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THE LEGISLATURE AND THE JUDICIARY COMMITTEE'S PROGRAM

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The 1951 General Assembly being ended, it is time while the events, accomplishments, and mistakes are fresh in our minds, to report to the bar association on the work of the Judiciary Committee and its good helpers.

In the January issue of *Dicta* the program of the bar association relating to judiciary problems was summarized and bills and amendments as then drafted were discussed. This is the story of what happened to that program and, as nearly as can be ascertained, why.

Following the preparation of the bills in tentative form, meetings of both the District Judges' Association and the County Judges' Association were held. Because of the necessary timing of these meetings and the desire of all concerned to have the program agreed upon by both bench and bar, the bills were not dropped into the hopper immediately upon convening of the legislature. Instead they were submitted to the judges at their meetings, discussed, slightly modified, and as modified, approved by the two associations.

Some have expressed the view that the delay of two or three weeks in submitting the bills made it more difficult to secure their enactment. I don't share that view, since I believe in the first place that official approval by the judges of all courts of record was a *sine qua non* to any success whatsoever. In the second place, the period during which the delay occurred was a period when the time of the legislators was largely consumed by organizing, getting acquainted, and by the general rat-killing which seems to be a part of our legislative process. Finally, I feel that if our experience and that of others engaged in similar attempts are any guide, the legislature acts upon the important legislation at the end, and not the beginning of the session.

Be that as it may, and I will be the first to confess that my judgment in these matters is prima facie wrong, the bills were held up two or three weeks, pending approval of the judges' groups.

During that same period, however, the committees of the bar association were not idle. Joint meetings were held between the Legislative Committee and Judiciary Committee, the former under the able and active leadership of Charles J. Kelly. At those meetings it was decided that one person should be asked to undertake the piloting of the program through the Legislature, so that efforts of all could be coordinated and thus made more effective. Claude

W. Blake, ex-senator from Denver, was the obvious choice for this difficult, time-consuming, and somewhat thankless job. His manner of doing that job is a great credit to him and deserves the gratitude of not only the bar association, but also of the bench.

Meanwhile, discussions also were being held with the Chairman of the Judiciary Committees of both the House and Senate. These were, respectively, Viggo H. Johnson, lawyer and member of the Board of Governors, and Wm. Albion Carlson, also an attorney and a leader in the legislature.

Following the approval of the judges, the bills were introduced. Emphasis first was placed on those in the Senate, although duplicate submissions had been made in both houses. The emphasis on the Senate side was based on the belief of all concerned that the bills once passed in the Senate, would have relatively smooth sailing in the House, though the converse might not be true. However, as with many of our preconceptions, this approach turned out to be wrong.

The bills having been moved into the Senate Judiciary Committee, a joint lunch and afternoon meeting of the House and Senate committees was arranged, at which the entire program was explained in detail. This turned out to be a valuable meeting, although it was but a small start. Following this meeting, Claude Blake, Charles Kelly and I were in fairly constant attendance, but after two or three weeks it became apparent that there was little likelihood of initial success in the Senate.

THE HEARING BEFORE THE SENATE JUDICIARY COMMITTEE

Difficulty had arisen from several sources. First, one of the Supreme Court Judges dissented from the views of his colleagues who approved the program, and appeared before the Senate Judiciary Committee to make that fact known. Word of his request to be heard reached the members of the Senate committee interested in securing enactment of the program in time for them to request another Judge of the Supreme Court also to appear and to express the majority view. In addition, former Chief Justice Haslett P. Burke was kind enough to respond to an invitation by the committee, and to express his views—primarily favorable to the program. Nevertheless, the Senate committee apparently felt that there was some dissension among the members of the court and accordingly lent their inertia to the mountain already building up.

About this time it was learned that before many of our bills could reach the floor, the Finance Committee of the Senate had to pass favorably upon them. Thus it became necessary to explain the program to the members of that committee, who, of course, were being harassed on all sides by proponents and opponents of the scores of bills involving potential expenditures of state moneys.

