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The Court in the 1960s: Stability and Transition

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The Court of the 1950s frustrated some who served on it as well as some who practiced before it. Justice McGhee expressed this frustration in terms of the lonely existence of a Supreme Court justice:

> So far as I know, a happening with a human interest angle seldom happens in the Supreme Court or growing out of its actions. When one becomes a member of that Court he is removed from the area where things of interest are happening. Except for the time taken at oral arguments and short vacations, a Justice of that Court has, for all practical purposes, taken the veil.[218]

Attorney Hannett expressed this frustration in terms of practicing law before the bench during this decade:

> The Supreme Court judges, particularly in the State Supreme Court, are very often afflicted with the "intellectual itch" and try to write literary masterpieces. The worst fault of all is found in the appellate court where it is common practice for judges to write opinions which state facts entirely unsupported by the record, in order to bolster up a bad decision. Frequently they ignore evidence appearing in the record and cite facts which never happened but which make a bad decision look good.[219]

McGhee and Hannett may have spoken only for themselves. Still, Mechem's election excepted, state and Democratic politics was during this period most predictable, which naturally influenced the Supreme Court's role within the political process. Under Democratic control for two decades, the Court became a place for some attorneys to end their careers and a place to which others stepped up from district judgeships. The legal profession remained determined to control selection of the Court's personnel.

Although less involved in political controversy than its predecessors, the Court of the 1950s still had much in common with earlier Courts. Colorful personalities were still to be found on the Court. The Court continued to act more to preserve the status quo than to upset it, although at times some members seemed willing to assert the authority of the bench for constructive change.

THE COURT IN THE 1960s: STABILITY AND TRANSITION

The New Mexico Supreme Court in the 1960s enjoyed an unprecedented period of stability, preceded and succeeded by a rapid turnover in court personnel. The years 1959-1960 and 1969-1970 each witnessed the appearance of four new faces on the high bench, but these upheavals only highlighted the significance and the accomplish-

218. McGhee, *supra* note 147, at 30.
219. Hannett, *supra* note 54, at 249.

ments of the court in the intervening era. For this Court, a Court whose personnel did not change from 1960 to 1969, was able to push for reform through concerted action in several areas. Its five Democratic justices represented the generation of attorneys which matured in the post-World War I era.

The transition began in 1959 as David W. Carmody was elected to the high court. It was further precipitated that year by laws designed to make judicial retirement more attractive. Passed by the Democratic legislature, the legislation resulted in the retirement of three justices. Each vacancy was filled by Democratic Governor John Burroughs. The first vacancy occurred when Daniel K. Sadler, a high court judge since 1931, stepped down. Clearly influenced by the new law, Sadler said, "Seeking to take advantage of the recent amendment of our Judicial Retirement Act, I hereby announce my retirement from the Supreme Court, effective May 15, 1959."[220] Eugene D. Lujan retired on December 31, 1959; James B. McGhee, on August 1, 1960.[221] All three retired when they reached the stipulated retirement age of 72.

Only the matter of Lujan's successor caused controversy. To Sadler's seat, Governor Burroughs named Irwin S. Moise of Albuquerque, whom he described as a man "who has won a reputation as a fine attorney, and who proved his judicial judgment during his term as a district judge."[222] Moise accepted the appointment after thinking about it overnight. To his knowledge he was the only person considered for the position.[223] To McGhee's seat the governor named Merrill E. Noble of Las Vegas, an attorney who received the support of the legal community in Santa Fe and the north.[224]

Neither of these two appointments aroused comment from the political or the legal community. The appointment in between did, largely because Lujan's retirement meant the loss of the only Spanish American who had sat on the Court. Lobbying efforts to influence Burrough's decision ensued. Filo Sedillo and David Chavez emerged as the two main contestants. Of the two, Sedillo, now a district judge, received the more concerted support. His supporters deluged

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220. Letter from Daniel K. Sadler to John Burroughs, Apr. 29, 1959, in John Burroughs Papers, on file in New Mexico State Records Center and Archives.

221. Letter from Eugene D. Lujan to John Burroughs, Dec. 7, 1957, and letter from James B. McGhee to John Burroughs, July 1, 1960, in Burroughs Papers, *supra* note 220.

222. Undated Burroughs statement; and Executive Order appointing Moise effective May 16, 1959, in Burroughs Papers, *supra* note 220.

223. Interview with Irwin S. Moise, former Supreme Court justice, Aug. 28, 1973.

224. Interview with John Burroughs, former Governor of New Mexico, Feb. 3, 1974; and Executive Order appointing Noble effective Aug. 1, 1960, Burroughs Papers, *supra* note 220.

