

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
February 23, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close, at 9:05 a.m., Monday, February 23, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William H. Hernstadt
Senator William J. Raggio
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Donald A. Rhodes, Chief Deputy Research Director
Shirley LaBadie, Committee Secretary

SENATE JOINT RESOLUTION NO. 20--Proposes constitutional amendment to provide for selection of supreme court justices by merit.

Senator Wagner stated basically S. J. R. 20 is a merit plan for the selection of supreme court justices. She stated that currently over 29 states use all or some features of the merit plan. There are three components, all essential in making this plan work. Nomination by commission, selection by appointment and a vote by the people to retain or not retain a particular justice. She said the key to success is the nomination by the commission. Senator Wagner stated the intent of the plan is simple, to make the selection of justices of the supreme court based on essential judicial qualities of personal integrity, temperament and adequate legal training and to make tenure dependent upon satisfactory service in office. She stated hopefully it will improve the selection process to emphasize professional qualifications rather than politics and to promote superior decision making by the board. See additional remarks attached hereto as Exhibit C.

SENATE COMMITTEE ON JUDICIARY
February 23, 1981

Senator Wagner stated the merit plan will encourage well-qualified people to serve on the board who might not be good "political campaigners" or lack the means of financing a campaign. She presented to the committee statistics on election history. See Exhibit D attached hereto. Under the current system, there have not been any highly contested races and do not believe this change as being a major one from the system that is currently being used. She stated that the judicial selection committee and the judicial discipline commission exist now and are needed to implement this program.

Senator Raggio questioned why the provisions of the amendment are extended only to supreme court justices. Senator Wagner stated the amendment could be extended to both levels of the judicial system, however it was a personal decision to limit it because of the problems in previous sessions having the amendment enacted. Senator Raggio asked if there would be any objection to extend the amendment to include both levels of the bench. Senator Wagner stated it would be agreeable to her, the committee would have to make the decision.

Dr. Chester M. Alter, Denver, Colorado, a nonlawyer who is now a professional citizen advocate for the improvement of the administration of justice, stated he is convinced the third branch of government must be considered by ordinary citizens if there is going to be a just and free society in America. He stated the judicial branch of government both at the state and federal level has been under severe attack in recent years. Dr. Alter stated he endorses the merit system for the selection of judges. He questioned why such large sums of money are spent for elections and could it be worth that much to an individual. He stated it is wrong and creates an image in the minds of citizens that a judgeship or justiceship in the supreme court is something that it is not. Dr. Alter stated he had worked in Colorado with the citizens in a conference and determined that something should be done about the selection of judges. A petition was developed to put the selection of judges on the ballot, providing for a constitutional amendment and providing for the merit selection of all judges in Colorado through the nominating procedure. The voters approved this issue in 1964 and have had a nominating commission since then. This procedure applies to all judges, county, district, intermediate court of appeals and supreme court in Colorado. Dr. Alter stated the merit system is the most adequate method of having the best qualified people sit on the bench. He said judges can become better judges by continuing education and experience. The system is working well in Colorado at all levels in the judicial system.

SENATE COMMITTEE ON JUDICIARY
February 23, 1981

Senator Keith Ashworth asked Dr. Alter how the public is informed on the qualifications of judges running for election. Dr. Alter stated that bar polls are used, lawyers appearing before judges are questioned as to their feelings on individual judges. Currently in Colorado, input from jurors regarding judges is being requested. Another program is that of the "court watchers" which is supported by the League of Women Voters.

Senator Hernstadt questioned if the merit selection plan denies the voters the right to pick a judge on his philosophy of being strict or liberal. Dr. Alter stated no, the voters in Colorado are well informed on individual judges and have turned out on retention votes, 18 sitting judges at the end of their first two years. This indicates that citizens are given a choice which they have exercised in voting. In conclusion, Dr. Alter stated he is in full support of S. J. R. 20.

Mr. Kent R. Robinson, member of the Board of Governors of the State Bar of Nevada, urged the committee to adopt S. J. R. 20. Last month the board adopted a resolution supporting the implementation of the modified Missouri plan in Nevada which is what S. J. R. 20 does.

Chairman Close asked what the position of the bar would be to include district court judges in the bill. Mr. Robinson said it had not been discussed but felt confident there would be no opposition to the inclusion of these judges.

Senator Ford asked what strategy could the bar use to convince the public of the advantages of this amendment. Mr. Robinson stated the public needs to be educated to the benefits of this system as compared to the type of campaign which was run last election. The lawyers would like to see a totally objective judiciary, one where the judges are not committing whether they are conservative or liberal in a campaign.

Mr. Julien Sourwine, member of the Board of Governors, from Washoe County, stated the board supports S. J. R. 20 and would support amending it to include district judges. He would like to see these judges considered, also consideration could be given to reducing the terms from six to four years. On a retention vote, the four year term would be better. Mr. Sourwine pointed out that very few judges and justices run opposed in an election.

