MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: Janice D. Goodhue
Mike Cool, City of Las Vegas
Guy Shipler, Judicial Discipline Commission
Assemblyman Dini
S. Morrow, Nevada Appeal
K. Creighton, LCB
T. Gardner
R. Brutocas
David L. Howard, Secretary of State
Wilma Winters
Dennis and Marilyn O'Connor, Constitutional Legislation
Arthur H. Cruickshank, Common Cause
J. Roger Detweiler, State Bar of Nevada
Bill MacDonald, Humboldt County Dist. Atty.
G.P. Etcheverry, Nevada League of Cities
Bob Ritter, Nevada State Press Assoc., Sigma Delta Chi - Gazette and Journal
Richard A. Wagner, Pershing County D.A.
Robert Shriver, Nevada Trial Lawyers Assoc.
Hal Newpher, Commission on Judicial Discipline

Chairman Stewart called the meeting to order at 8:05 a.m. and proceeded with hearing testimony on AJR 14.

AJR 14 Proposes constitutional amendment to provide that records and proceedings of commission on judicial discipline are open to public.

Assemblyman Joe Dini, Jr., spoke in favor of AJR 14 and stated that this bill came about as a result of comments made to him during his campaign. He indicated that there was a very strong feeling in his district concerning the judicial system and the judicial commission on discipline. He noted that none of the

comments to follow were to be directed toward the current justices of the Supreme Court.

Mr. Dini stated that the meat of the bill is the deletion of the provision in the constitution where the Supreme Court shall make appropriate rules for the confidentiality of all proceedings before the commission on page 2, lines 10 and 11. Section 10 is added, stating: "The records and proceedings of the commission on any matter relating to the fitness of a justice or judge are open to the public." He went on to say that Thomas Jefferson once stated that everyone in public life should be answerable to someone. It was Mr. Dini's opinion that judges are no exception, the Legislature is subject to the open meeting laws, and elected officials, cities and counties are also subject to open meeting laws.

Mr. Dini continued his testimony by reading from the attached "Analysis of A.J.R. 14" (EXHIBIT A). He went on to say that he hoped that from the hearing today, a system could be devised to open up the disciplinary hearings so that the general public and state will have their confidence in the Supreme Court restored again and the whole judicial process in the State of Nevada will benefit from it.

Mr. Sader asked if the language of the bill provided for the investigative process to be confidential and upon the filing of formal charges, proceedings thereafter would be public. Mr. Dini responded that the language may not detail that. Mr. Sader then asked if the addition of the language in Section 10, page 3 would provide that the investigative process and files would be open to the public. By way of further clarification of his question, he asked if the intent is to have the investigative process confidential and the hearing process public, is this going to be achieved in the present wording? Mr. Dini replied by saying it may not be and that lines 3 and 4 on page 3 are the broadest possible alternative to the present method.

Mr. Sader asked if the intent is to have the investigative process confidential and the hearing stage public. Mr. Dini stated that once the proceeding goes to a hearing, everything will be opened to the public, including the investigation. Mr. Dini indicated that the committee would have to determine whether justice would be served by disclosing everything from the beginning, even just accusations. He stated his preference was that everything be open from accusation on, but indicated it may not be practical to do that.

In support of his opinion that all proceedings be open, including "frivolous" accusations, Mr. Dini said that accusations that have been kicking around the court system in the state for

the last two years may appear frivolous to a supreme court justice, but may not be frivolous to the general public who pay his salary and elected him. He did say, however, that in the case of an attorney complaining against a judge, is it worth jeopardizing his career because he made an accusation against a judge, or does the public have a right to know what's going on in the judicial system. Mr. Price commented that whether or not the accusations are made public, the judges or justices will know that an attorney has made a complaint against them.

Guy Shipler, Chairman, Nevada Commission on Judicial Discipline, began by giving background on the judicial commission system. He indicated it has only been in existence for about 20 years and that only within the last 10 years, all the states, with the exception of Washington, now have judicial discipline commissions. He continued his testimony from the attached EXHIBIT B.

Mr. Shipler stated that he is not in favor of AJR 14 as it now stands because it opens the area of non-confidentiality of the investigative process too wide. It was his feeling that it could result in all types of "witch hunts". Mr. Shipler referred to the Annual Report of the Commission issued in December which lists that since May of 1978 there were 53 formal complaints made. 26 of those complaints were dismissed as frivolous, lacking supporting evidence or outside commission jurisdiction. He indicated that most of the frivolous complaints were of the type he expected in great quantities as a result of this bill as now worded.

Mr. Sader asked where Mr. Shipler felt the confidentiality should stop in the commission process. It was Mr. Shipler's personal opinion that after the investigation, if there is some reason to proceed, then it should be made public. He felt that much depends upon individual circumstances.

Mr. Shipler stated that the Commission is allowed to do only four things publicly: (1) force a judge to resign, (2) censure them, (3) let them go, or (4) throw them off the bench. The commission is only allowed to announce three of those things, unless permission of the one who was let go is obtained to make it public, as in the case of the Supreme Court. It was Mr. Shipler's feeling that the distance between censuring and letting people go is much too vast. He felt that between those two, there were a lot of areas that should be made public.

Mr. Shipler felt the hearing process should be made open after the filing of formal charges. On a question from Mr. Sader about whether the investigative files leading to the charges would be opened, Mr. Shipler was not sure that would be valid. He was concerned with unduly hurting a judge who might later be found

innocent. He felt that if all the information came out before the hearing started, he would be prejudged.

Mr. Sader asked for further explanation of the statement that meritorious complaints might not come to the attention of the commission. Mr. Shipler indicated that was a point made to him by Dr. Eleanor Bushnell, a recently reappointed lay member and first chairman of the Commission. He stated that it was her concern that this might cause anyone with a legitimate complaint to back off for fear of a libel suit if the investigative process were made public.

Chairman Stewart asked who determined if a complaint was frivolous. Mr. Shipler stated that the members of the commission made that determination. He pointed out that there are seven members of the commission and the process for making this decision is a very careful one. He stated that the decisions are arrived at in meetings of the commission which he felt should be kept confidential. On a question from Mr. Stewart, Mr. Shipler stated that the formal complaint is prepared in the style of a regular pleading and there is a distinction between a complaint filed by an attorney and the complaint heard in the hearings. Chairman Stewart then asked if the Commission was required to file the yearly report previously referred to. Mr. Shipler stated they were not required to, but the Commission had decided to try to make a public report in December, partly because of frustration over being unable to say anything.

Mr. Stewart asked if there would be any problem with making a public report of a complaint withholding the names of the parties involved. Mr. Shipler indicated he would be in favor of being allowed to anonymously make these matters public. He felt it was the duty of the Commission to report to the public.

Mr. Beyer asked if he was correct in understanding that the Supreme Court writes the rules under which the Commission operates. Mr. Shipler stated that was correct and indicated he was quite disturbed with that system. He felt there could be a strong tendency of the court too much of a firm mechanical control over the Commission. He stated the Commission had not been intimidated by the Supreme Court as far as their deliberations or decisions were concerned, but he was concerned about the restrictions of the Commission in communicating with the public. He felt the Commission could maintain the proper confidentialities in the proper areas and still be more visible in the public eye.

On Mr. Shipler's comment that in order to provide that the rules of the Commission be written by some entity other than the Supreme Court, the Constitution would have to be amended, Mr. Beyer asked who he would suggest should write the rules. Mr. Shipler didn't know who should do that but felt that the entire responsibility should not rest with the Supreme Court.

Mr. Beyer suggested that perhaps the committee should look into such an amendment. Mr. Shipler indicated that it was a concern of his but that he did not know how the rest of the Commission felt about it.

Bob Ritter, Executive Editor of the Nevada State Journal and Reno Evening Gazette, testified on behalf of the Nevada State Press Association, the Society of Professional Journalists - Sigma Delta Chi, Associated Press Managing Editors Assoc., and his newspapers in favor of AJR 14. He began by reading from the attached EXHIBIT C.

On a question from Chairman Stewart, Mr. Ritter stated that he could see the reason for some confidentiality during the investigative procedures, but felt it absolutely necessary to have the hearings made public. He further stated that the public has a right to know about the actions, the thought processes and the situations involving any accusation against a public official.

Dennis and Marilyn O'Connor of 870 Soda Lake Road, Fallon, NV, spoke next in favor of AJR 14. Mrs. O'Connor proceeded by reading from the attached EXHIBIT D, "Omission of Judicial Discipline".

