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## A View of the Judiciary Committee's Plan

By A. A. CLEMENTS

*Judge of the County Court, Delta County. Although this article does not express the views of the editors of DICTA, or the official views of the Colorado Bar Association, as voted at the annual meeting in Colorado Springs, it is presented here in accordance with our policy to present to our readers discussions of important legal questions, regardless of the view taken.*

The enthusiasm with which the Judiciary Committee views its plan to improve the administration of justice in Colorado, based on the Missouri experiment, and the speed with which it is asking that it be enacted into law, it is not quite understandable. The Missouri plan is still in the experimental stage. No one knows whether it will prove satisfactory or not. Why not let Missouri test the practicability of this plan before calling a special session of the legislature and foisting it upon the people of Colorado?

To me, the plan submitted by the Judiciary Committee is complicated, impracticable, smacks of bureaucracy, and violates the fundamental principles of democracy. Have we not had enough of the delegation of our rights as citizens to boards and bureaus? Why take the choosing of our judiciary from the people and delegate it to a little appointed clique?

It is said that one of the purposes of the plan is to take the judiciary out of politics, and yet it places the power to appoint all judges to fill vacancies, four members of the Supreme Court nominating commission, two members of the trial court nominating commission and two members of the judicial council, in the governor—always a politician. If he were not a politician he would not be governor, and he is always looking forward to a more exalted position in political life—United States senator, vice president, president. He would be more than human if he did not use the power and influence this plan gives him to further his political ambition. Under the Missouri plan, the same as our proposed plan, three nominees for judicial office are submitted to the governor, containing at least one Democrat and one Republican, but every one of the appointees to date has been Republicans, the governor being of that faith. Is this plan taking the judges out of politics in Missouri?

We had an illustration of the politician's attitude toward courts in President Roosevelt's attempt to pack the Supreme Court of the United States and his latter abuse of his appointive power by appointing men to the Supreme Court, not on the basis of their ability as lawyers and their fitness for the position, but strictly upon political considerations.

That politics has an influence on our judiciary is a boogie, except in a few instances. Even the Roosevelt appointees are striving to decide cases on their merits. I do not believe that the members of the committee submitting this plan can point to one single instance where a court has been influenced by the bias and prejudice of politics.

The trained judge takes great pride in his work. He has great respect for law. He strives to arrive at a correct solution of his problems, a solution that will stand the scrutiny of superior courts and meet the approval of the legal profession. No judge will cheapen himself in the eyes of his profession by deciding a case other than on its merits. He is oblivious to friend, foe, politics, race, color or creed.

The above is a true picture of the attitude of the great majority of the judges of our courts of record in the performance of their duties. It is also a true picture of lawyers in general in the solving of legal problems.

Under our present system all voters have a voice in the selection of judges. It is a matter of common knowledge that lawyers dominate our judicial conventions, but all lawyers have a voice, not just a little clique. In the selection of judges lawyers are not thinking of politics. They are thinking only of nominating men of high standing in the profession, men in whose legal knowledge, good judgment and honesty they have confidence. All lawyers want competency and honesty on the bench. Under our present system a judge is beholden for his position to no man or little group of men. Would that be true under the plan proposed?

The delegation of our rights as citizens to select our judiciary would not prove satisfactory. The delegation of authority to boards and bureaus during the late war was one of the most unanimously condemned and unsatisfactory of any of the measures found necessary. A few years ago the power to elect U. S. senators was vested in the state senates. Money and other vicious influences crept into the selection of senators. This method was extremely unsatisfactory and we amended the constitution to place the selection of senators in the hands of the people.

Under the plan submitted friendships would be an important factor in the nomination of judges, and insidious influences would creep into the deliberations of nominating groups just as they did into the election of U. S. senators by the state senates.

The Judiciary Committee's plan would close the door on every lawyer aspiring to a judgeship, without reference to his qualifications, unless he could break into the favor of the little nominating group. The fact is our whole judicial system would be under the domination of little groups.

When we deprive the people of a voice in choosing our public officials, we drift towards totalitarianism.

The proposed method of election of judges would perpetuate a judge in office, if not removed for cause by the judicial council. The submission of the incumbent only as a candidate would be a mere gesture. There being no opponent, no campaign, no discussion of the candidate's qualifications, the voters would blindly vote "Yes" for retention. It takes the stimulating influence of a political campaign to induce voters to become sufficiently interested to investigate and discuss the qualifications of candidates for public office.

The arbitrary provision of the plan to retire all judges at the age of

seventy-five would deprive us of the services of some of our ablest and most competent judges. Age does not determine a man's competency or incompetency. Who would say that Brandeis, Holmes or Hughes was incompetent at seventy-five? Hughes is now eighty-five and within the past few weeks was tendered the position of Chief Justice of the Supreme Court of the United States by President Truman. Bernard Baruch is seventy-seven years of age and still recognized as one of the great minds of America. Should the nation be deprived of his services in solving world's problems on the ground that he is incompetent by reason of age?

Men grow in knowledge and good judgment by experience, and many judges are giving their best and most efficient services at seventy-five. To deprive a man by reason of age of equal opportunity, with others to serve in any capacity of which he is capable, is a curtailment of the rights of citizenship and the rankest kind of injustice. No man in full possession of his faculties and able to provide for himself and his family wants to be a pensioner. Why make such a man a pensioner?

There should be some procedure for the removal of incompetent judges, but each procedure should not provide for the arbitrary removal of capable competent men.

There are many changes in our judicial system which would be desirable, viz:

1. Abolishment of the office of justice of the peace except in counties of the first class.
2. Requiring all judges to be lawyers.
3. Requiring candidates for judgeship to run as nonpartisans.
4. Prohibiting judges from practicing law or giving legal advice.
5. Prohibiting judges from being candidates for or holding public office other than judicial.
6. Prohibiting judges from accepting other employment or activities of such a nature as to interfere with the performance of judicial duties during the ordinary hours of court.
7. Prohibiting judges from contributing to or taking part in political campaigns or holding political party office.

But the complicated, radical, impractical changes proposed by the Judiciary Committee are not necessary and would prove to be unsatisfactory.

### **New Members of Denver Bar Association**

The following persons were admitted to membership in the Denver Bar Association at the November 3 meeting.

Herbert H. Ferguson  
Richard D. Hall

Carl H. Noel  
William A. Sackmann