I-211

STATE OF MINNESOTA

HOUSE OF REPRESENTATIVES

REPORT

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON COURT REFORM AND JUDICIAL SELECTION

Interim Activities
and Recommendations

January, 1968 to
December, 1968

Pursuant to the resolution adopted by the House Rules Committee on June 1, 1967, House Journal, Extra Session 1967, 7th Day, (Pages 231-234) the House was directed to study matters relating to "court reform."

In conformance with this resolution, the House Rules Committee on August 1, 1967, activated the House Judiciary Committee. Representative Harold J. Anderson, Chairman of the Judiciary Committee, subsequently appointed the Subcommittee on Court Reform and Judicial Selection and charged the Subcommittee with the responsibility of studying and evaluating the state's present court system and methods of selecting and removing judges.

Members of the Subcommittee include:

Rep. Wallace F. Gustafson, Chairman
Rep. Warren P. Chamberlain
Rep. C. A. (Gus) Johnson
Rep. Howard A. Knutson
Rep. Joseph T. O'Neill
Rep. Raymond L. Pavlak

The Judiciary Subcommittee on Court Reform and Judicial Selection met six times during the interim to examine four propositions designed to improve the judicial system in Minnesota. They are:

(1) The California Plan for Judicial Discipline and Removal.
(2) The Intermediate Court of Appeals.
(3) A County Court System.
(4) The Missouri Plan for Judicial Selection.

After careful deliberation the Subcommittee makes the following recommendations.

I. Judicial Removal and Reprimand

A bill is presently being drafted which proposes a modified version of the California Plan for judicial discipline and removal. This is a version of the California Plan which has been given attention by the Minnesota State Bar Association. This bill generally embodies the basics which a bill on this topic should contain. It is considered by the Subcommittee as a good basis from which to begin an attempt to adapt the California Plan to the State of Minnesota. It is recommended that Mr. William Westphal, the Administrative Assistant to the Supreme Court, should be the Executive Secretary of the Commission. A detailed description of the California Plan is attached.

II. Intermediate Court of Appeals

The attached bill proposes an amendment to Article VI of the Minnesota Constitution to allow for the establishment of an intermediate court of appeals. Presently the Constitution grants to the legislature the power to creat courts with jurisdiction inferior to the district court, but the legislature does not have the power to create an intermediate appellate court with jurisidiction superior to the district court. This proposal would give the legislature this authority but would not be self executing. It would thus be necessary for the legislature to act to create such a court after the constitution has been amended.

III. The Missouri Plan for selection of judges is characterized by the four elements set forth below:

1. The nomination of a panel of judicial candidates by a non-partisan commission composed of conscientious laymen and lawyers.

2. The limitation on the executive to appoint judges only from the panel submitted by the commission.

3. The review of the appointment by the voters after a short probationary term of service in which the only question is whether the judge's record warrants his retention in office.

4. Periodic review of the appointment at the end of each term of office by the voters in which the only question is whether the judge's record warrants his continued retention in office.

Such a plan has been adopted in at least ten other states in recent years. The Subcommittee feels that this method of selecting judges has considerable merit and warrants further study.

IV. A County Court System

The County Court Bill that was recommended by the Judiciary Committee in the 1967 Session* has been redrafted for introduction during this session. A majority of this Subcommittee recommends the enactment of this bill or a modified version since it is felt that a county court system is a necessary and desirable first step to the establishment of a unified court system for the state.

*H F 1232

/cb

Prepared statement of Jack E. Frankel, Executive Secretary, California Commission on Judicial Qualifications, before joint session of the Judiciary Committees of Minnesota House and Senate, February 29, 1960, St. Paul.

This testimony contains the personal views of the witness and should not be considered to represent any official position of the California Commission on Judicial Qualifications.