Mrs. O'Connor went on to state that they had filed complaints with just about every investigative agency within the State of Nevada, all of which say they lack jurisdiction. She indicated they had filed two criminal complaints against a court stenogrpher and the City Attorney of Fallon for altering court records to be used on an appeal. Mrs. O'Connor then presented a copy of their trial transcript to Chairman Stewart and indicated that portions of the judge's ruling had been left out of the transcript. Mrs. O'Connor then read a letter received by her from the Administrative Office of the Courts (EXHIBIT E) and pointed out the following discrepencies: (1) letter dated November 6, 1979, (2) letter received by O'Connors November 9, 1979, (3) letter refers to findings of Commission on Judicial Discipline at a meeting of November 11, 1979. She further stated that no such hearing had taken place. She then read a letter received from Mr. Newpher of the Administrative Office of the Courts after the filing of a subsequent complaint (EXHIBIT F) and stated that upon questioning Mr. Newpher about why the Commission had not at least asked to speak to them about their complaint, Mr.

Newpher told Mr. O'Connor that their complaints had not been given to the Commission and that he wouldn't give any of their complaints to the Commission.

Mr. O'Connor then stated that when he confronted Mr. Newpher, Mr. Newpher said that the O'Connors' complaints were not going to be considered. Mr. O'Connor then indicated that he felt that judges, in their decisions, will become more responsive if they know that they are going to be scrutinized by a judicial disciplinary committee. On an offer to read the complaints which had been filed and disregarded by the Commission, Chairman Stewart asked that copies be made and submitted to the Committee. Those Complaints are attached as EXHIBITS G and H.

Mr. Price asked who the O'Connors represented, to which the O'Connors stated they represented constitutional legislation on behalf of a group of people in the Reno and Fallon area. Mr. Price then asked for a clarification of which judges over which the Commission has jurisdiction. It was indicated that they have jurisdiction over all the judges in the State of Nevada.

Mr. Price then commented that if the Administrator or whoever undertakes the decision of whether a complaint goes to the Commission did not have the discretion to weed out frivolous complaints, then the Commission could possibly be bombarded with dozens of unwarranted complaints. He also commented that if there were more than one employee with this responsibility there would still be errors in discretion made. Mr. O'Connor responded by saying that allowing just one individual to make the determination breeds the possibility of corruption or a cover-up. He further indicated that when the Chief Justice of the Supreme Court is the overseer, you've created a situation where that Justice, without being accountable, can suppress complaints.

Mr. Price then asked for a brief summation of the complaints that had been submitted to the Commission and dismissed. Mr. O'Connor then stated that a judge met privately with the opposing attorney without the other attorney present. He stated that the other complaint was a violation of the Judicial Canons. Mrs. O'Connor outlined that complaint by saying that a judge apologized to a defense attorney from the bench, saying he had to make these decisions and couldn't give him everything he had asked for. She went on to say that the Assistant City Attorney said he was agreeable to drop charges and the judge refused to do so.

Arthur Cruickshank of Common Cause testified next. He stated that Common Cause has only one interest which is better government. It is their feeling that open meetings are tremendously important for secrecy is the most convenient means of keeping

information and power out of the hands of people. He stated that the California Brown Act said the people of this state do not yield their sovereignty to the agencies which serve them. Therefore, any agency which serves the people ought to be open. Mr. Cruickshank then stated that Common Cause is definitely in favor of AJR 14.

The Chairman then recessed the meeting at 9:05 and reconvened at 9:15 a.m. He then asked Mr. Newpher to explain to the committee the process of the complaints presented to the Commission on Judiciary Discipline.

Hal Newpher indicated that he was the former Director of the Administrative Office of the Courts. He stated that by statute that office also serves as Secretary to the Nevada Commission on Judicial Discipline. He further stated that when a citizen makes a complaint to the Commission, it comes to the Secretary of the Commission and is not acted upon unless it is in writing. He went on to say that the rules of the Commission, as approved by the Supreme Court, provide that the Secretary of the Commission could make a judgment at the early stage of a complaint as to whether or not it is valid. Mr. Newpher indicated that during his tenure he did not follow that rule, but made it a practice to forward every complaint to the Commission. He stated that when he received a complaint, he made a preliminary investigation to make sure there was some validity to the complaint in order to give the Commission enough information so they could make a proper judgment as to whether or not there was reason to proceed. He further stated that if it was found by the Commission to frivolous, unfounded or outside the jurisdiction, a letter was directed to the complainants to that effect. If investigation was required, either he or an outside investigator conducted an investigation. After the investigation, the complaint again went to the Commission for a judgment as to whether to proceed to hearings or not.

Mr. Beyer asked what types of complaints are outside the jurisdiction of the Commission, to which Mr. Newpher replied that in most instances those were complaints involving appealable issues dealing with judicial error.

Mr. Malone asked what percentage of Mr. Newpher's recommendations were concurred in by the Commission. Mr. Newpher estimated that at least half the time, after discussing the information Mr. Newpher had made available, the Commission would disagree with Mr. Newpher's recommendations. He stated that he ultimately agreed with their decisions because they were dedicated and talented commissioners and he had a great deal of confidence in them.

Mr. Chaney then asked at what point Mr. Newpher felt the hearings should be opened. Mr. Newpher stated that he agreed with Mr. Shipler's position that any hearings should be completely public. He was not certain at what point a complaint should be made public, but did not feel that the investigative or initial complaint should be made public until it gets to the hearing stage. Mr. Newpher pointed out that with his experience and contact with other Court Administrators, it was his feeling that hearings should be made public, a feeling which is proven by experience and to which other states are turning.

Mr. Chaney then asked how cases like the O'Connors' could be helped. Mr. Newpher stated that the complainants themselves could make it public. He then suggested a press release which did not name the individuals involved.

Mr. Stewart then asked Mr. Newpher if, due to the fact that he served as both the Court Administrator and Secretary of the Commission, he felt uneasy about cases involving the Chief Justice. Mr. Newpher indicated he did and went on to explain that the rules of the Commission require that the Secretary of the Commission is disqualified in any proceedings when the complaints relate to the Supreme Court. He stated that type of complaint went directly to the Commission or to its investigator.

Mr. Stewart asked who investigates the complaints, to which Mr. Newpher responded that in most cases the preliminary investigations were done by him, and in other cases outside investigators were employed under contract by the Commission.

Mrs. Cafferata asked for clarification from Newpher on the extent of his non-participation in cases against the Supreme Court. Mr. Newpher responded he was in no way involved; no access to the records or proceedings.

Chairman Stewart indicated that he had a bill he wished introduced by the committee. He stated it was submitted by the Attorney General and provides a civil penalty for pyramid motion schemes. It was moved, seconded and unanimously agreed that the committee would introduce the bill.

AB 41 Provides penalty for failure to obtain permit for flashing amber warning lights.

Vice Chairman Sader stated that he and Mr. Price had been assigned to a sub-committee to look into the amendment of AB 41. He reminded the committee of the problems which arose during the hearing on this bill, i.e. would the proposal of the Highway Department ban the use of amber warning lights in emergency situations and what types of vehicles would be required to ob-

tain permits from the Highway Patrol. The proposed amendment is attached as EXHIBIT I. In summation, Mr. Sader stated that the amendment makes it unlawful to operate and display an amber warning light except in the case of an emergency. The Highway Patrol would be authorized to issue permits to have a mounted flashing amber warning lights.

Mr. Chaney moved AMEND AND DO PASS AB 41, seconded by Mr. Malone and carried unanimously by the committee.

SJR 18/60 Proposes to amend Nevada Constitution to permit Legislature to authorize inferior courts to suspend sentences and grant probation.

Since there was no present at that time who wished to testify to this bill, Chairman Stewart outlined to the committee that this resolution was passed last session in the Legislature. He indicated that there are many courts that would like to impose penalties of restitution, going to school, etc.

Mr. Beyer commented that during the last few weeks, the trend has been to pass legislation that saw to it that the law was carried out according to the penalties, etc. provided for in the statutes. He felt that this bill opens the door for the judges to do as they please by giving them the opportunity to defer the decision of sentences and suspend the execution of sentences.

Mr. Chaney felt that the judges should have some discretion in making determinations of what they think should take place. He didn't think the judges should be held in too tightly.

Chairman Stewart indicated that since there were witnesses present to testify to SJR 25, the subject resolution would be held for later in the meeting.

