Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent:

None

Guests Present:

Don Ashworth	Senator
Gene Cataneo	
W.T. Creson	Crown Zellerbach
Shelly Gordon	
Prince Hawkins	Attorney at Law
Gene Milligan	Nevada Association of Lawyers
W.G. Olson	Crown Zellerbach
Richard Sassy	
Peggy Twedt	League of Women Voters

SENATE BILL 355

Provides legal proceeding for confirmation of domicile.

Senator Don Ashworth gave testimony on the provisions of this bill. The bill does not establish a domicile per se. In order for an individual to declare Nevada as his domicile he would have to live in Nevada for a period of time, vote in the state, license his car in the state, and have his children go to school in the state.

Mr. Banner questioned the bill as to how it would serve the public.

Senator Don Ashworth stated that the public would be served in a situation where an individual needed to establish his domicile for inheritance purposes.

Mr. Coulter asked what the difference between a domicile and a residence was.

Senator Don Ashworth stated that a person could have a dual residency but not a dual domicile.

SENATE BILL 289

Provides for creation of easements for collection of solar energy.

Peggy Twedt, League of Women Voters, testified for S.B. 289. Peggy Twedt strongly supports the passage of this bill because of the many homeowners who set up solar heating and discover that it may be useless because a neighbor erects a tall fence or plants trees which blocks out the sun.

Gene Milligan, Nevada Association of Realtors, testified on S.B. 289. He pointed out that originally the bill allocated the individual with solar equipment to appropriate an easement across a neighbors's land; Mr. Milligan said that as long as the bill is not by appropriation, they are for it and if it is by appropriation, they are strongly against it.

SENATE BILL 321

Authorizes judicial review of corporate takeover bids.

Mr. Prince Hawkins, Attorney at Law, testified in support of this bill. Please see Exhibit A for his testimony.

Mr. Walter Olson, Attorney for Crown Zellerbach, testified in support of S.B. 321. He stated that so far 12 states have provided for an actual hearing for a tender offer. At present most stocks are undervalued and it is difficult for a stockholder to require the offering corporation to state that they consider the offer to be fair and who it is. In the case of a takeover a temporary or permanent injunction would ultimately defeat the takeover.

Mr. Creson, Attorney at Law, testified in support of S.B. 321. He stated that they are not against consolidation of business but tactics that have come into play in recent years have changed. These changes have been in the form of fast offers, external pressures, emergence of speculators who are interested in short time gains; all of which has caused it to become more difficult for corporate mergers to fulfill. To be sure that the offering company has made full disclosure, it is important that there be some type of injunction or judicial intervention possible.

Mr. Olson is mostly concerned with the tactics that have emerged and are of a very hostile nature. EX: On Friday night or after stocks have closed, the Company will come out with a merger announcement Monday morning that an attempt to buy Crown Zellerbach was made and they must have an answer within days. At that time, all of the head people could be out of the state or the country and it would take several days to assemble people to evaluate the offer. The prospective buyers encourage arbitrators which results in speculators who want a short term

gain. The creation of urgency, time, and the building up of external pressure adds to this.

At present, under federal law a company can be taken over by total surprise. Nevada has to have a warning period of 10 days. Mr. Olson thought a 30 day warning period would be most suitable before the prospective buyers could spring their offer. As long as they did not have any membership, then they can go ahead with their offer but if they had bought any stock, then they can be taken to court. He stated that this bill is just a fairness concept and that the FCC does not go far enough to protect corporations and that they have no warning provision at all in their regulations.

SENATE BILL 289

In essence the bill would say that during periods of collection there will be no shadow allocated on the collecting equipment. This would come out in the title.

Mr. Malone asked where the equipment would be placed.

Mr. Sassy, testifying for S.B. 289, said that you would place a domestic hot water system facing south plus or minus a few degrees on a roof. This would also apply to an active heating system but a passive system would be on ground level also facing south.

Mrs. Hayes stated that she felt that solar energy is the only solution to our problems and that we will have to give up something. She also felt that Nevada is an ideal state for this.

ASSEMBLY BILL 313

Authorizes coroner who performs autopsy to retain body tissues and fluids under certain circumstances.

Mr. Prengaman recommended that we do not need the amendment for the coroners to call up next of kin and request autopsies.

Mr. Coulter moved that this bill have no further consideration; Mr. Fielding seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Malone, Polish, Prengaman, Fielding, Brady, Sena - 8

Nay - Sena, Horn, Banner - 3

Absent - None

Mr. Joseph Kadans gave testimony on what he felt was an important problem. For this testimony, please see Exhibit B.

SENATE BILL 289

Mr. Stewart moved to Do Pass S.B. 289; Mr. Fielding seconded the motion. The committee approved the motion on the following vote:

Aye - Unanimous

Nay - None

Absent - None

SENATE BILL 296

Removes office of county recorder as place to file security interests in certain cases.

Mr. Sena moved to Do Pass S.B. 296; Mr. Stewart seconded the motion. The committee approved the motion on the following vote:

Aye - Unanimous

Nay - None

Absent - None

SENATE BILL 293

Adds to declaration of public policy with respect to gaming licensing and control.

Mr. Sena moved to Do Pass S.B. 293; Mr. Horn seconded the motion. The committee approved the motion on the following vote:

Aye - Unanimous

Nay - None

Absent - None

SENATE BILL 355

Mr. Sena moved to Do Pass S.B. 355; Mr. Stewart seconded the motion. The committee approved the motion on the following vote:

Aye - Hayes, Stewart, Malone, Horn, Polish, Banner, Prengaman, Fielding, Coulter, Sena - 10

Nay - Brady

Absent - None

ASSEMBLY BILL 361

Limits disclosure of class of crime which a person has committed in another state to class in that state.

