shall Judge Doaks be retained as Sixth District Judge? Yes No."

It is argued that the appointive process leads to a better judiciary; that competent men who won't face the rough-and-tumble of politics will accept appointments to the bench.

It is argued that "politics" will be less of a factor in judicial selection if nominees are appointed, not elected.

Our opinion? Hogwash!!

The best example in the United States of an appointive judiciary is the federal court system -- the U. S. District Courts, Courts of Appeals and Supreme Court.

If anyone can argue that those appointments are made by the president without politics being a factor, he simply is ignoring the facts. Those judgeships are political plums; the fact that a competent judge occasionally is appointed is balanced by the fact that a lot of political hack lawyers get cushy jobs in payoffs. Seems to us that the public hasn't done any worse in electing judges in Nevada than the presidents have done in appointing federal judges.

Your editor recently returned to Nevada after a 4 1/2 year hiatus in Colorado. Electors in Colorado a few years back bought the "judicial reorganization" argument and voted to "take the judges out of politics."

The governor of Colorado, now in his second term, is Republican John Love. He's appointed about 25 judges from panels selected by "non-partisan" lawyer-dominated committees. Would you like to guess how many were Democrats? At last count it was 3, or a little less than 10 per cent.

Colorado "took its judges out of politics." You bet. What it really did was take its judges away from the people.

There's only one way to truly "take judges out of politics." That's to permit them to run non-partisan instead of by political parties.

To argue, as many proponents of the "Missouri plan" do, that qualified lawyers won't seek to become judges if they have to campaign, is to indict our entire political system. We wouldn't have qualified lawyers in the legislature if that were so.

The opinion here is that a lawyer who doesn't have enough guts to put his name and reputation before the electorate doesn't deserve to be a judge in a democracy.

In all honesty we hope the proposed constitutional amendment to "take the judges out of politics" does come to a vote. We'd like to see Nevadans beat it so soundly that this un-democratic idea will stay buried for all time. Nevada, thank God, is still a place where people like to decide for themselves -- and we'd bet they'll vote to keep on deciding for themselves as far as judges are concerned.