SJR 25/60 Proposes to amend Nevada Constitution to allow for municipal courts of record.

Bill MacDonald, Humboldt County District Attorney and appointed City Prosecutor for the City of Winnemucca, spoke in favor of SJR 25. Mr. MacDonald felt that this resolution would merely give the Legislature the same power over the municipal courts that it has with respect to setting the parameters of the justice courts in the state. He stated that two years ago changes were made in the justice courts so that they were constituted as semi-courts of record. He stated that in the case of extraditions, a Waiver of Extradition has to be signed by a prisoner before

a court of record, at which time he is advised of his rights, etc. He indicated that now the small towns which lie along the Interstate and have a great number of extraditions no longer have to wait for the next district judge to come to town in order to extradite their prisoners. Mr. MacDonald stated that most prisoners wanted in other states with waive extradition simply because they get no credit for the time spent in our jails. He also indicated that while those individuals are in our jails, they are being fed, treated by doctors and county hospitals, all at the expense of our taxpayers.

Another change which occurred with last session's ruling over justice courts is a substantial reduction in the points appeal where an individual can stall proceedings which would cause him to lose his driver's license. In the interim, a previous conviction would run its time limit and be taken off the driving record. Mr. MacDonald stated that in the last two years there have only been two appeals from the justice courts to the district courts in his county that anyone could recall. He further indicated that there hadn't been a single appeal from the municipal where they still have the right of a trial de novo in the district court, but stated that is probably because most of their cases come into justice court to start with.

By way of explanation to the committee, Mr. MacDonald stated that if there is a conviction in municipal court, that individual is entitled to a brand new trial in district court on an appeal, which is a trial de novo. This requires the setting of a complete trial, calling in witnesses, etc., whereas, if the municipal court were a court of record, that appeal would be heard on the record, or typed transcript of the trial. This saves time by not crowding the court calendar with trial settings.

Mr. MacDonald expressed the concern of district attorneys over the fact that the State has only the right of one trial. This means that if the State loses a case, it cannot appeal. He stated that one of the reasons these defendants are allowed a second trial in district court is that the law provides that these defendants have the right to a trial by a "lawyer judge" where they are facing jail time. He suggested that if that is the reason, then why not have lawyer judges at the municipal level. He went on to say that some of the larger cities are leaning toward more lawyer judges at the lower level.

Mr. MacDonald went on to say that there are defense attorneys who feel that there should not be courts of record below the district court. He felt that if there is no big cost involved to the public, the more courts of record there are the better off we are. His main argument in favor of municipal courts of

record is the ability to process extraditions quickly. An argument against lower courts of record is the cost of the tape recorders. Mr. MacDonald indicated that many municipal courts in the state share courtrooms with the justice court or district courts, which already have recording equipment. To the argument about the cost of preparing transcripts on appeal, Mr. MacDonald countered that transcripts are typed only in the case of an appeal and stated that in his county only one small case and one criminal case have been appealed in the last two years. To the argument that defenses will cost more because the attorney will have to be better prepared to try the case, Mr. MacDonald felt that most attorneys try to prepare as thoroughly as possible the first time around anyway.

Another argument heard by Mr. MacDonald is that because there is no jury trial at the municipal level, defendants should be allowed the right to a trial de novo at the district court level. He countered by saying that the instances where a jury would be required are so rare at the municipal and justice level that he need not address that. In conclusion, Mr. MacDonald stated that SJR 25 would give this Legislature the same authority over setting the jurisdiction of municipal courts that they now have over justice courts, which he felt appropriate. He stated that the next question to be considered after that would be to abolish the trial de novo.

Miss Foley commented that she did not see the need for this legislation in Mr. MacDonald's area due to the fact that they had a justice court which was a court of record, thereby solving the problem with extraditions. She went on to say that it was her understanding that out of the thousands of cases heard in municipal court in Las Vegas, only 155 were actually brought to trial on appeal in district court last year. Mr. MacDonald countered by saying that he had heard "horror stories" to the effect that some district court judges were trying to force the prosecutors to accept lesser charges to clear some of the appeals. He suggested Miss Foley look into that. Miss Foley then expressed concern over the cost involved in changing the system. Mr. MacDonald stated that all that is involved is acquiring a four track tape recorder. He suggested that it is cheaper to prepare a typewritten transcript from a tape recording than to buy a court reported transcript.

Mr. Banner asked if defendants have the right to a court appointed attorney at the first level of the court. Mr. MacDonald stated that any case in which the defendant faces the possibility of imprisonment in the county or city jail gives that individual the right to court appointed counsel if they cannot afford counsel.

To a question by Mr. Banner about the case of a defendant going to trial without an attorney and losing, Mr. MacDonald stated that that defendant still has the right to an appeal. Mr. Malone stated that due to the fact that municipal court is not a court of record and only handles misdemeanors, very few people take an attorney to court with them. However, if they find they are in serious trouble, they can still get a new trial in district court, whereas if the municipal court were a court of record they would be stuck with what's on the record without an attorney's legal representation. Mr. MacDonald responded that had been the case in justice court for the past two years, but represented that it may have been a problem in some courts but if it hasn't been a problem in justice's court he didn't see a reason that would make it a problem in municipal court since they are both courts of essentially equal dignity and authority, with the exception that justice court also conducts coroner's inquests and preliminary hearings on felony and gross misdemeanor matters.

On a question by Mr. Malone about the right to a jury trial in justice and municipal court, Mr. MacDonald stated that the right to a jury trial is statutory.

Mr. Malone asked what the fiscal impact of this bill would be on the cities. Mr. MacDonald felt there were maybe one-third of the cities where the municipal court and the justice court were one and the same or used the same courtroom. He used as an example the committee hearing room which is shared by two committees and both utilize the same recording equipment. He indicated the only other cost he could think of would be in preparing transcripts, which only occurs when there is an appeal.

Mr. MacDonald pointed out that his comments about the extradition situation did not apply to municipal court, but were made only as an example of what had come from making justice courts courts of record. He felt that if the trial de novo were allowed in municipal court, it might undo the good that had been done in justice court. Mr. Stewart pointed out that an advantage of having municipal courts of record and abolishing the trial de novo is that the cost of recalling witnesses for another trial is eliminated. Mr. MacDonald used Clark County as an example of just that by saying that many of the crimes or accidents occuring in that area involve witnesses, victims, etc. are from California and the cost involved is great.

Mr. Price made mention the excess spending that had been authorized, indicating that Lyon County had been authorized $21,000 for sound recording equipment for the justice courts, Douglas County was authorized $72,340 to upgrade, which included more that just sound equipment, Esmeralda was authorized $7,439, Lincoln County - $5,000, Elko County - $15,667 strictly for recording equipment for justice court. He went on to say that

this was just an example of what had been authorized last session and that it may include the installation of other things as well.

Mr. MacDonald pointed out that some of the counties have more than one justice court and that these figures might reflect more than one township in each county. He said the cost would involve how many cities have municipal courtrooms separate from the justice courtrooms and that in many of the small counties those courtrooms are shared.

Mike Cool, City of Las Vegas, and G.P. Etcheverry, Deputy Director of Nevada League of Cities, testified next. Mike Cool started off by saying that since 1979 in looking at Clark County's 1980-1981 budget, they have incurred and are proposing to incur a cost for transcribing court reporters fees of $225,000 this year. He pointed out that in addition to the cost of recording equipment, there is the cost of fees to court reporters which range from $8.00 an hour to a maximum of $50.00 per day. He further stated that there is legislation being proposed increasing those fees. He noted that 3% of the City of Las Vegas' municipal court budget as proposed for the upcoming fiscal year, or roughly $30,000 a year, is spent for transcribing at this time. He said it is projected this year that there will be five to seven appeals a week, for a total of 250 to 300 appeals through the municipal court this year. Mr. Cool pointed out that the trend in Las Vegas justice courts is to use more and more court reporters in addition to the recording equipment, and the expected impact is as much as 10% of the municipal court budget, or approximately $120,000 a year if this bill passes.

Mr. Banner asked if the City of Las Vegas was budgeted for public defenders. Mr. Cool indicated that a contribution is made by the City to the Clark County Public Defenders in the neighborhood of $60,000 a year. For clarification, Chairman Stewart stated that the right to a public defender has nothing to do with whether or not the court is a court of record, but depends only upon whether jail time is involved. Mr. Banner asked if passage of this bill could increase the demand for public defenders. It was not felt that it would.