Mr. Sena moved to Indefinitely Postpone A.B. 361; Mr. Stewart seconded the motion. The committee approved the motion on the following vote:

Aye - Hayes, Stewart, Malone, Polish, Banner, Prengaman, Fielding, Brady, Sena - 9

Nay - Coulter, Horn - 2

Absent - None

ASSEMBLY BILL 481

Requires reporting of apparent incidents of domestic violence.

Mr. Sena motioned to indefinitely postpone A.B. 481; Mr. Stewart seconded the motion. The committee approved the motion on the following vote:

Aye - Hayes, Stewart, Malone, Polish, Banner, Brady, Sena - 7

Nay - Prengaman, Fielding, Coulter, Horn - 4

Absent - None

ASSEMBLY BILL 488

Increases penalties for assualt with deadly weapon and battery upon a police officer or firefighter.

Mr. Horn moved Do Pass A.B. 488; Mr. Prengaman seconded the motion. Under Committee Rule 3, the motion lost by the following vote:

Aye - Horn, Prengaman, Fielding, Coulter, Polish - 5

Nay - Hayes, Stewart, Sena, Brady - 4

Absent - Banner - 1

Not Voting - Malone - 1

ASSEMBLY BILL 507

Prohibits district attorneys and peace officers from disclosing at certain times names of victims of sexual assaults.

Mr. Horn moved to indefinitely postpone A.B. 507; Mr. Stewart seconded the motion. The committee approved the motion on the following vote:

Aye - Unanimous

Nay - None

Absent - None

ASSEMBLY BILL 684

Provides for deposition of vehicles forfeited for use in illegal transportation of controlled substances.

Mr. Horn moved Do Pass A.B. 684; Mr. Brady seconded the motion.

Motion was withdrawn and discussion ensued.

Mr. Horn feels that the owners of vehicles would be more careful about what they brought in if they knew that they could have their vehicles seized.

Mr. Malone moved Do Pass A.B. 684; Mr. Stewart seconded the motion. The committee approved the motion on the following vote:

Aye - Stewart, Malone, Horn, Coulter, Brady, Sena - 6

Nay - Hayes, Polish, Prengaman, Fielding - 4

Absent - None

Not Voting - Banner - 1

SENATE BILL 124

Limits incorporators to natural persons, precludes renewal of periods for reservation of corporate names, increases certain fees and removes requirement for certain publications and certificates.

Mr. Polish moved Do Pass S.B. 124; Mr. Sena seconded the motion. The committee approved the motion on the following vote:

Aye - Unanimous

Nay - None

Absent - None

Vice Chairman Stewart adjourned the meeting at 10:45 a.m.

Respectfully submitted,

Judy E. Williams

Judy E. Williams

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JOHN B. RHODES
M. CRAIG HAASE

April 16, 1979.

Mrs. Karen Hayes, Chairman,
Assembly Judiciary Committee,
Carson City, Nevada 89701

Re: SB 321 - Corporate Takeover Bids.

Dear Mrs. Hayes:

The above bill was introduced by Senator Young at my request, and at the hearing April 19th I and one or more other witnesses will appear in support of the bill.

The purpose of the bill was to afford the stockholders of Nevada corporations targeted for takeover, an opportunity for judicial review of compliance with disclosure requirements and the fairness of the takeover bid. As introduced, there would have been an automatic stay of the offer, if a petition in opposition were filed in the District Court, until the court acted. The Senate Committee believed that an automatic stay pending hearing would defeat the takeover due to the time that would elapse before the judge acted. It therefore eliminated the former Section 6 from the bill, which leaves a Nevada corporation without any real protection.

Thirty-six states have anti-takeover statutes, and twelve provide for a review for fairness. In lieu of the automatic stay to which the Senate objected, we would like to substitute an amendment to Section 4 which would require the offeror to make a representation that the bid was fair and equitable, and disclose all material information, and a changed Section 6 which would confirm that injunctive relief was available for violation of the takeover statute, but would not provide for any automatic stay. We are endeavoring to ascertain whether these provisions would be acceptable to the Senate Judiciary Committee.

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These amendments would read as follows:

Sec. 4, NRS 78,3771, Lines 19-26

78.3771. 1. At least 30 days prior to the making of a takeover bid, the offeror shall file with the resident agent of the offeree corporation a statement containing the following information:

(a) The name, address and business experience of the offeror and each associate of the offeror;

(b) The terms and conditions of the takeover bid which shall include the applicable provisions of NRS 78.3772, and a representation that the bid is fair and equitable to the offerees and all other security holders of the offeree corporation, and all material information with respect thereto.

Sec. 6, NRS 78.3778, Lines 39 et seq.:

1. Whenever any person has engaged or is about to engage in any act or practice constituting a violation of NRS 78.376 to 78.3778, inclusive the offeree corporation or any security holder of the offeree corporation may bring an action to enjoin such person from continuing or doing any such act or practice, or to enforce compliance with NRS 78.376 to NRS 38.3778, inclusive. Upon a proper showing, the court may grant a permanent or preliminary injunction or temporary restraining order or may order rescission of any sales, tenders for sale, purchases, or tenders for purchase of securities determined to be unlawful.

EXHIBIT A

2. Any offeror who makes a takeover bid which does not comply with the provisions of NRS 78.3771 and 78.3772 is guilty of a gross misdemeanor.

3. Each offer in violation of NRS 78.376 to 78.3778, inclusive, by advertisement or to a particular offeree constitutes a separate offense under this section.

The statutes of Illinois (9.8/78) and New Jersey (4/27/77), which are big commercial states, contain an identical provision for injunctive relief at the instance of the offeree corporation or its security holders (Section 12(b); Section 49:5-12(b).