Senator Hernstadt asked why it is unethical for a judge to declare whether he is liberal or strict in his interpretation of the constitution. Mr. Robinson stated the judicial canon of ethics dissuade candidates from running on issue orientated types of campaigns.

SENATE COMMITTEE ON JUDICIARY
February 23, 1981

Mr. Sourwine stated that the canon of ethics does not prohibit reference to what a judge has done, but does prohibit him from saying what he will do if elected. He said the commission on judicial selection exists in our constitution now, it is used to fill all vacancies which occur by death, retirement or resignation other than at the end of a term. This proposal will extend the merit selection to the justices of the supreme court who are turned out of office at the end of the term.

Mr. Robinson pointed out to the committee that the Board of Governors has done two things to implement their policies to the public. One, is the creation of a citizens committee, created with representatives from unions, banking, etc., and educate that committee and have it inform the public of the beliefs and philosophies on issues involved. Secondly, money has been raised for public education programs.

Mr. Michael Fondi, District Court Judge, Carson City, stated he is in favor of S. J. R. 20. He said he felt district court judges should be included, however there is a possibility of the legislation being defeated. The public is not ready for district court judges not being elected. He felt this amendment had substantial merit and should be approved before adding the district court judges to the system. Judicial legislation which has been defeated has been the result of the conflicts which are occurring in the Nevada Supreme Court.

Mr. Gordon Thompson, retired justice, stated that he offered his first testimony in support of merit selection in 1947 before a Senate Judiciary committee. He stated merit selection is most desirable for numerous reasons. The main reason is to get the most qualified persons available to become judges. Merit selection will encourage people qualified to seek judicial office because they are not required to be in the political process. He said that education of the public is of the utmost importance to the enactment of S. J. R. 20. In the Supreme Court of Nevada, the oath of the judge requires that the judge be compelled to follow the decisions of the United States Supreme Court in interpretation of the United States Constitution. He stated that on numerous occasions, while serving in the court, he followed United States Supreme Court decisions which he was not in agreement. This is required in the Nevada constitution. Mr. Thompson stated that the most important step is to get good people in initially and the merit selection process does promote this.

SENATE COMMITTEE ON JUDICIARY
February 23, 1981

Mr. and Mrs. O'Connor, Fallon, Nevada offered testimony relating to S. J. R. No. 20. See Exhibit E attached hereto. Mrs. O'Connor stated that the commission, as set up, would be functioning as an elite group. Mr. O'Connor stated they have testified before the Assembly Judiciary, Assembly Government Affairs and the Senate Human Resource committees. Mr. O'Connor told the committee that he and Mrs. O'Connor have undergone court litigations where judges have violated their canons, they have been denied appeals on Rule 46-B which is unconstitutional and they have been denied their constitutional rights by judges. (Exhibit F also submitted)

Senator Raggio stated that it would appear Mr. and Mrs. O'Connor would welcome a change in the judicial system because of the problems encountered by them with judges. Mr. O'Connor stated he is testifying on S. J. R. No. 20 because of the problems in the judicial system in Nevada. Mr. O'Connor suggested that a lay committee appoint the judges, rather than the governor. Mrs. O'Connor said that this merit selection plan would work only if there is a strong system of discipline and tenure and Nevada does not have this now. Mr. and Mrs. O'Connor stated they would feel better about the bill if more depth was added to the bill to protect the people of Nevada.

Mr. David Russell, member of the State Bar of the Washoe County Bar, stated he is appearing in behalf of the president of the Washoe County Bar. He indicated that the bar does support S. J. R. 20 and the merit selection process.

Senator Keith Ashworth, Vice Chairman, asked for a motion to approve the minutes of February 5, 10, 11 and 12, 1981.

Senator Ford moved the minutes of February 5, 10, 11 and 12, 1981, be approved.

Senator Raggio seconded the motion.

The motion carried unanimously.

There being no further business, the meeting adjourned at 10:30 a.m.

Respectfully submitted


Shirley L. Bagie, Secretary

APPROVED BY:


Senator Melvin D. Close, Chairman

DATE: February 25, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Monday, Date February 23, Time 9:00 a.m.