The value of a judicial disciplinary system must be judged by how it works and if it works. Scattered throughout the laws of the states of the Union are many apparent methods of judicial removal. Before 1960 there were four on the books in California alone. They were ineffective. Therefore, perhaps I can be of service to you in your examination of this topic by describing the functioning of the California Commission on Judicial Qualifications, (hereafter the Commission), which is regarded in judicial and legal circles as a fair and workable system. A different procedure, with a similar objective, called a Court on the Judiciary is used in New York and Oklahoma.

The Commission was established by constitutional amendment in November 1960. At the first meeting in March 1961 Justice A. F. Bray was elected chairman. Legislation for similar commissions has now been passed in six states: Texas, Maryland, Florida,

Colorado, Nebraska and New Mexico, and proposals are pending in several others.

This fundamental innovation did not take place in California nor in any of the other states as a result of scandal or corruption but as a necessity for a means to deal with normal human occurrences and difficulties - questions of conduct, fitness and ethics among judges. This Commission Plan has proved adaptable and successful for this purpose.

Five of the nine members are judges selected by the Supreme Court. Two of the five must be from the Court of Appeal, two from the Superior Court, and one from the Municipal Court. Two lawyers who have practiced ten years are named by the Board of Governors of the State Bar, and two citizens are appointed by the Governor with the consent of the State Senate. Terms are four years. Rules of procedure, formulated by the Judicial Council, became effective August 1, 1961 which was the date an office was established and the Commission employed me as its Executive Secretary. There is also a secretarial employee. Thus there have now been about six and one-half years of regular Commission operation.

The Commission examines and investigates complaints on specified grounds. There are five grounds which can form a basis for proceedings: "Wilful misconduct in office, wilful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, disability seriously interfering with the performance of duties, which is, or is likely to become of a permanent character." Complaints which are unfounded and outside Commission

jurisdiction are closed by letter to the complainant with a short explanation. Normally the judge would not hear of this complaint since there is nothing actively pending before the Commission. Over half of the cases are in this category. The confidentiality protects the reputation of judges against irresponsible charges. This is but one of several built-in guarantees protecting the proper independence of the judge against any inroads.

Of course, the Commission does not investigate dissatisfactions with rulings, sentences and the like. Many such calls and letters are received but not included in figures of Commission cases because no judge is being charged with misconduct or wrongdoing. These citizens are told of the Commission's limited powers and purview, of his right to appeal, or whatever else may fit the grievance. There is a therapeutic value in allowing a citizen with a real or fancied grievance to bring it to a place which is empowered to give due consideration, and if justified, to take meaningful action while offering a measure of safety to the citizen against retribution by the judge.

The Commission may receive a legitimate report containing significant and apparently reliable information from any number of places, (for example, local officials or judges or lawyers.) If the facts appear to merit further consideration a basic inquiry is made to round out the essentials and check the allegations. Occasionally as a part of this early inquiry the judge is notified of the complaint and asked for his consent or explanation. The reply might satisfy the question which was raised and with notice to the judge and complainant the case is closed. More frequently if the matter

involves some impropriety or questionable practice the letter may have the effect of bringing about a change or sometimes warning a judge about a hitherto unknown difficulty. The matter can then be closed and the Commission procedure has had the result of contributing to better judicial performance.

Whenever it is warranted the Commission orders a preliminary investigation. This step involves a formal notice by letter that a matter against the particular judge is pending before the Commission. He is advised of the nature of the charges and that he is now being given an opportunity to reply. There is a more complete investigation. Naturally, at any stage a decision by a judge against whom proceedings are pending to retire or resign has the effect of ending the proceedings. There have been an average of five or six such departures, in the course of an investigation, per year. This is actually the way the Commission effects the retirement or resignation.

At the completion of a preliminary investigation the Commission will decide whether a formal hearing is warranted. If so, charges are drawn and served on the judge, counsel selected, and the case proceeds to trial either before the Commission or special masters. An attorney who may be from the attorney general's office or may be outside counsel presents the case before the Commission from the prosecution side. Rules of evidence apply and, of course, the judge is represented by his counsel. Both sides have subpoena power.