Sincerely,

Prince A. Hawkins.

PAH:GHF

EXHIBIT A

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JOHN B. RHODES
M. CRAIG HAASE

April 19, 1979.

Assembly Judiciary Committee,
Carson City, Nevada.

STATEMENT IN SUPPORT OF AMENDMENT TO
SB 321 -- CORPORATE TAKEOVER BIDS

A takeover bid is an offer by the management of one corporation to acquire, as a practical matter, a controlling interest in another corporation through a direct offer to its stockholders. The offer is usually conditioned upon acquisition of sufficient shares to effect control, and is usually followed by a merger of the target company into the offeror, and the de-listing of its stock.

Shareholders receiving a tender offer must either accept the offer or face the realization that probably enough shares will be acquired by short-term speculators to swing the offer and that they then will be frozen out at the same price in a cash merger. The theoretical option of enough stockholders rejecting the offer to keep the company alive, as a practical matter does not work. There needs to be, and 36 states, including Nevada, have provided some protection to the offeree corporation and its stockholders. A list of these states and their statutes is attached.

We are here asking Nevada to amend its law to add the following provisions:

First, by amendment of Section 4 of SB 321, which amends NRS 78.3771, to require the offeror to make a statement that the bid is fair and equitable and to disclose all material information with respect to that representation. This does not seem too much to ask of a corporation that is seeking to acquire and extinguish another corporation.

EXHIBIT A

Second, by addition of a new Section 6, to amend NRS 78.3778, to allow the target company or its security holders, if they believe the Act has been violated, to go to court to obtain an injunction to enforce compliance with the Act and restrain sales in violation of the Act. Such injunctive relief may already be available but express reference to these remedies would be helpful. Most or all of the other 35 states do make such express reference, and 12 states provide for delay of an offer until the determination has been made that it is fair and equitable to the security holders of the target company.

The takeover statute has no application to purchases made upon a stock exchange, on an over-the-counter market, or from isolated stockholders; nor does it have application to stock of a company whose shares are not registered pursuant to the Securities Exchange Act of 1934. Thus, there are only a limited number of Nevada corporations which may be affected, but for any one of these, the foregoing amendments may be crucial to its continued existence.

Prince A. Hawkins.

PAH:GHF

EXHIBIT A

STATE TAKE-OVER STATUTES

STATE	CITATION	EFFECTIVE DATE
Alaska	**Takeover Bid Disclosure Act** Alaska Stat. §45.57.010—.120 1 CCH Blue Sky L. Rep. ¶6029—6029K	*June 8, 1975*
Arkansas	**Investor Protection Take-Over Act** Arkansas Stat. §67-1264—67-1264.14 1 CCH Blue Sky L. Rep. ¶7151—7165	*March 24, 1977*
Colorado	**Investor Protection Act** Colo. Rev. Stat. §11-51.5-101—108 1 CCH Blue Sky L. Rep. ¶9,151—9,158	*July 1, 1975*
Connecticut	**The Connecticut Tender Offer Act** Conn. Gen. Stat. §36-347a—36-347m 1 CCH Blue Sky L. Rep. ¶10,151—10,163	*June 2, 1976*
Delaware	**Tender Offers** Del. Code Ann. Title 8, §203 1 CCH Blue Sky L. Rep. ¶11,131	*May 1, 1976*
Florida	**Investor Protection Act** Florida Stats. §517.35—517.364 1 CCH Blue Sky L. Rep. ¶13,451—13.459	*October 1, 1977*
Georgia	**Corporate Takeovers** Code of Georgia §22-1901—22-1915 1 CCH Blue Sky L. Rep. ¶14,161—14,178	*March 23, 1977*
Hawaii	**Take Over Bid Disclosure** Hawaii Rev. Stats. ¶417E-1—15 1A CCH Blue Sky L. Rep. ¶14,731—14,745	*May 24, 1974*

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Idaho	**Corporate Take Overs** Idaho Code §30-1501—1513 1A CCH Blue Sky L. Rep. ¶15,171—15,183	*July 1, 1975*
Illinois	**The Illinois Business Take-Over Act** (official citation unavailable) 1A CCH Blue Sky L. Rep. ¶16,251—16,284	*September 8, 1978*
Indiana	**Business Take Over Law** Indiana Code §23-2-3-1—23-2-3-12 1A CCH Blue Sky L. Rep. ¶17,151—17,162	*May 1, 1975*
Iowa	**Minority Rights Protection Act** Code of Iowa §§502.102, .211—.215, .407, .501, .502, .610 1A CCH Blue Sky L. Rep. ¶18,142 *et seq.*	*January 1, 1979*
Kansas	**Take-Over Bids Law** Kan. Stat. Ann. §17-1276—1285 1A CCH Blue Sky L. Rep. ¶19,351,—19,360	*July 1, 1974*
Kentucky	**Take-Over Bid Disclosure Act** Ky. Rev. Stat. §292.560—630 1A CCH Blue Sky L. Rep. ¶20,131—20,138	*July 1, 1976*
Louisiana	**Business Take-Over Offers** La. Rev. Stat. §51:1500—1512 1A CCH Blue Sky L. Rep. ¶21.151—21.163	*June 28, 1976*
Maine	**Takeover Bid Disclosure Law** Me. Rev. Stat. Chap. 23, §801-817 1A CCH Blue Sky L. Rep. ¶22,151—22,167	*March 24, 1978*
Maryland	**Corporate Take-Over Law** Md. Code Ann. §11-901—908 1A CCH Blue Sky L. Rep. ¶23,421—23,428	*July 1, 1976*