S. J. R. 20--Proposes constitutional amendment to provide for selection of supreme court justices by merit. ,

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

EXHIBIT B

DATE: February 23, 1981

<u>PLEASE PRINT</u>	<u>PLEASE PRINT</u>	<u>PLEASE PRINT</u>	<u>PLEASE PRINT</u>
<u>NAME</u>	<u>ORGANIZATION & ADDRESS</u>	<u>TELEPHONE</u>	
<i>[Faint handwriting]</i>	<i>[Faint handwriting]</i>	<i>[Faint handwriting]</i>	
Bob SHRIVER	NEV. TRIAL LAWYERS ASSN.	883-3577	
TIM TERRY	INTERESTED INDIVIDUAL	892-0695	
Kent R Robison	Board of Governors of Nev. Bar	323-8616	
Michael Fondi	District Judge	882-1619	
DELLIS + MARILYN O'CONNOR	CONSTITUTIONAL TACILE	FALLOV 367-2121	
Charles W. Altus	American Indication	303-722-7771	
James Simpson	Retired Justice		

5-5-20

1. Merit Plan or Merit Plan - so named
for that state let to adopt in 1940

A. got new idea - discussions for last in 1913
American Judicature Society

B. 29 states use all or some features of merit plan
hand out

Merit Plan = suggests to me ^{rather} good arrangement

1. nomination by commission

2. selection by appointment

3. vote by people to retain or not to retain

A. nomination by commission → by to success

composed of atty gen, laymen & Chief Justice -
submit 3 names to governor

B. Governor must select from list submitted

C. vote to retain or not of that appointment

Plan is not to make selection on basis of
social judicial qualities of personal integrity,
judicial temperament & adequate legal training & to
make tenure dependent on satisfactory service in office

Improve selection process to emphasize professional
qualifications rather than politics & to promote
superior decision making by courts

Arguments can be made that plan would permit
judges to put in more time on judicial work

Experience in Missouri, prior to plan 2 to 3 years

behavior in its district - under present system docket up to
date

57-50-55
Campaign
response

method
Contested election may actually be less effective
as a means of registering voter disapproval of a judge's
conduct than a general retention election. Some
challenges to incumbent may not be qualified as
a replacement -

Often - as issues of significant judicial importance
are discussed in campaigns. It may well occur
that when judge stands alone before voters those issues
can be focused upon & discussed.

Major findings & conclusions indicate that intellectually
sound debates on issues facing a court are impossible
in state election campaigns. Furthermore according to
voter returns in this state during last 30 years ~~at~~
a significant drop off in voter cast occurred between
the high water mark - Democrat - & Supreme Court justices
in some cases 50% or more. ^{with few exceptions not highly educated}
have

~~Such suggestions are, however, merely offered as methods of alleviating
what appear from this perspective, to be the worst features of the
present system. Ultimately, I would agree with the premise of most of
the articles ~~and~~ that the judiciary and politics should not mix.
I believe the separation of powers and constitutional system work best when
as in the federal system, the judiciary is not elected to be representative
of any interest group or point of view--even that of the current majority--
but can act, without fear or favor, independent of concerns which are
appropriately those of the members of the other two branches of govern-
ment.~~

The current system in Nevada asks members of the judiciary to act

impartially and without regard to political consequences, while making
the judiciary totally subject to political consequences. It asks a judge
to ignore the fact that he may have to raise \$100,000 in his next campaign;
~~or go to the voters to explain an unpopular legal position; or be subject~~
to the threat of a contested election at the whim of one or two disappointed
and determined men. It invites dissension on the court by encouraging
members to believe that they may work to defeat each other at the polls,
as a viable alternative to persuasion and to learning ~~to work together~~
to work together

4/6/61

politics. It may serve as some comfort to those concerned with maximizing the accountability



of public officials to the electorate that merit selection does not eliminate voter approval of judicial performance. While the probability of a judge being rejected by the voters in a merit retention election is low, the incumbency factor for merit judges isn't any better a shield against defeat than it is for partisan or nonpartisan elected judges. Since the element of electoral accountability is present in each system, the benefits gained from merit selection may offset the alleged damage that occurs to our democratic values when the linkage between the people and their public officials is made more indirect.

→ think merit plan will encourage well-qualified people to serve on the bench - end might not be good "political campaigns" or who looks the means of financing such a campaign

conclude - by presenting convincing statistics

Coal Dodge - Credit Com - Comm. of Subcommittees

Legislative - old ad. adys would like to serve out campaign

Jan. 1968 - National Court Structure

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 885-5627
KEITH ASHWORTH, Senator, Chairman
Arthur J. Palmer, Director, Secretary
INTERIM FINANCE COMMITTEE (702) 885-5640
DONALD R. MELLO, Assemblyman, Chairman
Ronald W. Sparks, Senate Fiscal Analyst
William A. Bible, Assembly Fiscal Analyst

ARTHUR J. PALMER, Director
(702) 885-5627

FRANK W. DAYKIN, Legislative Counsel (702) 885-5627
JOHN R. CROSSLEY, Legislative Auditor (702) 885-5620
ANDREW P. GROSE, Research Director (702) 885-5637

February 16, 1981

EXHIBIT D

M E M O R A N D U M

TO: Senator Sue Wagner
FROM: Donald A. Rhodes, Chief Deputy Research Director
SUBJECT: Election of Nevada Supreme Court Judges Initially
Elected to the Court

This is in response to your request for the election history, since 1950, of Nevada supreme court judges initially elected to the court.