Mr. Cool indicated that not only do you have the expense of the operation and installation of the recording equipment, but generally you will have a stenographer or recorder recording names, etc. He mentioned that there was concern that with a tape recorder it was difficult to determine who was speaking and sometimes the testimony is garbled.

On a question from Mr. Stewart as to what the $225,000 figure included, Mr. Cool stated that is specifically for court reporting fees for the five justice courts. He indicated they are making an effort to certify some of their own staff as court reporters so they would not have to incur the expense or as much of an expense to hire outside reporters.

On a further question from the Chairman, Mr. Cool indicated that the $120,000 impact per year on the City if this bill were passed presumes the possibility of an increase in court reporter fees. If the court reporter fees are increased, then the projected impact would be as high as half a million dollars.

Mr. Stewart asked for an estimate of the cost of time involved, witness fees, etc. in the case of appeals. Mr. Cool did not have those figures and did recognize a cost savings in those areas in terms of using a court of record.

Miss Foley asked for a figure on the amount of money spent by justice courts on recording equipment. Mr. Cool did not have that figure, but stated that the municipal courtrooms in Las Vegas had been upgrading equipment in the neighborhood of $15,000. He pointed out again that in many cases both court reporters and recording equipment are used in the justice courts.

Mr. Etcheverry testified next, stating that there had been violent opposition to SJR 25, particularly in Henderson, based on the cost factor involved. He did agree that in about one third of the cities where the facilities are joint for justice and municipal courts, recording equipment is probably present. With regard to most of the legislative commission hearings on JP courts on equipment, he reiterated the position of Douglas County, stating that they had to set up court systems in Lake Tahoe as well as Minden and Gardnerville. Mr. Etcheverry indicated Elko County did the same thing in Wells and Carlin in Elko County.

Mr. Thompson stated he had spoken to the City Manager and was quoted a price of $100,000 a year to implement this bill.

Mr. Cool pointed out that the $225,000 figure quoted for the five justice courts is in addition to monies used for transcribing preliminary hearings and coroners' inquests.

Mr. Malone asked if each of the municipal court judges had been contacted and what their feeling was. Mr. Cool stated that the Las Vegas judges are against this legislation.

Senator Close began his testimony by saying that people are afraid of change which is unfortunate. He stated that sometimes it is the Legislature's responsibility to impose change upon people who don't necessarily want that imposed upon them. He indicated that this bill came as a result of the study two years ago for the purpose of simplifying court action, avoiding duplication of trials, and to save money. He continued by saying that making a municipal court of record accomplishes all those things. It saves money because now people can go to a municipal court trial, have the trial, police officers must be subpoenaed to testify, the judge must hear the case, the city attorney must prosecute the case, the court clerk must be there and court time is taken up. He went on to say that the man has received a fair trial, is convicted, and then has no risk of any penalty because within 10 ten days he has the right to appeal that conviction to district court and receive another trial. Once again policemen are subpoenaed, etc., all for the sake of hearing a traffic violation, DUI, speeding ticket, reckless driving, etc. Senator Close stated that those judges should not be hearing those trials, but should be hearing robberies, burglaries, rapes, murders, and civil trial. They should not be trying for the second time a speeding ticket.

As a practical matter, Senator Close stated that district judges don't have the time or the inclination to hear traffic violations. Consequently, the judge might plea the case down to less. As a result this defendant avoids justice because his attorney has delayed his hearing either beyond the point where points don't make a difference or police officers don't want to testify or the city attorney says lets reduce the charge. Senator Close pointed out that in district court, burglars, murderers, etc. do not get second trials. If he is convicted, he can appeal to a higher court on the record. It was his suggestion that this should be the case in municipal court, with appeals on the record to district court.

Senator Close further stated that a recording device would be used and that if Las Vegas chose to use both a recording device and a court reporter, that's their decision. He pointed out that if a court chooses to use both systems, that's up to the county commissioners. He stated that the bill passed last session specifies that no court reporters are to be used unless authorized by the county commissioners.

To the argument of the cost involved, Senator Close countered that that cost exists only if it is allowed by the county commissioners. He stated that a judge cannot require or request a court reporter unless the commissioners agree to it. If they do not agree, then they use only the recording system as used in the Legislature. He stated that this system has worked out

very successfully and that the JP from Lyon, Carson and Washoe Counties had indicated they were very pleased with this type of system.

Senator Close suggested the committee refer to the bill passed for justice courts, where it states that if the recording device fails, then there is a new trial immediately granted. He stated that there has been only one such incident in the last two years.

Senator Close stated that when cost is being considered, it should be viewed as a total, and assured that it costs less for one trial and an appeal on the record than for two complete trials. He next stated that a municipal court offender should not be entitled to two trials and couldn't understand why a municipal court judge would be reluctant to have his record examined by a court on appeal unless he is afraid of making mistakes that cannot be justified upon review. If that is the case, then he is not conducting his court properly. It was Senator Close's strong recommendation that the committee pass SJR 25.

Mr. Price asked if the move to make the municipal courts a court of record would also be a step towards having all municipal judges be attorneys. Senator Close responded no and stated that most JP courts have lay judges and that the larger counties, because of the heavy criminal activities involving preliminary hearings, mostly have attorneys, but in the outlying districts they are mostly lay judges. He indicated there is no problem with lay judges and the move is not toward professional judges.

Senator Close went on to say that a defendant goes to a small JP court with a DUI, there is one trial before a lay judge out in a small county, whereas in the city the defendant gets two trials. He stated he had done this for clients and that it is a legal maneuver that an attorney can and probably should use to protect his client. He indicated that any city councilman who states the cost of what the bill proposes, is not aware of what the measure does and what happens in JP courts throughout the state.

Mr. Price asked if there was any possibility that an individual could sue the city or county for not providing an accurate transcript when the commissioners refused to allow a court reporter in addition to a recording device. Senator Close indicated he had not heard of any appeals on that basis, nor was he aware of any problem with transcribing the recording, except in the one incident where the proper buttons were not pushed and the statutes provide for a new trial in that event.

Mr. Malone asked if Senator Close had seen the cost figures that Mr. Price had presented to the committee and asked if this is

what might happen if the municipal courts are made courts of record. Mr. Price then showed the figures to the Senator, to which he responded those figures represented more than one township in some cases. He further indicated that the $5,000 figure for Lincoln County is also a case of a multiple township county. Senator Close suggested that a recording system might cost $1,000. He went on to say that the larger counties are requesting more district judges and to suggest that those judges try speeding tickets is silly. He stated those cases should be tried in JP and municipal court and the district court should just review the record of those cases on appeal as the Supreme Court does. He compared it to suggesting that the Supreme Court try a case for burglary. He indicated that there would be a cost involved in instituting the recording system, but that across the board statewide there would be a savings and that the recording device is a one-time expense. He stated that any cost suggested by the cities is a cost that they must decide on themselves because it is their choice if they go recordings or court reporters.

Miss Foley asked Jor Jan Martin, the Committee Stenographer, if she would have any trouble transcribing the testimony from the recording without being present during the meeting. Ms. Martin responded by saying that the only problem would be in the case of an individual speaking without being addressed or who did not identify himself. She indicated that other than that, her only purpose was to change tapes. She indicated that if she had to do a verbatim transcript from the recording there would be no problem if she were not present during the meeting. However, in the case of the paraphrased minutes done for these meetings, it is helpful to sit through the meeting to have a better understanding of what is being said. Ms. Martin went on to rebut the argument that an accurate verbatim transcript could not be taken from a recording by stating that the recording is being made on four channels, with each microphone recording on a separate track. In the event of more than one individual speaking or background noise, the tape can be listened to on a sorter which tracks each microphone separately.

Miss Foley asked what the cost of this type of system would be, to which Ms. Martin responded that the type of system used for these committee meetings is an inexpensive type of system compared to the type of system used in the court system in Alaska. She stated that there they use a reel to reel recording device which records on eight tracks and the transcriber is equipped with a console which sorts those tracks as necessary while she is typing the testimony.

Senator Close commented by saying that Alaska uses that system in their district courts to hear murder trials, etc., and has found the system satisfactory for murders and the supreme court finds it satisfactory since they do not have the luxury of court reporters in Alaska. He agreed with Ms. Martin's testimony in that if two people are speaking at the same time, each microphone can be isolated. He went on to say that the court clerk operates the machine and keeps notes as to who is talking. He further indicated that each party to the trial, i.e. the judge, defendant, the witness, have their own microphones, which helps to identify who is speaking.