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Massachusetts	**Regulation of Take-Over Bids in the Acquisition of Corporations** Mass. Gen. Laws Ch. 110C, §1-13 1A CCH Blue Sky L. Rep. ¶24,261—24,273	*May 22, 1976*
Michigan	**Take-Over Offer Act** Mich. Comp. Laws §451.901—.917 1A CCH Blue Sky L. Rep. ¶25,341—25,357	*July 1, 1976*
Minnesota	**Corporate Take Over Law** Minn. Stat. §80B.01—13 1A CCH Blue Sky L. Rep. ¶26,211—26,223	*August 1, 1973*
Mississippi	**Business Takeover Act** Mississippi Code, 1972, Ann., §75-72-1—75-72-23 1A CCH Blue Sky L. Rep. ¶27,151—27,163	*July 1, 1977*
Missouri	**Take-Over Bid Disclosure Act** Missouri Revised Stat. (citation unavailable) 2 CCH Blue Sky L. Rep. ¶28,201—28,214	*August 13, 1978*
Nebraska	**Corporate Take-Over Law** Revised Stat. of Neb. §21-2401—21-2417 2 CCH Blue Sky L. Rep. ¶30,151—30,167	*April 27, 1977*
Nevada	**Takeover Bid Disclosure Act** Nev. Rev. Stat. §78.376—78.3778 2 CCH Blue Sky L. Rep. ¶31,151—31,169	*March 4, 1969*
New Hampshire	**Security Takeover Disclosure Act** N.H. Rev. Stat. §421-A:1—A:15 2 CCH Blue Sky L. Rep. ¶32,171—32,186	*March 25, 1977*
New Jersey	**Corporation Takeover Bid Disclosure Law** N.J.S.A. §§49:5-1 *et seq.* 2 CCH Blue Sky L. Rep. ¶33,151—33,171	*April 27, 1977*

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New York	**Security Take Over Disclosure Act** N.Y. Bus. Corp. Law §1600—1613 2 CCH Blue Sky L. Rep. ¶35,351—35,364	*November 1, 1976.*
North Carolina	**Tender Offer Disclosure Act** Gen. Stat. of No. Carolina §78B-1—78B-11 2 CCH Blue Sky L. Rep. ¶36,251-36,261	*June 28, 1977*
Ohio	**Take Over Bids** Ohio Rev. Code Ann. §1707.04 2 CCH Blue Sky L. Rep. ¶38,104-1	*October 9, 1969*
Pennsylvania	**Takeover Disclosure Law** Pa. Stat. Ann. §71-85, *et seq.* 2 CCH Blue Sky L. Rep. ¶41,181—41,196	*March 3, 1976*
South Carolina	**Tender Offer Disclosure Act** Code of Laws of So. Carolina (citation unavailable) 2 CCH Blue Sky L. Rep. ¶43.301—43,313	*June 12, 1978*
South Dakota	**Corporate Take-Over Offers Law** S. D. Codified Laws Ann. §47-32-1—47-32-47 2 CCH BLue Sky L. Rep. ¶44,271—44,317	*July 1, 1975*
Tennessee	**Investor Protection Act** Tenn. Code Ann. §48-2101—2115 3 CCH Blue Sky L. Rep. ¶45,191—45,205	*March 17, 1976*
Texas	**Administrative Guidelines for Minimum Standards in Tender Offers** Texas Securities Act Regulations 065.15.00.100—.700 3 CCH Blue Sky L. Rep. ¶46,615	*May 6, 1977*
Utah	**Take-Over Offer Disclosure Act** Utah Code Ann. §61-4-1—61-4-13 3 CCH Blue Sky L. Rep. ¶47,331—447,343	*February 5, 1976*

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Virginia	**Take-Over-Bid Disclosure Act** Va. Code Ann. §13.1-528—541 3 CCH Blue Sky L. Rep. ¶49,228—49,241	*March 5, 1968*
Wisconsin	**Corporate Take-Over Law** Wisc. Stat. Ann. §522.01—25 3 CCH Blue Sky L. Rep. ¶52,261—52,285	*July 1, 1972*
Model Act	**The Council of State Governments**	

EXHIBIT A

STATEMENT OF JOSEPH M. KADANS

My name is Joseph M. Kadans and I reside in Las Vegas at 5010 N. Ridge Club Drive. I am serving as Dean of the Institute of Advanced Law Study, a non-profit membership organization originally chartered in the State of Michigan in 1953 and recently re-chartered in the State of Nevada on November 23, 1977. The purposes of the Institute include promotion of higher learning in law, conducting seminars in legal subjects and assisting others in conducting seminars, especially assisting and encouraging law schools to conduct post-graduate courses for their law graduates and other lawyers who may wish to attend and to encourage respect for the law by various means such as aiding in the selection of qualified judges and aiding in the removal of unqualified judges.

I was first licensed to practice law in 1943 in the State of Maryland, after passing the Maryland bar exam graduating that same year from the University of Baltimore, a law school now fully accredited by the American Bar Association but not so accredited at the time of my graduation. Prior to practicing law, I was in the employ of the United States Corps of Engineers on river and harbor improvement work as a safety engineer, from 1932 to 1940 and with the United States Interstate Commerce Commission as a safety inspector with the Bureau of Motor Carriers from 1940 to 1944. I resigned from Government employment effective December 1, 1944 and in February, 1945 enlisted in the U. S. Coast Guard and was honorably discharged in September, 1945.

I believe it is necessary to mention these things about my own background to establish myself as an expert witness and a creditable one in connection with what I am about to recommend to this Committee. In 1948, I was invited by the Dean of a law school in Baltimore, Maryland, to teach admiralty law. After teaching that subject, I was invited to teach and did teach Federal Court Procedure and later, insurance law. During the teaching of these subjects, I wrote sylabii for the students on both Federal procedure and insurance law and since

EXHIBIT B

that time I have added a book on admiralty law that has been listed as a recommended book for law libraries by the Association of American Law Schools. My book on Federal administrative and court procedure is now in the Truman Library in Independence, Missouri, having been presented to the President in 1949 and used for many years in the White House Library.