The following chart illustrates that history. Those judges initially elected have been marked with a single asterisk and those initially appointed have been marked with a double asterisk. The asterisk marking only appears once for each judge.

The table shows some some interesting facts: *last 30 years*

1. Only three justices (Merrill, Gunderson and Springer) have won their spot on the supreme court by election contest against another candidate.
2. No sitting supreme court judge has been defeated at the polls since 1950.
3. After being elected, no justice initially elected has had to run against another candidate to retain his seat on the supreme court.
4. Appointed justices, such as Batjer, Manoukian, Mowbray and Thompson have had election contests against another candidate after their initial appointment.

only one appointed by Judicial Selection Committee

LECTION HISTORY OF NEVADA SUPREME COURT JUDGES
INITIALLY ELECTED TO THE COURT

<u>Candidates</u>	<u>Votes</u>	<u>Majority or Plurality</u>	<u>High Vote</u>
<u>November 7, 1920</u> *Horsey, Chas. Lee **Merrill, Charles M.	27,155 29,399	2,244	61,773 (Governor)
<u>November 4, 1922</u> **Bast, Milton B.	55,561		82,190 (President & Vice President)
<u>November 2, 1924</u> **Eather, Edgar	49,798		78,462 (Governor)
<u>November 6, 1926</u> Merrill, Charles M.	68,095		96,689 (President)
<u>November 4, 1928</u> Bast, Milton B.	55,931		84,889 (Governor)
<u>November 8, 1930</u> **Pike, Miles W.	61,882		107,267 (President & Vice President)
<u>November 6, 1932</u> **Thompson, Gordon	63,539		97,192 (U.S. Senator)
<u>November 3, 1934</u> Bast, Milton B.	80,539		115,433 (President & Vice President)
<u>November 8, 1936</u> (6-year term) *Tenoff, David (4-year unexpired term) **Collins, Jon R. Marshall, George E.	80,151 62,463 53,460	7,003	137,677 (Governor)
<u>November 5, 1938</u> (6-year term) Thompson, Gordon **Nowbray, John **Batjer, Cameron M. Mendoza, John F.	86,668 97,412 80,863 53,793	27,070	154,218 (President & Vice President)
<u>November 3, 1940</u> *Gunderson, E. M. Taber, Harold O.	70,757 53,453	17,304	147,768 (U.S. Senator)
<u>November 7, 1942</u> (Dept. 1, 6-year term) Tenoff, David (Dept. 2, 6-year term) Batjer, Cameron M. Phillips, James H.	119,675 110,835 39,585	71,250	181,766 (President & Vice President)
<u>November 5, 1944</u> Nowbray, John Springer, Charles E. Thompson, Gordon	119,592 74,507 80,607	6,100	169,473 (U.S. Senator)
<u>November 2, 1946</u> *Gunderson, E. M. None of these candidates	130,332 35,749	94,583	201,876 (President & Vice President)
<u>November 7, 1948</u> (Seat B) Batjer, Cameron M. None of these candidates (Seat D) Dotson, Edwin J. **Manoukian, Noel E. None of these candidates	123,107 36,258 47,619 108,785 19,187	123,107 61,166	192,445 (Governor)
<u>November 4, 1950</u> (Seat A) Flanagan, P. Nowbray, John None of these candidates (Seat E) Goldman, Paul *Springer, Charles None of these candidates	44,335 156,523 28,320 106,659 112,636 15,011	112,188 5,977	247,885 (President & Vice President)

*Initially elected.
**Initially appointed

464

Page 3

Enclosed are two pages taken from the Political History of Nevada 1979 which shows the justices of the supreme court since 1864 and designates whether they were elected or appointed.

DAR/jld
Encl.



ABRAHAM LINCOLN

POLITICAL HISTORY
OF NEVADA
1979

ISSUED BY WM. D. SWACKHAMER, SECRETARY OF STATE OF NEVADA

4/60

THE COMMON LAW

At the time of organization of a new government there arises a question of the "line of decision" in law. This question was settled for Nevada by the first Territorial Legislature in passing "An Act adopting the Common Law." The State Constitution, in turn, accepted the laws of the Territory, subject to amendment, repeal, or expiration. The present law (Chapter 1, Nevada Revised Statutes) says "The Common Law of England, so far as it is not repugnant to, or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State."