SJR 18/60 ADDITIONAL TESTIMONY

Senator Close testified in favor of SJR 18 by saying that last session, inferior courts were suspending sentences. He stated that it is an effective way of handling criminal matters and felt that they should have the power to suspend sentences in the proper instances. He indicated that this bill does not give them the power to grant probation, although the summary indicates that it does. He stated that the last session amended the bill to eliminate probation because it was a problem when presented to the people.

Senator Close went on to say that this bill gives the court to suspend imposition of sentence so that an individual fined $300 can have a week in which to get the money together. Otherwise, if a defendant cannot pay the fine, he goes to jail or is let off. He stated it is just a fact of life that misdemeanants do not go to jail which is a violation of the constitution.

Chairman Stewart asked if under the subject bill the judge could order restitution. Senator Close replied no, but that there was a bill coming on that and giving the judge the power to order community service.

Mr. Beyer asked what the vote was in the last session on this bill. Chairman Stewart read from the history of the last session that the Assembly vote was 37 ayes and 3 nays and the Senate vote was 18 ayes, 0 nays, and 2 absent.

On a motion made, seconded and unanimously carried, the meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Jor Jan M. Martin
Committee Stenographer

EXHIBIT A

Analysis of A.J.R. 14

BILL: A.J.R. 14.

AUTHORS: Assemblymen Dini, Mello, Glover, May, Marvel, Robinson.

SUBJECT: Proposes constitutional amendment to provide that records and proceedings of commission on judicial discipline are open to the public.

Background

Prior to 1960 the only methods for removing or disciplining state judges were impeachment and recall. Because both of these processes are cumbersome, lengthy, expensive, and ineffective, California established the first judicial discipline commission in 1960. The purpose of the discipline commission is to provide an effective means of disciplining judges who have violated their public trust. Impeachment and recall are a remedy only for flagrant abuses and result in an all or nothing disciplinary measure; the judge is either removed from office or is not punished at all.

The California plan provides for the Commission on Judicial Performance to investigate and adjudicate each case and for the state supreme court to determine the punishment. The proceedings of the commission are confidential until formal charges have been made.

Existing Law

In 1973, the Nevada legislature passed A.J.R. 16 which proposed establishment of a commission on judicial discipline. Judicial reform, and political reform in general, served as the catalyst for establishing the commission and the California plan served as the model for the commission. The 1975 legislature approved A.J.R. 16 and it was ratified by the people at the 1976 general election (Nevada constitution article 6, §21).

The proceedings of the state commission on judicial discipline are closed to the public until formal charges have been made. The public, then, only knows what the punishment, if any, is and the judge involved. The rest of the proceedings remain confidential.

Description

This joint resolution deletes the section providing for confidentiality of the commission's proceedings, and requires "That the records and proceedings of the commission on any matter relating to the fitness of a justice or judge are open to the public."

Comment

Proponents of open proceedings argue that judges hold a public trust and should be held accountable for their actions. If a judge violates that trust, the public has a right to know what disciplinary actions were taken and the reasons for them. The real purpose of the judicial discipline commission is to maintain public confidence in the judiciary. The most stringent set of ethical standards is of little value unless the public is convinced that the standards are uniformly and vigorously enforced.

Increasingly, states which adopted the California plan have begun to open the formal disciplinary proceedings to the public. Kansas and North Dakota are the states which have most recently opened the proceedings to the public. Most proponents recognize the importance of confidentiality during the investigatory process but when the formal proceedings begin they do not recognize the need for conducting confidential hearings.

Proponents of confidentiality argue that a judge's reputation needs to be protected from frivolous accusations. They also argue that confidentiality protects the anonymity of a complainant, especially an attorney.

While these arguments should be considered, it is difficult to know if frivolous accusations have been filed or not if all the public knows is the final decision. There is no way to evaluate whether the commission is doing its job. As the proponents have stated, secrecy and credibility do not mix in a democracy, and as they have often quoted Edmund Burke: "Where mystery begins, justice ends."

Research Division
2/9/81

JKC/jld

EXHIBIT B

Snyder

THERE ARE NOW 50 JUDICIAL DISCIPLINE COMMISSIONS IN THE U.S. EACH IS ESTABLISHED UNDER SLIGHTLY DIFFERENT RULES, DEPENDING UPON THE CONSTITUTION AND LAWS OF THE INDIVIDUAL STATES. BUT ONE THING THAT ALL HAVE IN COMMON WOULD BE OPPOSITION TO A PROPOSITION SUCH AS THIS ONE. THE REASON IS THAT IT WOULD DESTROY, IN EFFECT, THE BASIC FOUNDATION UPON WHICH EACH commission IS BUILT....THAT IS, CONFIDENTIALITY OF ITS PROCEDURES RANGING FROM A COMPLAINT, THROUGH INVESTIGATION AND UP TO ITS DECISION IN THE MATTER, AND the permanent CONFIDENTIALITY OF THE RECORDS LEADING UP TO THAT POINT. IT SHOULD BE UNDERSTOOD....AND APPARENTLY IS NOT WELL UNDERSTOOD IN NEVADA....THAT THE WORK AND DUTIES OF A JUDICIAL DISCIPLINE COMMISSION DEAL 100% WITH PERSONNEL MATTERS. IF THIS AMENDMENT WERE ADOPTED Without modification IT WOULD REMOVE THE COMMISSION'S ACTIVITIES NORMALLY ACCORDED TO PERSONNEL MATTERS ~~FOR EXAMPLE, LOGICALLY FOLLOW THAT ALL OTHER PERSONNEL MEETINGS IN~~ ~~STATE GOVERNMENT WOULD ALSO HAVE TO BE ABOLISHED.~~ from the Commission's initial stage WHY WOULD MAKING THE OPERATIONS AND RECORDS OF THE DISCIPLINE COMMISSION BE BAD? WITHOUT THE CONFIDENTIALITY SAFEGUARD, ANY COMPLAINT FROM ANY DISGRUNTLED CITIZEN AGAINST A JUDGE...SAY IN THE EVENT OF AN ADVERSE COURT DECISION..... COULD BECOME PUBLIC AS SOON AS IT ARRIVED AT THE COMMISSION. THE FIRST THE JUDGE MIGHT HEAR OF IT WOULD BE TO READ ABOUT IT IN THE PAPER, BEFORE ANYTHING HAD BEEN DONE BY ANYONE TO CONFIRM OR DENY THE CHARGE. OBVIOUSLY THIS WOULD BE A GROSS INJUSTICE, SINCE SPURIOUS COMMENTS COULD DAMAGE OR DESTROY A JUDGE, EVEN IF SUBSEQUENT EVIDENCE COMPLETELY VINDICATED HIM. OBVIOUSLY, IT WOULD ALSO INVITE COMPLAINTS FROM EVERY KOOK IN THE STATE, ALL OF WHICH COULD FIND THEIR WAY INTO THE MEDIA, WHICH IS ALWAYS SEEKING A SENSATIONAL STORY. WORSE, LEGITIMATE COMPLAINTS WOULD NO DOUBT DRY UP OUT OF FEAR OF PUBLICITY BEFORE INVESTIGATION SO THE COMPLAINT AND THE INVESTIGATION OF IT MUST BE KEPT CONFIDENTIAL IF THE DISCIPLINE FUNCTION IS TO DO THE JOB THE PEOPLE CREATED IT TO DO. THE PURPOSE OF THAT JOB, OVERALL, IS TO PRESERVE THE JUDICIARY. THAT PROCESS HAS TWO BASIC ELEMENTS: ONE IS TO DISCIPLINE JUDGES WHEN ~~THEY ARE FOUND~~...ON THE BASIS OF SOUND, CREDIBLE AND COMPLETE EVIDENCE...they are found TO HAVE VIOLATED THEIR TRUST. THE OTHER IS TO PROTECT THE INNOCENT JUDGE FROM SCURRILOUS ACCUSATIONS. EACH OF THEM HAS THE SAME RIGHT TO PROTECTION FROM SUCH EVENTS AS ANY OTHER CITIZEN.