In 1950, I moved from Baltimore, Maryland to Detroit, Michigan and practiced law in Michigan until 1962, when I moved to Las Vegas, Nevada. In Michigan, I organized the Institute of Advanced Law Study as a non-profit corporation in 1953 and under the auspices of the Institute lectured on admiralty law at all of the Great Lakes port cities. This was during the time of the opening of the St. Lawrence Seaway and there was great interest in sea law at that time. My law practice in Detroit included admiralty law, negligence law and workmen's compensation law. After moving to Nevada, I have done work for various lawyers assisting in problems related to Nevada law and have held some law seminars for the Institute dealing with admiralty law and other legal subjects. I have also served as head of the Nevada operation of Bernadean University an old and established California institution that has been functioning in California since 1954 and has never had any problems with California officials or with any agencies of the federal government and enjoys a fine reputation. It is still operating actively in California. It's law school is recognized by California officials and graduates may take the bar exam there.

It is extremely difficult for a lawyer practicing law in Nevada to attack the conduct of any Nevada judge or justice of the Nevada Supreme Court. To do so is to risk failure in the presentation of cases to judges or to the Supreme Court. Appeals to higher courts are expensive and the United States Supreme Court is so heavily congested with cases that they select only the most urgent cases of national significance for adjudication. It is only when an individual of my special background, learned in the law and yet not practicing in Nevada Courts, is able and willing to appear before a committee of the State Legislature, that there can be an expose of unethical practices of

EXHIBIT B

judges. And yet, despite the danger, there are several Nevada lawyers who have risked their careers in pointing to deficiencies of members of the Nevada Supreme Court.

For example, Edwin J. Dotson, a recent candidate for election to the Nevada Supreme Court, in his political literature referred to the Court as "being subjected to a great deal of criticism throughout the state. Ted Dotson believes this court should be above reproach." See EXHIBIT A, attached to this statement. Another example of a courageous Nevada lawyer is George Franklin who, in writing about the Nevada Supreme Court, said: "I can only hope the people I will be reporting about will remember "By George!" is written in my capacity as a columnist." The principal fault that Mr. Franklin found with the court is that "three justices who had not read the record on appeal, who had not read the briefs in the case, and who didn't even hear oral arguments put their hands and seals on an opinion authored by one justice." See EXHIBIT D.

In an editorial published in the Nevada State Journal and re-published in the Las Vegas Sun on May 29, 1978, it was stated that "State Bar President Thomas Foley has said lawyers are concerned about problems at the high court, but are confident the judicial discipline committee will take care of the matter. He said that if the commission did nothing, the state bar might get into the picture, although it is not clear what action the group could take." See EXHIBIT C.

Unfortunately the Commission on Judicial Discipline can do little if anything to control the actions of the members of the Nevada Supreme Court. The reason for this is that any action of the Commission is subject to review by the Nevada Supreme Court. Everyone knows and the members of the Commission know that upon review of the action of the Commission, should such action recommend the removal or even any reprimand of the members of the Nevada Supreme Court, the Court would be rather reluctant to approve such a

recommendation. The fact that a "number of prominent Nevada lawyers" have asked for an investigation of the Nevada Supreme Court, as reported in an Associated Press dispatch from Carson City and published in the Las Vegas Review Journal on May 2, 1978 (see EXHIBIT B), coupled with the fact that it has been over a year since the probe by the Commission started and there has been no action taken by the Commission, at least nothing has been announced, indicates that it is not likely that the Commission will take any action.

One report (see EXHIBIT E) refers to an effort made by one of the Justices to halt the investigation of the Court's improper actions. The report indicates that an investigation actually started "with all justices undergoing questioning by a representative of the discipline commission, which had flatly declined to comment on any details." (EXHIBIT E)

For any judicial tribunal to fail to read the record of a case or the briefs filed in a case, there can be only the most severe chastisement from the legal profession. The easy road is to listen to the oral argument and to try to understand the case without reading the briefs or studying the record that accompanies the briefs. This can easily lead to serious errors in deciding cases. Lawyers engaged in argument assume that the judges have read the record and the briefs and often omit important facts in their statements of the case to the tribunal reviewing the decision of the lower court. Sometimes the justices will ask questions about the case of the lawyers arguing the case. Unfortunately, a Justice of the Supreme Court may ask some question pertaining to the factual circumstances. This is an extremely grave error as the answer given by the attorney is not under oath, is not subject to cross-examination and actually constitutes the taking of testimony. As recently as April 13, 1979, while the Supreme Court was hearing oral argument in North Las Vegas, several of the Justices asked questions pertaining to factual circumstances. I was present when this took

place. In answering the questions, the lawyer representing one of the parties was actually testifying although not under oath. The other lawyer, to his credit, interrupted the questions and answering and pointed out to the Court that the Court was engaging in an improper activity in obtaining answers to factual circumstances at an appellate hearing that should have been restricted to argument on matters of law.