JUSTICES OF THE SUPREME COURT'

Name	Year
Lewis, J. F., Rep.	1864-66
Beatty, H. O., Rep., resigned Nov. 9, 1868	1864-68
Brosnan, C. M., Rep., died April 21, 1867	1864-67
Lewis, J. F., Rep.	1867-74
Johnson, J. Neely, Rep., appointed to C. M. Brosnan's vacancy until election following	1867-68
Whitman, B. C., Rep., appointed to H. O. Beatty's unexpired term	1868-68
Johnson, J. Neely, Rep., elected to C. M. Brosnan's unexpired term	1869-70
Whitman, B. C., Rep.	1869-74
Garber, John, Dem., resigned Nov. 7, 1872	1871-72
Belknap, C. H., Dem., appointed to John Garber's vacancy until election following	1872-74
Hawley, T. P., Rep.	1873-78
Earl, Warner, Rep., elected to John Garber's unexpired term	1875-76
Beatty, Wm. H., Rep.	1875-80
Leonard, Orville R., Rep.	1877-82
Hawley, T. P., Rep.	1879-84
Belknap, C. H., Dem.	1881-86
Leonard, Orville R., Rep.	1883-88
Hawley, T. P., Rep., resigned Sept. 27, 1890	1885-90
Belknap, C. H., Dem.	1887-92
Murphy, M. A., Rep.	1889-94
Bigelow, R. R., Rep., appointed Dec. 2, 1890, to T. P. Hawley's unexpired term.	
Bigelow, R. R., Rep.	1891-98
Belknap, C. H., Dem.	1893-98
Bonfield, M. S., Silver	1895-1900
Massey, W. A., Silver, resigned Sept. 1, 1902	1897-1902
Belknap, C. H., Dem.	1899-1904
Fitzgerald, A. L., Silver-Dem.	1901-06
Julien, Thomas V., Silver-Dem., appointed Sept. 15, 1902, to W. A. Massey's unexpired term	1902
Talbot, George F., Silver-Dem.	1903-08
Norcross, Frank H., Rep.	1905-10
Sweeney, James F., Silver-Dem.	1907-12
Talbot, George F., Dem.	1909-14
Norcross, Frank H., Rep.	1911-16
Arran, Patrick A., Dem.	1913-18

Art. VI, Sec. 3, of the State Constitution reads "The Justices of the Supreme Court . . . shall hold office for the term of six years . . . there shall be elected at the first election . . . three Justices of the Supreme Court . . . and continue in office thereafter two, four and six years respectively . . . at their first meeting determine by lot the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, after which the senior Justice in Commission shall be Chief Justice."

JUSTICES OF THE SUPREME COURT—Continued

Name	Year
Coleman, Ben W., Dem.	1915-20
Sanders, J. A. ¹	1917-22
Ducker, Edward A.	1919-24
Coleman, Ben W.	1921-26
Sanders, J. A.	1923-28
Ducker, Edward A.	1925-30
Coleman, Ben W.	1927-32
Sanders, J. A.	1929-34
Ducker, Edward A.	1931-36
Coleman, Ben W.	1933-38
Taber, E. J. L.	1935-40
Ducker, Edward A.	1937-42
Coleman, Ben W., died Feb. 25, 1939	1939
Orr, William E., appointed March 2, 1939, to Ben W. Coleman's vacancy until election following	1939-40
Orr, William E., elected to Ben W. Coleman's unexpired term	1941-44
Taber, E. J. L.	1941-46
Ducker, Edward A., died Aug. 14, 1946	1943-46
Orr, William E., resigned Oct. 10, 1945	1945
Horsy, Charles Lee, appointed Oct. 10, 1945, to William E. Orr's vacancy until election following	1945-46
Eather, Edgar, appointed Sept. 18, 1946, to Edward A. Ducker's vacancy until election following	1946
Eather, Edgar, elected to Edward A. Ducker's unexpired term	1947-48
Horsy, Charles Lee, elected to William E. Orr's unexpired term	1947-50
Taber, E. J. L., died Feb. 6, 1947	1947
Badt, Milton B., appointed March 26, 1947, to E. J. L. Taber's vacancy until election following	1947-48
Badt, Milton B., elected to E. J. L. Taber's unexpired term	1949-52
Eather, Edgar	1949-54
Merrill, Charles M.	1951-56
Badt, Milton B.	1953-58
Eather, Edgar, resigned Dec. 15, 1958	1955-58
Merrill, Charles M., resigned Oct. 1, 1959	1957-59
McNamee, Frank, appointed Dec. 15, 1958, to Edgar Eather's unexpired term	1958-60
Badt, Milton B.	1959-64
✓Pike, Miles N., appointed Oct. 1, 1959, to Charles M. Merrill's vacancy until election following	1959-60
McNamee, Frank (disabled February 17, 1965)	1960-65
Pike, Miles N., elected to Charles M. Merrill's unexpired term, resigned June 5, 1961	1960-61
✓Thompson, Gordon R., appointed June 5, 1961, to Miles N. Pike's unexpired term	1961-62
Thompson, Gordon R.	1963-
Badt, Milton B. (died April 2, 1966)	1965-66
Collins, Jon R. (appointed May 5, 1966, to Milton B. Badt's vacancy until following election)	1966-66
Zenoff, David (resigned May 1977)	1965-77
Mowbray, John C. ¹	1967-
Batjer, Cameron M. ¹	1967-
Gunderson, E. M.	1971-
Manoukian, Noel E. (appointed to David Zenoff's vacancy, May 1977)	1977-78
Manoukian, Noel E.	1979-

¹Stat. of 1915, Chap. 285, p. 507, made all judicial offices nonpartisan.²Statutes of 1967, Chapter 293, provides for the appointment of two additional justices.