HAVING SAID ALL THAT, LET ME NOW SPEAK AS BOTH A NEWSMAN AND AS COMMISSION CHAIRMAN AND SAY THAT CONFIDENTIALITY HAS BEEN CARRIED MUCH TOO FAR. THE COMMISSION HAS UNANIMOUSLY ENDORSED A PROPOSAL...AND DONE SO PUBLICLY....THAT HEARINGS SUCH AS THOSE HELD IN THE SUPREME COURT LAST SUMMER, SHOULD BE PUBLIC IF THE ACCUSED SO DESIRES. I WOULD GO FURTHER AND SUGGEST THAT PUBLIC HEARINGS BE MADE MANDATORY. THIS CHANGE, BY THE WAY NEEDS NO CONSTITUTIONAL AMENDMENT: IT CAN BE CHANGED BY A REVISION OF THE RULES. THOSE RULES, UNDER THE CONSTITUTION, ARE WRITTEN BY THE SUPREME COURT. A PETITION HAS BEEN FILED WITH THAT COURT BY DISTRICT JUDGE WILLIAM BEKO, ON BEHALF OF THE COMMISSION FOR THAT REVISION. (JUDGE BEKO IS A FORMER ALTERNATE COMMISSION MEMBER AND PRESIDING OFFICER AT

THE SUPREME COURT HEARINGS. I HAVE DISCUSSED THE PROPOSAL WITH CHIEF JUSTICE GUNDERSON, AND HE AGREES THAT REVISION IS NECESSARY, IT SHOULD BE STRESSED THAT THE COMMISSION, WHICH IS STILL IN ITS INFANCY, HAVING BEEN IN EXISTENCE FOR ONLY ABOUT THREE YEARS, HAS BEEN OPERATING UNDER TEMPORARY RULES. JUDGE BEKO'SPETITION POINTS OUT....AND THE CHIEF JUSTICE AGREED IN OUR CONVERSATION....THAT, QUOTE: SUFFICIENT EXPERIENCE HAS NOW BEEN HAD BY THIS COURT AND OTHERS WHO HAVE WORKED WITH SUCH RULES....TO AFFORD A BASIS FOR EVALUATING THE INTERIM RULES UNQUOTE, AND IT URGES A COMPLETE REVIEW AND REVISION. THAT IS HEARTILY ENDORSED BY THE COMMISSION. MY OWN FEELING IS THAT THE COMMISSION SHOULD BE GIVEN MORE LEEWAY THAN SIMPLY BEING ALLOWED TO HOLD PUBLIC HEARINGS. WE SHOULD BE ABLE SOMEHOW TO KEEP THE PUBLIC INFORMED ABOUT WHAT WE ARE DOING, AND I BELIEVE THIS CAN BE DONE WITHOUT VIOLATING THE BASIC PRINCPLE OF CONFIDENTIALITY OF SPECIFIC CASES....I WAS PARTICULARLY ENCOURAGED IN THAT STANCE WHEN HAL NEWPHER THEN COURT ADMINISTRATOR, AND I ATTENDED THE NATIONAL CONVENTION OF THE AMERICA JUDICATURE SOCIETY LAST OCTOBER. THIS MEETING WAS ATTENDED BY EITHER THE CHAIRMEN OR MEMBERS OF THE DISCIPLINCE COMMISSIONS OF EACH OF THE 50 STATES. THERE WERE FINE LEGAL SCHOLARS WHO PARTICIPATED, SOME WITH 20 YEARS OF EXPERIENCE IN THE DISCIPLINE FIELD. THE MAIN ISSUE DISCUSSED THROUGHOUT THE FOUR DAY SESSION WAS M COMMISSION VISIBILITY AND CONFIDENTIALITY. IT WAS CLEAR THAT ALL THE COMMISSIONS HAVE AGONIZED OVER THIS JUST AS THE NEVADA COMMISSION HAS. BUT IT WAS THE CONSENSUS OF THESE EXPERTS THAT THERE CERTAINLY HAS TO BE ACCOUNTABILITY OF THE COMMISSION'S ACTIVITIES.....ONE OF THE CHIEF PANELISTS WAS A A MEMBER OF MY OWN PROFESSION. HE IS ROBERT DUBILL, EXECUTIVE EDITOR OF THE GANNETT NEWS SERVICE IN WASHINGTON, D.C. HE SAID THAT PUBLICITY IS ESSENTIAL TO COMMISSION SUCCESS. AMONG HIS STATEMENTS: IF YOU'RE GOING TO BE SO PRIVATE THAT THE PUBLIC DOESN'T KNOW WHAT YOU'RE DOING, WHAT'S THE POINT OF HAVING THESE COMMISSIONS? HAL NEWPHER AND I TALKED WITH SETH HUFSTEDLER, THE DISTINGUISHED CALIFORNIA ATTORNEY WHOLED THE INVESTIGATION OF THE CALIFORNIA SUPREME COURT IN 1979, AND WHO WAS THE KEYNOTE SPEAKER EE AT THE CONVENTION. HUFSTEDLER SAID HAD FOUR WEEKS OF TELEVISED HEARINGS NOT OCCURRED, IT WOULD HAVE BEEN A CATASTROPHE. WHEN THE PUBLIC HAD FULL ACCESS TO THOSE HEARINGS, PUBLIC OPINION FORMED THAT THE DISPUTE WAS SETTLED PROPERLY.

I CAN SAY WITH FULL CONFIDENCE THAT HAD THE SUPREME COURT HEARINGS IN NEVADA LIKEWISE BEEN COVERED BY THE NEWS MEDIA, THE PUBLIC OPINION IN THIS STATE....AND THE OPINION OF THE MEDIA THEMSELVES, WHO DID SO MUCH TO FORM THE ADVERSE OPINIONS....WOULD ALSO HAVE SEEN THAT THE CASES WERE SETTLED PROPERLY, THAT THERE WAS NO WHITEWASH, THAT THE EVIDENCE SIMPLY WAS NOT THERE. FOR US TO HAVE DECIDED OTHER THAN WE DID, IT WOULD ALSO

~~have been made clear that BECAUSE THE RULES FORCE THE COMMISSION TO STATE ONLY THAT NO CREDIBLE EVIDENCE WAS FOUND TO CENSURE, REMOVE OR FORCE ANY JUSTICE TO RESIGN~~

~~THE COMMISSION SHOULD BE ALLOWED TO MAKE SOME PUBLIC STATEMENT BEYOND ONLY THAT NO CREDIBLE EVIDENCE WAS FOUND TO IT TO TAKE DISIPLINARY ACTION. THAT REQUIREMENT INDEED MAKES IT APPEAR THAT WE BLINDLY ACCEPTED, 100 PERCENT, ALL THE DEFENDENTS ARGUMENTS. SUCH WAS NOT THE~~ It would also

HAVE LEARNED THAT ~~THERE WAS~~ THERE WAS NO ATTEMPT IN ANY WAY, SHAPE OR FORM TO PRECLUDE THE PRESENTATION OF ANY EVIDENCE, OR THE TESTIMONY OF ANY WITNESS, AND THAT THE COMMISSION'S ATTORNEY SIMPLY ~~HAD~~ HAD FAILED TO COME UP WITH THE EVIDENCE ~~WHICH~~ WHICH HE SAID EXISTED AT THE TIME THE CHARGES WERE FILED.

THERE ARE MANY CHANGES THAT CAN AND SHOULD BE MADE, IN MY PERSONAL OPINION. AND MOST OF THEM INCLUDE MORE PUBLIC COMMUNICATION BY THE COMMISSION. AFTER ALL, THE PUBLIC ESTABLISHED THE COMMISSION, AND IT IS AS MUCH A PUBLIC SERVANT AS ANY ELECTED OFFICIALS. IT HAS THE SAME OBLIGATION TO KEEP THAT PUBLIC ADVISED OF WHAT IT IS ~~BEING~~ DOING. I BELIEVE THIS CAN BE DONE WITHOUT VIOLATING THE NECESSITY OF CONFIDENTIALITY.....A NECESSITY IN THE COMPLAINT AND INVESTIGATIVE PHASES OF COMMISSION WORK. AND THAT CONFIDENTIALITY MUST BE PRESERVED IF THE COMMISSION IS GOING TO FUNCTION PROPERLY AT ALL.

EXHIBIT C

February 14, 1981
Subject: Presentation before Assembly Judiciary Committee
RE: A bill to open records and proceedings of the Judicial Discipline Committee

Madame chairman; committee members:

I am Bob Ritter, executive editor of the Nevada State Journal and Reno Evening Gazette. I come before you today representing the Nevada State Press Association and my newspapers.

I am here to speak in favor of AJR 14, a bill which would allow the citizens of Nevada to view the proceedings of the state's Judicial Discipline Commission.