Despite all efforts, therefore, things were reaching an impasse in the Senate. All this was further complicated by the attitude of one key senator who misunderstood the purpose of the judges' salary bill and felt that only the proposed constitutional amendment (permitting immediately effective salary changes for judges) should be passed, and only in the event of its adoption by the people in 1952 should the legislature later pass any salary bill for judges whatsoever.

Turning then to the House, it was found that through the quiet but most capable work of Representatives V. H. Johnson and Carter, the bills had fared far better and were reported favorably from the Judiciary Committee and the Fees and Salaries Committee to the Rules Committee. The Rules Committee, of course, is the key committee in the House and consequently must consider and decide whether to report out a vast amount of proposed legislation. The difficulty that was experienced in having the bar bills reported out of that committee was attributable in a large part simply to the volume of work and pressure under which that committee works. In any event, due principally to the work of Representatives Johnson and Carter, the salary bills, the expense bill (giving travelling judges reimbursement for actual expenses incurred) and the amendment were reported out, and passed by the House.

Reduced Salary Increases Approved

At the same time, the Finance Committee of the Senate reported out, and the Senate passed, the same expense bill, together with a salary bill cutting down considerably on the recommendations but still granting a very substantial raise over the present figure (e.g. Supreme Court from $6500 and $7500 to $8500, district courts from $6000 to $7500, and county courts approximately 20% increase). The House on the other hand passed the salary bills which had been introduced without change in recommended amounts. The House had also, at about the last week, passed the constitutional amendment. This amendment had overcome the difficulty of passing in the face of the rule which limits the number of amendments which can be put on one ballot.

Going into the last four or five days of the session, therefore, the status was this:

House: Passed amendment.
Passed original salary bill.
Passed expense bill.
Ready for favorable action on judicial department bill, but minus any extra compensation for departmental judges—an unfeasible and unworkable plan.
Justice court abolition bill dead.

Senate: Passed reduced salary bill.

Passed expense bill.
Judicial department bill and justice court abolition bill dead.

It was thus apparent that compromise was essential to get anything passed by both houses. Notice of a proposed assault on House salary bill had already been served in the Senate—in fact, nothing but the careful work of Senator Carlson had gotten *any* salary bill through the Senate, in view of the previously mentioned and unshakable misunderstanding of one senator. It appeared, therefore, that if the House salary bill were pressed in the Senate, thus reopening the salary question for further maneuvering there, it was doomed to defeat. On the other hand, the Senate's salary bill was fairly sure to pass in the House, since the House had already assented to a greater increase.

The obvious answer, therefore, was to press the Senate salary and expense bills in the House, and the House constitutional amendment in the Senate. To make a very long story very short, that was successfully done.

The reform measures (the judicial department bill and the justice court abolition bill) died a-borning. This is unfortunate but far from fatal.

THE PROGRAM FOR THE FUTURE

The salary bill and the expense bill are big steps, but far from the last, along the road of restoring our judges to their proper status. More important, perhaps, from the long range standpoint, is the constitutional amendment which, if adopted by the people in 1952, will eliminate from future judicial reform programs any accusation of subterfuge or unconstitutionality. It is that accusation and its implications, however unfounded, that in my humble judgment, ruined the judicial department bill, the judicial council bill of 1949, the justice court bill, and many other proposals of a wise and progressive nature. If the constitutional amendment is passed these other measures may be considered on their merits, instead of on the prejudices of a few laymen who write and talk as experts in the field of constitutional law.

Finally, I would recommend that this bar association join with the American Bar Association and others in the attempt to discover what many of our clients already know—the art of securing enactment of a legislative program. The best program in the world—a draft of the most enlightened, the most efficient, progressive and worthwhile reform measures is not worth the paper it is written on until it is written in the statutes. I suggest we, as lawyers, should find out how this goal may be attained.

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