EXHIBIT E

**JUDICIAL SELECTION AND RETENTION
IN THE UNITED STATES**

A State-by-State Compilation

The following methods of judicial selection and retention are used in the states' major appellate and trial courts:

- * **MERIT SELECTION** is a system which employs a permanent nonpartisan commission of lawyers and non-lawyers that initially and independently generates, screens and submits a list of judicial nominees to an official who is legally or voluntarily bound to make a final selection from the list.

- ** **MERIT RETENTION** is a system which allows a judge to succeed himself in office if a majority of voters in a nonpartisan, noncontested election vote for his retention.

- + **NONPARTISAN ELECTION**

- ++ **PARTISAN ELECTION**

- # **OTHER** (including executive or legislative appointment).

JURISDICTION**SELECTION****RETENTION****ALABAMA**

- * Constitutional merit selection for interim vacancies in Jefferson (adopted 1950) and Madison (adopted 1974) counties.
- + + Partisan election in other counties.

+ + Partisan election

ALASKA

- * Constitutional merit selection for all judges (adopted 1956).

** Constitutional merit retention.

ARIZONA

- * Constitutional merit selection for all appellate judges as well as trial judges for the counties of Pima and Maricopa.
- + Nonpartisan election for all other trial judges.
- * Merit selection of magistrates in Tucson adopted by ordinance May 1978.

** Constitutional merit retention for judges affected by merit selection.

+ Nonpartisan election for the rest.

ARKANSAS

- + + Partisan election. Governor voluntarily uses bar screening for interim vacancies.

+ + Partisan election.

CALIFORNIA

- # Appellate judges appointed by governor and confirmed by commission on judicial appointments.
- + Nonpartisan election of trial judges.

** Constitutional merit retention for appellate judges (adopted 1966).

+ Nonpartisan election for trial judges.

COLORADO

- * Constitutional merit selection for all judges (adopted 1966).

** Constitutional merit retention for all judges.

CONNECTICUT

- # Legislature confirms from governor's nominees. Governor uses informal screening commission and state bar screening committee.

Reappointment.

DELAWARE

- * Voluntary merit selection for all judges by executive order (issued 1977).

Reappointment pursuant to initial selection procedure.

DISTRICT OF COLUMBIA

- * Statutory merit selection for all judges (adopted 1973).

Reappointment after evaluation by tenure commission.

JURISDICTION

SELECTION

RETENTION

FLORIDA

- * Constitutional merit selection for interim vacancies of all appellate judges (effective 1973). Constitutional merit selection for trial judge interim vacancies (effective 1973).
- + Nonpartisan election for trial judges.

- ** Constitutional merit retention for appellate judges (adopted 1976).
- + Constitutional nonpartisan election for all judges not subject to merit selection.

GEORGIA

- * Voluntary merit selection for interim vacancies.
- ++ Partisan election.

- ++ Partisan election.

HAWAII

- * Constitutional merit selection for all judicial vacancies.

- # Reappointment after evaluation by judicial selection commission.

IDAHO

- * Statutory merit selection for interim vacancies.
- + Nonpartisan election.

- + Nonpartisan election.

ILLINOIS

- ++ Partisan election for appellate and circuit judges.
- # Associate judges appointed by circuit judges.

- ** Constitutional merit retention after a judge has won one partisan election (adopted 1962).
- # Associate judges reappointed by circuit judges.

INDIANA

- * Constitutional merit selection for appellate judges (adopted 1970). Statutory merit selection for trial judges three counties (adopted 1971, 1973).
- ++ Partisan election in other counties.

- ** Constitutional merit retention for appellate judges. Statutory merit retention in four counties.
- + Nonpartisan election.

IOWA

- * Constitutional merit selection for all judges (adopted 1962).

- ** Constitutional merit retention for all judges.

KANSAS

- * Constitutional merit selection for appellate judges (adopted 1958) and trial judges in 23 districts (local option plan adopted 1974).
- ++ Partisan election in six districts.

- ** Constitutional merit retention for all courts with merit selection.