Assemblyman Dini's bill says it all:

"The records and proceedings of the Judicial Discipline Commission or any matter relating to the fitness of a justice or judge are open to the public."

As I am certain you are aware, a provision of this type was not included in the original constitutional amendment which created the Judicial Discipline Commission.

That ommissions has resulted in a commission cloaked in secrecy -- secrecy that has seriously hampered its work by fostering public distrust of the commission and its actions.

The original amendment also erred in permitting the Nevada Supreme Court to make rules governing the confidentiality of all proceedings, except decisions to censure, retire or remove a judge, all of which had to be done in public. This wording almost begged for closed hearings -- closed hearings which the Supreme Court ordered, at the recommendation of the commission itself.

The wording also placed the Supreme Court in a conflict of interest by permitting it to set the rules for hearings in which it would be directly involved. Perhaps those who wrote the amendment believed that the state's highest court would never find itself in such a position. But as we all know, the very first case to come before the Discipline Commission involved accusations against various Supreme Court justices. The case became a test of the commission's ability to function -- and the commission failed that test miserably.

The commission concluded that the justices it was investigating had engaged in no wrongdoing. But the matter did not end. The accusations had arisen from a badly divided court and the court remained divided. Furthermore, the public, having been shut out from both the evidence and the reasoning, continued speculation about the court: about its members, their actions, their motivations; their suitability for office. Those questions could not be answered because the court itself had placed a cloak of secrecy over the matter.

Adding to the difficulty of the situation was a statement by the commission's own special investigator who said viable leads were not pursued, partly because of a lack of authorization from the commission. He also took exception to rules of evidence which he said were at variance with procedures approved by the Supreme Court of the United States. The special investigator was then criticized for speaking openly.

But our soap opera had not ended yet. A lawsuit forced revelation of part of the commission documents -- documents which showed alleged conspiracies by one justice to discredit another; of alleged judicial

conflicts of interest; and of great bitterness. But, since only a part of the record had been released, the citizens of Nevada could reach no definite conclusions. The entire episode was worse than ever.

I would like to conclude my statement by quoting directly from an editorial written by Bruce Bledsoe, editorial page editor of the Reno Evening Gazette. The editorial was published February 4, 1981, and I quote:

"An open investigation might not have made our quarreling justices love one another, that is true. But it might have alleviated matters, simply by opening all the wounds and giving them air. Even more important, an open investigation would have given the public a means to judge the actions of the men in the highest court of their state -- and to have some means of acting on those judgments when these individuals stand for re-election.

"This should be an object lesson about the dangerous deficiencies of secret government in a democracy. Secrecy abuses both the system and the public.

"The time has come to rectify the errors of the amendment which created the commission. The light of day must be admitted to judicial commission proceedings, with a constitutional mandate that all records and hearings be open to public scrutiny, without exception."

End quote.

Enough said.

EXHIBIT D

February 11, 1981

Dennis and Marilyn O'Connor
870 Soda Lake Road
Fallon, Nevada 89406
(702) 867-3121

COMMISSION OF JUDICAL DISCIPLINE

(Assembly Judicary Committee)

We are here today to offer our support as well as evidentary materials on the proposed legislation which would open the proceedings and papers to the public on the Commission of Judical Discipline.

This country was founded on the principal that all men are created equal which includes justice for all.

The Courts of Nevada are absolutely void of any semblance of due process and equal protection of the laws in regards to the rights of the common people. We have in this state what are known as "juice courts."

Nevada is in a state of anarchy when it comes to taking affirmative action against its public officals.

The Commission of Judical Discipline is not receiving valid complaints. These complaints are being concealed and suppressed by the Court Adminstrator in the process known as "screening."

We recognize the concern of those persons who feel that open hearings would discourage some people from filing complaints with the Judical Discipline Commission. We have lost our business, my husband has been falsely arrested and convicted in a mock trial, and because of all this his reputation has been irreparably discredited. The only thing we have left is our dwelling which is homesteaded, and our lives. Although we have received harassing and threatening telephone calls, neither one of us has any fear of death.

It has been suggested that some people may hesitate to file complaints with the Commission if the cover of confidentiality is lifted. We disagree. The greatest protection the common people have is to be within the view of the public eye provided the media does not distort the facts.

Complaints should not be based upon speculation nor should they be frivolous. The persons filing the complaints must have the courage of their conviction. Likewise, the judical officers should be able to publicly confront

the witnesses against them and defend their reputation.

For the past nineteen months we have observed the rules of confidentiality. This confidentiality has resulted in stonewalling and a cover-up.

The executive branch of government aids in this cover-up by and through the defense representation of the Nevada Supreme Court and the Commission of Judical Discipline.

We recommend that the Commission of Judical Discipline be put under the jurisdiction of the Senate Judicary Committee (as is done in Washington, D.C.) or under a state Senate-Assembly Joint Committee. We also recommend that the same be done with the Nevada State Bar Association. Up until 1963, the Nevada State Bar was under the jurisdiction of the legislature. This would halt the selective inforcement of the members of the legal profession.

Exhibit "F"

Nevada Court System

Administrative Office of the Courts

Secretariat to: Judicial Discipline Commission • Judicial Selection Commission • Judicial Planning Council

November 6, 1979

Mr. and Mrs. Dennis O'Connor
870 Soda Lake Road
Fallon, Nevada 89406

Dear Mr. and Mrs. O'Connor:

With reference to your complaints dated July 13, 1979 which you furnished to us, the Nevada Commission on Judicial Discipline found at their meeting of November 11, 1979, that the information you set forth concerned matters outside the jurisdiction of the Commission. Accordingly no further action will be initiated by the Commission.

Your assistance in these matters is appreciated.

THE NEVADA COMMISSION ON
JUDICIAL DISCIPLINE

K3v1

Exhibit "F"

Capitol Complex • Carson City, Nevada 89710 • Telephone (702) 885-5076/Toll Free in Nevada: (800) 992-0900, Ext. 5076

EXHIBIT F

NEVADA COURT SYSTEM

JOHN MOWBRAY
Chief Justice

HAROLD E. NEWPHER
Director

TED P. BENDURE
Deputy Director

ADMINISTRATIVE OFFICE OF THE COURTS

CAPITOL COMPLEX
CARSON CITY, NEVADA 89710
Telephone (702) 885-5076

March 30, 1980

NEVADA COMMISSION ON JUDICIAL DISCIPLINE

Mr. and Mrs. Dennis O'Connor
870 Soda Lake Blvd.
Fallon, Nevada 89406

Dear Mr. and Mrs. O'Connor:

At a meeting held on March 1, 1980, at Reno, Nevada, the Nevada Commission on Judicial Discipline considered your complaint dated January 1, 1980. The Commission voted that the matters set forth in your complaint do not fall within the jurisdiction of this Commission. Accordingly, the complaint was dismissed.

Your interest in communicating with this Commission is greatly appreciated.

Very truly yours,

Harold E. Newpher

Harold E. Newpher, Secretary
Nevada Commission on Judicial Discipline

U2vcl

EXHIBIT G

STATEMENT OF COMPLAINT

Name of Complainant DENNIS AND MARILYN O'CONNOR Date July 13, 1979

Address 870 SODA LAKE RD. Telephone 867-3121

Name of Judge ~~JUDGE MICHAEL FONDI~~

Judicial District THIRD Case Number 12768

Date incident complained of occurred AUGUST 29 and 30th, 1978

Nature of Complaint

(Please be as specific as possible; attach additional sheets as necessary.)

1. Meeting privately with attorney Mario Recanzone without our attorney being present the day of august 30th and just prior to the decision from the bench on a breach of contract suit..... we being the plaintiffs. Our attorney was in the court room making notes for his summation. Mr. Recanzone and the defendants were down in front of the court clerks office. Mr. Recanzone was figiting with an envelope he had in his upper sports jacket pocket. He was very anxious while waiting for a sign to go in. When he came out, he had a conference with the Defendant's. Their elation was obvious to us. When our attorney came out we told him that the Palludan's were acting real happy and were literally whistling. I also asked him if the judge could throw the case without worrying about his peers finding out. He didn't answer me but had a painful look on his face. Naturally we don't know what was in the envelope however while the judge was giving the decision, our attorney said to us, "Look at him, he's reading that Son of a Bitch." He then looked over at Mr. Recanzone and we all noticed he seemed to be following a copy of the decision in his own notes.