Following the hearing the Commission either dismisses or recommends censure, removal or retirement to the Supreme Court. At this point for the first time, upon the filing of the record, the

proceeding is public. The case is reviewed by the Supreme Court which enters its order. Only one case has gone through the whole procedure and in that one the Supreme Court declined to follow a removal recommendation. A formal hearing is rare because if a situation is serious enough to justify full Commission action normally the significance and the gravity will become clear to the judge.

The course of action to be followed in any particular case will naturally depend on the circumstances. Sometimes there will be a personal interview with the judge. If a disability question is involved the Commission might ask the judge if he is willing to supply medical reports from his own doctor or have us talk to his doctor. The Commission may decide to arrange for independent medical examinations. There is flexibility and discretion as to the particular manner in which it decides to proceed, depending on what is appropriate.

If a mental or physical disability overtakes a judge it may become necessary to act forcefully in order to uphold, and give protection to, the public interest. A judge's condition may prevent him from having a clear understanding of his inability to fulfill the duties of his office.

The disciplinary measures have had a constructive impact. Sometimes carelessness or a disregard for what is expected of the judicial office has permitted an unsatisfactory practice to develop. Frequently a judge has not had the perspective to view some borderline or possibly unethical activity objectively. An impartial tribunal can be invaluable in dealing with such lapses. Often when the alleged impropriety is discreetly called to the judge's attention there is a cooperative response. Of course, there may be a

disagreement either on the allegations or on their import but at the very least a sensible method exists for enforcing legitimate standards of judicial conduct. In this discussion we are emphasizing the problems which are actually quite few overall. (Current year figures.)

Popular elections and impeachment are failures as a check in the judicial branch. There is a justified distrust of unlimited tenure and absence of accountability in any public officers, including judges.

Reasonable assistance comes from such state agencies as California Highway Patrol, State Department of Justice, the Controller, Administrative Office of the Courts, and county offices such as sheriff and district attorney. On occasion we are in touch with presiding judges of courts, grand juries, local bar association officials and practicing lawyers. This enables the Commission to make use of work already done by other agencies.

Expenses are modest. Commission members receive travel allowance but no other compensation. In its first year of operation (1961-1962) the Commission spent $24,000. In the present fiscal year (1967-1968) the Commission budget is about $36,000. There are about 1,000 judges, from Justice Court through the Supreme Court under Commission jurisdiction. In a smaller state full time staff would not be required and office space and staff could be shared with a compatible office.

Besides providing a fair and effective method for removal and retirement of judges where cause exists, which is the main purpose, there are important corollary effects.

1. The existence of the Commission is a deterrent to

errant behavior. It fosters a high level of performance and a realistic assessment of capability.

2. Violations of ethics and derelictions not warranting removal can be dealt with.

3. Irresponsible and baseless accusations against judges can be disposed of quickly and impartially.

In summary, the judicial branch is given a tool so that it can exercise its judgment for the public good on matters of fitness and conduct. This cannot help but raise public confidence in the judicial process.

A bill for an act

proposing an amendment to the Minnesota Constitution, Article VI, Section 1; permitting the establishment of courts with jurisdiction less than the supreme court.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, Article VI, Section 1, is proposed to the people of the state. The section, if the amendment is adopted, shall read as follows:

Section 1. The judicial power of the state is hereby vested in a supreme court, a district court, a probate court, and such other courts, minor judicial officers and commissioners with jurisdiction inferior to the district supreme court as the legislature may establish. The supreme court shall, except as provided by law, define by rule the jurisdiction and procedure of any court established by law wholly to hear appeals.

Sec. 2. The proposed amendment shall be submitted to the voters at the general election for the year 1970. The ballots used at the election shall have the following question printed thereon:

"Shall the Minnesota Constitution be amended to permit the establishment of any court with jurisdiction less than the supreme court?

Yes_____

No_____"