JURISDICTION**SELECTION****RETENTION**

KENTUCKY	<ul style="list-style-type: none">* Constitutional merit selection for interim vacancies (adopted 1974).+ Nonpartisan election.	<ul style="list-style-type: none">+ Nonpartisan election.
LOUISIANA	<ul style="list-style-type: none">+ Nonpartisan election.	<ul style="list-style-type: none">+ Nonpartisan election.
MAINE	<ul style="list-style-type: none"># Governor appoints with legislative approval. Governor uses screening commission.	<ul style="list-style-type: none"># Reappointment.
MARYLAND	<ul style="list-style-type: none"># Vacancies in court of appeals appointed by governor with advice and consent of Senate.* Voluntary merit selection for interim vacancies on court of appeals, court of special appeals, circuit, district court appointments and supreme bench of Baltimore City (executive order 1979).	<ul style="list-style-type: none">** Constitutional merit retention of appellate judges.+ Nonpartisan election of circuit judges.# Reappointment of district judges.
MASSACHUSETTS	<ul style="list-style-type: none">* Voluntary merit selection by executive order (issued 1979). Governor appoints with approval of executive council.	<ul style="list-style-type: none"># Life tenure. Mandatory retirement at 70.
MICHIGAN	<ul style="list-style-type: none">+ Nonpartisan election. Governor uses bar screening for interim vacancies.	<ul style="list-style-type: none">+ Nonpartisan election.
MINNESOTA	<ul style="list-style-type: none">+ Nonpartisan election.* Voluntary merit selection by executive order (1979) for vacancies in county and district courts.	<ul style="list-style-type: none">+ Nonpartisan election.
MISSISSIPPI	<ul style="list-style-type: none">+ Partisan election.# Vacancies filled by executive appointment.	<ul style="list-style-type: none">+ Partisan election.
MISSOURI	<ul style="list-style-type: none">* Constitutional merit selection for appellate judges and trial judges of four counties (adopted for appellate courts and Jackson County, 1940; St. Louis County, 1970; Clay and Platte Counties, 1973) and the City of St. Louis.+ Partisan election for the rest.	<ul style="list-style-type: none">** Constitutional merit selection for all courts with merit selection.+ Partisan election for the rest.
MONTANA	<ul style="list-style-type: none">* Constitutional merit selection for interim vacancies (adopted 1972).+ Nonpartisan election.	<ul style="list-style-type: none">+ Nonpartisan election.
NEBRASKA	<ul style="list-style-type: none">* Constitutional merit selection for all judges (adopted 1962, amended 1972).	<ul style="list-style-type: none">** Constitutional merit retention for all judges.

JURISDICTION**SELECTION****RETENTION**

NEVADA	* Constitutional merit selection for interim vacancies (adopted 1976). + Nonpartisan election.	+ Nonpartisan election.
NEW HAMPSHIRE	# Governor appoints with approval of executive council.	# Life tenure. Mandatory retirement at 70.
NEW JERSEY	# Governor appoints with approval of senate. Governor uses bar screening.	# Reappointment.
NEW MEXICO	++ Partisan election. Governor voluntarily uses bar screening for interim vacancies.	++ Partisan election.
NEW YORK	* Constitutional merit selection for Court of Appeals (1977). Voluntary merit selection by executive order for interim vacancies (issued 1975). ++ Partisan election.	++ Partisan election.
NORTH CAROLINA	* Voluntary merit selection by executive order for superior court interim vacancies or new judgeships (issued 1977). # Statutory bar screening for district court interim vacancies (adopted 1965). ++ Partisan election.	++ Partisan election.
NORTH DAKOTA	* Constitutional merit selection for interim vacancies (adopted 1976). (As of now, legislature has not enacted implementing legislation. However, Governor has voluntarily created his own nominating commission.) + Nonpartisan election.	+ Nonpartisan election.
OHIO	+ Nonpartisan election.	+ Nonpartisan election.
OKLAHOMA	* Constitutional merit selection for appellate judges (adopted 1967). Voluntary merit selection by executive order for trial judges interim vacancies (issued 1967). + Nonpartisan election for trial judges.	** Constitutional merit retention for appellate judges. + Nonpartisan election for trial judges.
OREGON	+ Nonpartisan election.	+ Nonpartisan election.
PENNSYLVANIA	* Voluntary merit selection by executive order for interim vacancies and newly created offices (issued 1973, modified 1975). ++ Partisan election.	** Constitutional merit retention after a judge has won one partisan election (adopted 1968).