To base a decision solely upon listening to the oral argument and/or the questions and answers stated during the oral argument may result in disastrous consequences. An individual may be wrongly convicted of a crime and spend many years in prison and his reputation wrongfully ruined; the victim of an automobile accident may not be compensated for his or her injuries and expenses although innocent of blame because the Justices did not bother to read the briefs or the record; a businessman may be forced to pay heavily for an alleged breach of contract when a careful reading of the facts of the case, as shown by the record and briefs on file indicate that there was really no breach of contract; a lawyer from another State may seek admission to practice in Nevada and despite a fine record at the Bar in the other state, the Court may ignore the actual record and adopt the recommendation of the Nevada Board of Bar Examiners to deny admission, for no good reason but simply to reduce competition for clients. I happen to be one of the lawyers from a sister state who was denied admission and among the ridiculous reasons given for denial was the charge that although I have been a law professor for 30 years, one of the law schools where I had taught, Loyola Law School, in Los Angeles, had me listed as a law lecturer and I was therefore of questionable morals because I had referred to myself as a law professor. It was bad enough to be denied admission to practice in the State courts -- incidentally, I am representing clients on the federal appellate level in the federal courts -- and it is bad enough to be the victim of unjust insults by such denial, but circulating the report throughout the

state and throughout the country that admission to the Nevada bar was denied on grounds of immorality -- entirely unfounded and unjustified -- has seriously injured the reputation and standing of my family. My wife, for example, long active and prominent in community affairs, and herself a former holder of an important Governmental position during World War II, has suffered the consequences of being married to an individual denied admission to the State courts of Nevada on grounds related to immorality, when there was actually no immorality, no hint of moral turpitude, not a scintilla of evidence of wrong-doing. Oh, yes, the Board of Bar Examiners, headed by Nevada lawyer Sam Lionel, reported to the Supreme Court that in teaching at Loyola Law School, I was said to repeat principles of law too often to the law students. How sad, indeed, that a lawyer with 35 years of experience should be denied the right to practice his profession because, while teaching in law school, someone thought he was too concerned about impressing his law school students with principles of law.

My own case is an outstanding case of what happens when a Supreme Court does not rely upon the applicable principles of law and instead relies upon unproved and unreliable charges and disputed facts.

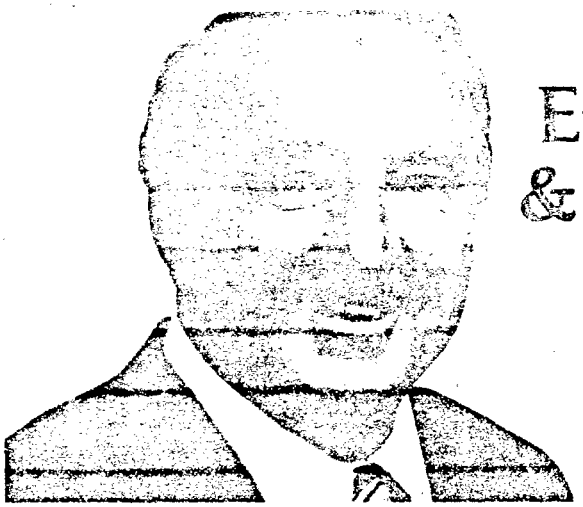
I recommend to this honorable committee that they present to the Assembly a Resolution for investigation of the Nevada Supreme Court. If the Resolution is adopted, either this committee or another committee should be assigned to hold hearings and to invite members of the Supreme Court to answer the charges with respect to nonfeasance in office by the failure to read briefs and records before deciding cases and malfeasance in office by the rendering of clearly unjust decisions such as the denial of the right to take the Nevada bar examination to a highly qualified lawyer from another state. They should also be asked whether or not, in cases of complaint from parties feeling aggrieved by decisions of the Court, they would be willing to allow these cases to be re-opened.

If the Justices insist on deciding cases in a haphazard fashion, there can be no true justice in Nevada and every citizen would resent such a condition. It is incumbent upon the members of the legislature, who represent Nevada citizens, to take whatever action is necessary to correct what appears to be an intolerable situation. Already, the Nevada Supreme Court, by the publicity attending its actions, has become a national disgrace to the legal profession. Citizens of Nevada should not close their eyes to this form of cancer but, through its legislature, should take the matter in hand and correct the situation.

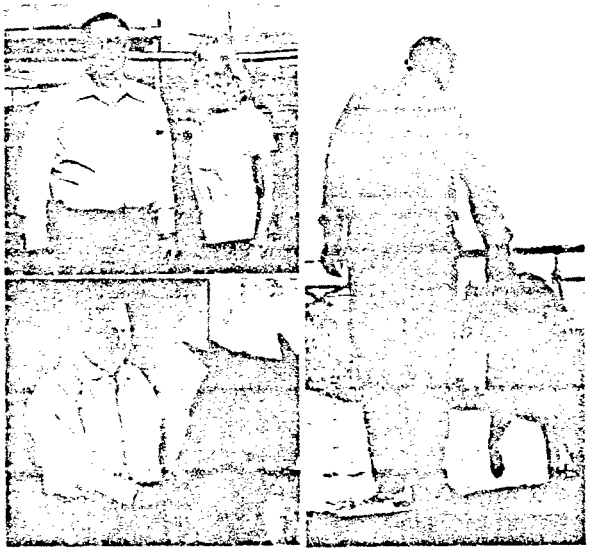
I strongly urge this committee to send an appropriate Resolution to the Assembly.

Joseph M. Kadans

EXHIBIT B



Experience & Integrity.



Ted Dotson is running because he believes it is time that **someone** made an effort to restore public confidence in our State Supreme Court. It is time to put an end to all of the petty bickering and dissension in the highest, most important court in the state.

It is time, also, for the people of Nevada to have an opportunity to vote and to elect a justice on the basis of his integrity and experience.

Ted Dotson is that kind of a man. He has lived in Nevada for 55 of his 56 years, and for the last 29 years has practiced law with distinction. He is past president of the Clark County Bar Association, and for three years was chairman of the Ethics and Disciplinary Administration Committee for the State Bar for Clark County. He was elected by his colleagues to the Legislative Counsel Committee in 1956 and 1957, and served in the State Assembly in 1955 and 1956.