   We asked Mr. Sloan about turning it in to the Bar and he said it wouldn't do any good. He probably will turn out to be right but we've decided anything is worth a try. We seem to be getting the run around however. It seems everyone wants to pass the buck by telling us to file a suit or take it to our attorney. No one has ever taken the time or had the interest to listen to the whole story. I feel that some of these disiplinary boards should serve some kind of function.

2. Judge Fondi was in a hurry to get back to Carson City and said so from the bench. He also had a conference with Mr. Sloan and

Signature of Complainant

(over)

Mr. Recanzone in chamber the morning of the 29th. When we broke for lunch he called them into his chambers. Mr. Sloan was disturbed and told us the substance of the conversation. The judge told him to quit controlling his court. He said he had things he wanted to do and he was sure Mr. Sloan had things he wanted to do. We thought Mr. Sloan was doing an excellent job but apparently thats not what the judge wanted him to do. We feel we've been denied due process at the very least.

3. Judge Fondi laughed out loud along with Mr. Recanzone at our attorney. From our view point there was nothing said to be very funny. When Sloan finished questioning Mr. Walker, we asked him if they were laughing at him. He said he thought they were. (SLOAN)

4. Judge Fondi also apologized to Mr. Recanzone from the bench. He said, " I have to make these decisions Mario, I can't give you everything you asked for." We're not quite sure if that was in reference to the attorney's fees he awarded him or to the fact that he said the building was uninhabitable and it was the duty of the Palludan's to fix. That has been ommitted from the transcript.

We have talked to several attorney's who say they can't win down here and won't take a case. Sloan says he's never taking another case down here.

We are enclosing various complaints we have made or are making to other boards along with legal papers, etc. I know there is quite a bit to digest but I don't feel you could make an acceptable evaluation unless you read the transcript. I have the original in my possession and a copy is on file with the legal counsel for the Nevada State Bar in Las Vegas. Our tentative date for trial is August 15th. Since Judge SIMMS has only allowed one day for the trial (we asked for two) we may ask for a change of venue. We feel we have a very abusive process in the Third Judical District and probably our only recourse will be in Federal Court for violation of our civil rights under 42 USC 1983, 1985, and 1986.

I can bring the transcript to Carson City any time before the 15th. Otherwise I would imagine the Bar would let you examine it's copy.

I just remembered something else that means nothing to me but it may to you. When I was down at the court getting copies and exact dates, etc. the Court Clerk made the remark that it was funny the depositions were unsealed and that they came that way. I told her a lot of things had been funny about this whole thing and she just politely changed the subject.

Sincerely,

Dennis L. O'Connor

DENNIS L. O'CONNOR

Marilyn O'Connor

MARILYN O'CONNOR

DATED: July 13, 1979

307

Second page of exhibit "E"

EXHIBIT H

STATEMENT OF COMPLAINT

Name of Complainant Dennis and Marilyn O'Connor Date 1/1/80

Address 870 Soda Lake Road, Fallon, Nevada Telephone 867-3121

* * *

Name of Judge J. Charles Thompson

Judicial District Third (Eighth) Case Number 13059

Date incident complained of occurred October 4, 1979

Nature of Complaint

(Please be as specific as possible; attach additional sheets as necessary.)

This is a follow up to complaints filed by the above-named on July 13, 1979 of which the Judical Discipline Committee alleged they had no jurisdiction. Concerning those complaints I would call your attention to the following actions taken by judical discipline committees in other states:

1. A Detriot, Michigan judge named James Del Rio was suspended from office for five years for disregarding the law, using his office to help friends, lack of judical temperament, and forcing people to plead guilty.

2. A judge with the name of Harvey was tried in a Federal Court for violation of a person's civil rights and the jury awarded the plaintiff $260,000.00. Accordingly, the jury overturned the findings of the state judical commission that the judge was "innocent" of a public and private campaign of villification against the complainant.

3. Judge Edward Filipowicz was found guilty of altering a trial record so a case couldn't be appealed. Though he never admitted doing it, he was found guilty of offical misconduct and was publicly censured for a series of

Signature of Complainant

(over)

acts he was accused of. This took place in New York.

Therefore, it would seem that this complaint we are about to file as well those filed July 13, 1979 were well within your jurisdiction. Had you of properly investigated that complaint, I doubt very seriously if J. Charles Thompson would have totally disregarded the law and considered an ex parte communication which was intended to influence his decision against the complaintant, hereinafter to be referred to as the defendants.

Judge J. Charles Thompson violated Canon 1, Canon 2 A. and B., Canon 3, A. (1) (3) and (4) and Canon 3 B. (3).

Defendant had asked for a motion to set aside and vacate on a criminal conviction per complaint filed with this committee on July 13, 1979. The opposing counsel said he <u>had no objections to the court granting the defendants motion</u> and vaguely mentioned that defendants had never filed an appeal. The judge then denied the motion on the grounds the defendant had not filed an eal. First of all, technically the defendant was never even given an appeal from municipal court as the municipal court judge testified as a witness for the prosecution as to what had transpired in his court. Secondly, as defendant explained to the judge, he was not allowed to cross-examine the witnesses in as much as the alleged loiters were never in court to present testimony. This was not a question of law but rather a question of constitutional rights. Incidentally, defendant was, and still continues to be, innocent of the charge but has not been allowed to present his case on appeal in the district court.

The Federal Court so found in <u>DUKE v. STATE OF TEXAS</u> :Cites 327 F. Supp. 1218 (1971).

> "Indeed, the judgment of the State district court recites that the judge has not given any consideration to the constitutional questions raised. It is critical to the vitality of our federalism that State court judges, as well as the national government's judicary, are obligated to apply the constitution to the facts and the law in the case before them. Article 6, Clause 2, Constitution of the United States. The failure and refusal of the State district Court judge to rule on constitutional issues, which were squarely put to him, presents an abuse of judical discretion of such magnitude as to amount to a denial of the most fundamental element of the Due Process Clause of the fourteenth amendment-

(See page 2)

EXHIBIT I(1)

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Feb. 11, 1981

SUBJECT: AB 41: Provides penalty for failure to obtain permit for flashing amber warning lights.

MOTION:

DO PASS XX AMEND XX INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: CHANEY SECONDED BY: MALONE

AMENDMENT: SEE ATTACHED EXHIBIT I

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	X					
Foley	X					
Beyer	X					
Price	X					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	X					
TALLY:	11					

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____

AMENDED & PASSED XX AMENDED & DEFEATED _____
AMENDED & PASSED _____ AMENDED & DEFEATED _____

ATTACHED TO MINUTES OF February 11, 1981, as EXHIBIT I

EXHIBIT I(2)

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION	
Adopted	☐	Adopted	☐
Lost	☐	Lost	☐
Date:		Date:	
Initial:		Initial:	
Concurred in	☐	Concurred in	☐
Not concurred in	☐	Not concurred in	☐
Date:		Date:	
Initial:		Initial:	

Assembly AMENDMENT BLANK

AMENDMENTS to Assembly

Bill No. 41 ~~Joint Resolution No.~~

BDR 43-291

Proposed by Committee on Judiciary

Amendment No. 21

. Amend section 1, page 1, by deleting line 2 and inserting:

"484.579 1. It is unlawful to operate or display a flashing amber warning light on a vehicle except when an unusual traffic hazard exists. This subsection does not prohibit the use of amber lights in electric turn signals.

2. It is unlawful for any person to mount flashing".

Amend section 1, page 1, line 3, by inserting "permanently" after "lights".

Amend section 1, page 1, line 5, by deleting "2." and inserting "3."

Amend section 1, page 1, by deleting line 6 and inserting:

"a permit [for the operation of] to mount a flashing amber light [for the following:] on:"

Amend section 1, page 1, line 14, by deleting "3." and inserting "4."

Amend section 1, page 1, line 15, by deleting "4." and inserting "5."

Amend section 1, page 1, by deleting line 21 and inserting:

"[4. Subsection 3 does] 6. Subsections 1 and 2 do not apply to an agency of".

Amend section 1, page 2, line 1, by deleting "6." and inserting "7."

Amend the bill as a whole by adding a new section designated section 2, following section 1, to read as follows:

"Sec. 2. NRS 484.581 is hereby repealed."

Amend the title, by deleting line 2, and inserting:

"for mounting flashing amber warning lights and for their improper use; and providing other matters".

To: E & E
LCB File
Journal
Engrossment
Bill

FEB 11 1981

Drafted by DS:ml Date 2-3-81