JURISDICTION**SELECTION****RETENTION**

PUERTO RICO	# Supreme court appointed for life by governor with advice and consent of senate; superior and district court appointed by governor with advice and consent of senate.	# Life tenure for supreme court.
RHODE ISLAND	# Legislature appoints supreme court. Governor appoints trial judges with approval of senate.	# Life tenure.
SOUTH CAROLINA	# Legislature elects with nonbinding recommendations from judicial nominating committee.	
SOUTH DAKOTA	* Voluntary merit selection by executive order for interim vacancies (issued 1977). + Nonpartisan election.	+ Nonpartisan election.
TENNESSEE	* Statutory merit selection for intermediate appellate judges (adopted 1971). ++ Partisan election.	** Statutory merit retention for intermediate appellate judges. ++ Partisan election.
TEXAS	++ Partisan election.	++ Partisan election.
UTAH	* Statutory merit selection for interim vacancies (adopted 1967, amended 1969, 1971, 1975). + Nonpartisan election.	+ Nonpartisan election.
VERMONT	* Constitutional merit selection for all judges except probate court judges subject to senate approval (adopted 1974).	# Legislative election.
VIRGINIA	# Appointed by legislature.	# Reappointment.
WASHINGTON	+ Nonpartisan election.	+ Nonpartisan election.
WEST VIRGINIA	++ Partisan election.	++ Partisan election.
WISCONSIN	+ Nonpartisan election.	+ Nonpartisan election.
WYOMING	* Constitutional merit selection for judges (adopted 1972).	** Constitutional merit retention.

AMERICAN JUDICATURE SOCIETY
Revised July 1, 1979

February 23, 1961

EXHIBIT F

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

SELECTION OF SUPREME COURT JUSTICES
BY MERIT - S.J.R. No. 20

(Senate Judiciary Committee)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

We feel that the Justice's of the Nevada Supreme Court running unopposed in an election is violative of the principals of a democracy and is comparative to the election process in Russia and other communist countries.

S.J.R. 20 would only be acceptable if we could be assured that each governor and the people he appoints would remain free of corrupt influences. However, we all know this is not realistic.

We, the people must first ask ourselves what we expect of our justice's on the Nevada Supreme Court.

It is not necessary that they always be politically and politely in agreement with one another. Our founding fathers had to close the curtains and board up the windows so that the citizenry could not hear all of their sometimes highly emotional arguments ^{during the framing of the U.S. Constitution}. Constructive dissention is vital to our system of government. So we must determine when constructive dissention ends and unethical conduct begins.

Speaking for ourselves and based upon conversations we have had with attorneys, we feel the so-called in fighting has effected the efficiency of the Court as many of the appeals are not being given due consideration. Another contributory factor to the inefficiency of the ^{appellate} justice by the state appallate court is its preoccupation ^{with} administrative duties.

Most of the current justices were originally appointed by the governor and for the most part have run unopposed ever since. So in theory and in practice, it would appear that S.J.R. 20 has already been defeated although something must be done to promote justice and improve the judiciary of Nevada.

We must have people that are dedicated to due process and equal

1 protection of the laws for all and equally devoted to the guardianship
2 of the federal and state constitutions as well as the state laws. These
3 people must be more concerned with the public trust rather than their own
4 prestige and position. We have asked such persons to run for the position
5 of Supreme Court Justice who have all refused saying if they lost the
6 election they would have trouble winning appeals. This does not say much
7 for due process in Nevada.

8 One of the main problems with our current system is what we refer
9 to as "squatters rights." It is an old phrase originally coined by Lord
10 Acton of England and quoted many times by our forefathers that "POWER
11 TENDS TO CORRUPT, AND ABSOLUTE POWER CORRUPTS ABSOLUTELY." There can be no
12 permanent reliance upon the benevolence and integrity of human beings who
13 have been placed in positions of power.

14 Therefore, we must set limits on the absolute power of the members
15 of the Supreme Court of Nevada. The best way to do this (outside of
16 disciplinary actions) is to limit their tenure of office. We therefore
17 recommend as a voice of the people that the justice's be limited to
18 a twelve year consecutive term with retirement benefits, the terms of
19 which ^{are} to be set by law. The taxpayers will benefit in the long run and
20 it would encourage more qualified candidates to run for the elective position.

21 We agree that candidates should not have to solicit campaign
22 contributions for the position of Supreme Court justice and perhaps should
23 not do so at all. This would leave a lot up to the media to give unbiased
24 coverage and equal time to the candidates. However, it would not stop independent
25 endorsements from special interest groups including those from "we the people."

26 In any event, our courts are in dire need of being accountable and
27 responsive to all and that can only be accomplished through the elective
28 process. that is wide open to opposition.

29 As noted by Thomas Jefferson in a letter to William C. Jarvis dated
30 September 28, 1820:

31 "When the legislative or executive functionaries act unconstitut-
32 ionally, they are responsible to the people in their elective
capacity. The exemption of the judges from that is quite
dangerous enough. I know no safe depository of the ultimate
powers of the society, but the people themselves, and, if we

think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education. This is the true corrective of abuses of constitutional power."

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32