Ted Dotson attended Brigham Young University in Provo, Utah, and George Washington University and American University in Washington, D.C. He received his Juris Doctor Degree from American University Law School.

He is a family man, active in his church, his community and a number of civic and social organizations.

Ted Dotson believes that the Supreme Court should be above reproach. "It is and always should be the last bastion of liberty and preservation of the rights of the people," he says. "When the respect of our courts is attacked by the press, the citizens of our state should be concerned."

Elect Edwin J. "Ted" Dotson Supreme Court Justice **for all of the people!**

EDWIN J. "TED" DOTSON Supreme Court Justice for all of the People

The Supreme Court of Nevada is being subjected to a great deal of criticism throughout the state. Ted Dotson believes this court should be above reproach. He desires to work for an improved Supreme Court to promote harmony and cooperation without compromise of principle.

EXHIBIT A-1 831

Justice defends actions as court is probed

Nevada news

CARSON CITY (AP) — As Nevada's Commission on Judicial Discipline weighed requests for a probe into behavior of some state Supreme Court justices, one justice who sparked the requests defended his actions.

Justice Al Gunderson issued the statement Monday in response to criticism by three fellow justices of his recent dissent on a court opinion — a dissent which confirmed reports of fierce in-fighting on the high court.

His comments followed a disclosure by the Valley Times in North Las Vegas that the discipline commission has been asked by a number of prominent Nevada lawyers to find out why Gunderson criticized his fellow justices, and whether he was "playing politics."

The commission is expected to open a preliminary investigation on the requests, to see if further action is necessary. But panel vice-chairwoman Renee Diamond said she could make no comment, even to confirm a review of the requests is being made.

A report of the court infighting, including quarreling, swearing and threats in conferences where pending decisions are discussed, surfaced more than two weeks ago.

That was followed by an opinion last week in a case upholding the constitutionality of a vagrancy law, written by Justice Noel Manoukian. Gunderson attached a blistering dissent criticizing the opinion and the other justices who signed it.

Late last week, Justice Gordon Thompson said Gunderson took too long to write the dissent. Justice John Mowbray criticized Gunderson for the way in which the dissent was issued. Thompson also said it appeared to him that someone was trying to "hurt" Manoukian, a candidate for election this year.

Gunderson's dissent criticized the other justices for not doing their homework on the case and accused them of failing to follow established court procedures.

Gunderson said Monday that he didn't take so long to prepare his dissent, and even if he had, "this would not justify the practices addressed in my dissent."

The justice also said he regretted that "some may choose to view my dissent as a personal attack."

Gunderson also rejected Mowbray's criticism that he didn't see the dissent before it was filed, saying he drafted the dissent after "expressly" advising other justices in earlier conferences that he intended to do so.

Gunderson also said that "personalities should not obscure what motivates my dissent." He said the real problem is that the court's current heavy workload will get worse before relief such as an intermediate appeals court can be set up.

In the meantime, he said, "this court must maintain accuracy and logical consistency in and between whatever lawmaking pronouncements we make."

EXHIBIT B-1

SUN

Editorial

From Other Editors

The Court's Conduct

The state Commission on Judicial Discipline has notified Nevada's Supreme Court justices that it is investigating reports concerning the conduct of the five justices and dissension on the court.

The probe is necessary. There have been reports of infighting, quarreling, swearing and even threats in conferences where pending decisions were being discussed.

Large Egos

Justices are human and some heated arguments are to be expected among men of large egos dealing with issues of great importance and controversy. But there are reports the situation has gone beyond an occasional loud voice or oath and that the actions of at least one justice have bordered on irrationality.

The reports draw a picture of dislike, mistrust and even fear among the five jurists. One justice has reportedly said he would avoid conferences until things cooled down.

Litigants in a case before the state Supreme Court have the right to have their case decided by reasonable men carefully reaching sound decisions. Lives, laws and fortunes hang on the daily decisions of the five justices.

Censure, Removal

The Commission on Judicial Discipline has the power to censure a judge or even remove him from office. Grounds include violation of the Judicial Code of Ethics, willful misconduct or failure to perform the duties of office.

The commission is barred by law from discussing any details of an investigation. If, however, it takes action against a justice, the action is public and he has a right to an appeal.

The secrecy involved in the proceedings is to protect the justices and complainants, but in the current case it may present a problem. If, for example, the commission determines there is no cause to take action against any of the justices, it does not appear that it can issue a report on its findings. Two justices are up for election this year. And unless the controversy presently surrounding the court receives a public airing, they may be running under a cloud of public doubt.

Work Aplenty

It's entirely possible the investigation may reveal present tensions revolve around an ever-increasing workload that has the justices worn to the point of bare tempers. The Supreme Court had 906 new cases filed in 1978 and disposed of 893. Last year, the filings of new appeals jumped to 1,092; but the dispositions ran just under 900. The projections this year are that as many as 1,200 new appeals will be filed.

Whether the judicial disciplinary committee could legally or would issue a report on non-disciplinary problems it finds has not been stated at this time.

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EXHIGIT C-1

Another possibility is an investigation and a report by the State Bar of Nevada. Lawyers are notoriously cautious about taking on the justices. They must, after all, practice law in a forum where they are at the mercy of those five men.

The Case At Bar

State Bar Association President Thomas Foley has said lawyers are concerned about problems at the high court, but are confident the judicial discipline committee will take care of the matter. He said that if the commission did nothing, the state bar might get into the picture, although it is not clear what action the group could take.

If the action of the judicial discipline committee does not remedy the situation, the state bar should take action. Though it's unclear just what legal powers the bar has in this matter, there is nothing to prevent it from bringing the issue before the public, which can take appropriate action at the polls.

If the court is laboring under an impossible workload, the state bar is in a position to bring the problem to the public's attention and to make recommendations for changes which would lighten the load.

NEVADA STATE JOURNAL

EXHIBIT C1 - 834

By George!

By George Franklin

SUPREME COURT — GIVE ME FIVE

There are times when I wish the name of the game were not "Tell It Like It Is!" I came within a gnat's eyelash of not writing this column, because it is about an existing situation that is not nt to me.

It is particularly disturbing to me because I am a lawyer. I can only hope the people I will be reporting about will remember "By George!" is written in my capacity as a columnist.

Numerous papers throughout the state have commented upon the obvious schisms among the members of the Surpreme Court. Until recently it was only rumor that there is indeed troubled water under the smooth surface of judicial placidity.

For many months the almost open hositlities between justices were cloaked by grim "No comments," but now at least the judicial thrusting and parrying has surfaced in a number of precise and damning dissents.

At least now the lawyers of Nevada, who are privy to the court's opinions, have a crystal-clear picture of the inner sanctum in-fighting. It is a distressing matter to most lawyers, but the consensus is the dissents are indispensable to understanding the often too-mysterious processes of the Appellate Court.

The average lawyer, and especially the new ones handling their first appeals, knows very very little about the process itself. Of course, they would never tell their clients how little they know about what goes on behind those panelled doors, but in truth they are wandering through the miasma of mysterious moors.

I have heard a thousand and one reasons given for losing appeals in the Supreme Court, when the tragedy is the lawyer doesn't know why he lost, nor why his opponent won, and the reasons are not to be found in the opinon.

For too many years lawyers have stood before the five justices to argue intricate questions of law on behalf of clients, and to compress into 30 minutes all the hopes and heartaches of people they sincerely represent, only to have their arguments weakened by suspicion that member of this judicial hierarchy didn't know the case at all.

However, there was always the solace that at least one of them was assigned to read the record and the brief, and that your argument might nail down some of the precious points with that one judge.

Now we find out that funny feeling in the napes of our necks was not just primitive premonition, but tragically true. Justice Gunderson, who has always been as diplomatic as a Brahma in the chute, has laid it all out in lavender in a recent dissent. In this particular case, three justices who had not read the record on appeal, who had not read the briefs in the case, and who didn't even hear oral arguments put their hands and seals on an opinion authored by one justice.

EXHIBIT D-1

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EXHIBIT D-1

This confidence in one brother justice may be touching, but is is not commendable. If this is proper appellate practice, then instead of going from three justices to five we should have gone to one justice and saved money.

Lawyers have always been led to believe their cases receive the careful judicial analysis of five legal scholars, and it is a sad denouement to find otherwise.

Every opinion by our Supreme Court is far more than a single victory for one party or defeat for the other. The opinion does not just terminate a law suit, it sets precedent for all cases in the future, and should be the best product that five monds can author. The people are entitled to no less!

The three justices who have formed a troika for many reasons have many friends in the legal profession who may resent Justice Gunderson for laying this whole situation out in black and white and in public, but it had to be said.

There are other reasons, not of a judicial nature, that are causing problems among the justices. They are not going away, and because they involve our highest court, there is little liklihood they will be alleviated by a judicial discipline commission.

Laws that permit the removal of other public officials by the people have been stricken from the books when it comes to judges. I recognize the futility of even hoping for changes in personal traits, but I can hope proper appellate procedure can be assured to all lawyers, and through them to all the people of the state of Nevada.

I think it all boils down to the fact if an appeal is not important enough to justify oral argument to enlighten all justices, then it is not important enough to justify an "authored' opinon which only represents the legal views of one justice — especially when that one justice is a political appointee with limited legal or judicial experience.

I will grant a backlog of cases can be expedited by parcelling them out on a one-to-one basis. This will certainly lessen the quantity of justice and just as certainly lessen the quality thereof.

Supreme Court

Nevada state news

CARSON CITY (AP) — The state Supreme Court resumes oral arguments Monday after a summer break in which justices focused on weighing and deciding cases which are being filed at a record rate.

While the court's summer work results appeared good, a cloud remained over the panel as a result of a still-pending probe of in-fighting among the five high court justices.

Chief Justice Cameron Batjer said the resumption of oral arguments is no major move since the arguments amount to "the easiest part of the job."

Thursday, September 7, 1978—Las Vegas Review-Journ

faces full calendar

The hard work, he said, is the analysis and discussion among the five high court justices in reaching decisions after lawyers have finished their arguments.

The week-long series of arguments this month includes one Tuesday in which the high court will review its stance, spelled out in previous cases, that lie detector tests are inadmissable in Nevada courts.

That case involves Lafate Willie Corbett, a Lovelock tavern manager sentenced to five years in prison for manslaughter, who is trying to get the state Supreme Court to overturn his conviction.

The argument is expected to focus on whether a lower court judge erred in allowing results of four polygraph examinations as evidence during the trial.

The Supreme Court has consistently held that polygraph results are inadmissable to impeach or corroborate the testimony of a witness on grounds such tests are inherently unreliable.

But courts in some other states have admitted such tests and the state Supreme Court has said the clear split warrants oral arguments on the issue.

The Supreme Court justices had a busy summer, disposing of 109 cases in June alone. But even as cases were wrapped up, new appeals continued rolling in.

During the first half of this year, more than 500 new appeals were filed and it's expected that the total will exceed the record 1,078 appeals filed with the high court in 1977.

While the court had a productive summer, there was still no report of a conclusion to a pending probe of the panel by the Nevada Commission on Judicial Discipline.

It was learned last month that Batjer tried to stop the probe but ran into opposition from three other justices.

The investigation has been officially underway for about four months, with all justices undergoing questioning by a representative of the disicpline commission, which had flatly declined to comment on any details.