Burroughs with telegrams, one endorsement specifically describing Sedillo as "representative of a large group in New Mexico who should always have a voice in our Supreme Court."[225]

The lobbying for Chavez, while not as obvious or vociferous, was nevertheless significant. He received written endorsements from the Santa Fe Democratic county chairman and from Emilio Naranjo, an administrator in the state Department of Motor Vehicles and a political wheelhorse in the north.[226] Still, Chavez's strength lay more in unstated, rather than stated, political considerations. He was, after all, the brother of New Mexico's senior Senator, Dennis Chavez. He was also touted as early as 1932 for a position on the court. His state political stature made him a contender for the appointment.

It should be noted that other possible appointees also received recommendations.[227] But when all was said and done, Burroughs chose Chavez.[228] It was a straightforward, nonpolitical appointment in the views of the two principals involved. According to Chavez:

> There is no story behind my appointment by Governor Burroughs. He came to my home here in Santa Fe with Justice Carmody before appointing me and asked me if I would accept the appointment. I advised him that I would have to advise two people, one was Archbishop Byrne and Senator Dennis Chavez. After consulting with them, I advised Governor Burroughs that I would accept the appointment and he appointed me.[229]

Burroughs, too, denied that there were political reasons for his choice. He did point out that both Chavez brothers opposed him in 1958 but that David Chavez was neutral in the 1960 election. He said that he appointed Chavez and that Chavez accepted the appointment to the Supreme Court with the stipulation that the justice was to be neutral, that nothing was expected of him as a result of the appointment.[230] The appointment nevertheless pleased Senator Chavez, who wired the governor: "Dear John: Most grateful and appreciative Dave's appointment. Happy New Year to you and yours."[231]

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225. Telegram from W. Peter McAtee to John Burroughs, Dec. 14, 1959, in Burroughs Papers, *supra* note 220. Some 20 telegrams and a letter from District Judge James A. Maloney, all recommending Sedillo's appointment, appear in the Burroughs Papers.

226. Johnny Vigil to John Burroughs, undated; and Emilio Naranjo to John Burroughs, Dec. 9, 1959, in Burroughs Papers, *supra* note 220.

227. For example, interested in protecting what it viewed as its special interests, the New Mexico State AFL-CIO recommended three potential nominees. Letter from James A. Price and Tom E. Robles to John Burroughs, Dec. 16, 1959, in Burroughs Papers, *supra* note 220.

228. Executive Order dated Dec. 29, 1959, appointing Chavez effective Dec. 31, 1959, in Burroughs Papers, *supra* note 220.

229. Letter from David Chavez to Susan Roberts, *supra* note 157.

230. Burroughs interview, *supra* note 224.

231. Letter from Dennis Chavez to John Burroughs, Dec. 30, 1959, in Burroughs Papers,

Burroughs' appointments taken together reflected a preconceived plan. He tried to achieve both a geographic and ethnic balance on the court. In this he succeeded, for Moise represented Albuquerque; Chavez, the state's ethnic minority; and Noble, the north. A fourth appointment, were there one, was to have gone to the state's east side. Burroughs' appointments, indeed his very opportunity to appoint, also revealed the anxiety of the bar. Some members of the bar association distrusted the governor, a layman, and came to him and asked outright for the chance to make the appointments. Taking the position that he was elected by the people and should therefore do the appointing, Burroughs cooperated to the extent that he made his selection from a bar list of 15 qualified candidates.[232]

The new appointees soon faced contests to secure election to the court in their own right. Governor Burroughs made sure that whoever he appointed was willing to seek the party's nomination and to campaign actively in the general election. All three met that criterion, but after watching the ineptitude with which they campaigned, the governor became convinced that lawyers were the worst politicians in the world.[233] Moise had the most difficult time, for he was opposed in both the primary and the general election. He credited such opposition to his name as much as anything, since it sounded strange to people, especially those in the southern and eastern parts of the state.[234] Still, he retained his position on the bench, with the primary proving the closer of the two contests, a victory to which he himself referred as "my narrow squeak."[235]

Noble's problem was more fundamental, for he experienced trouble in getting on the ballot. His appointment occurred after the party's primary but before the November election, thereby creating a question settled ultimately by the Supreme Court. At issue was whether the secretary of state should place Noble's name on the ballot, since no such office, a second two-year Supreme Court term expiring December 31, 1962, was voted on in the primary election.

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supra note 220. The reason for discussing the Chavez appointment in terms of political considerations is because of Governor David F. Cargo's contention that a political deal was the basis for Burroughs' decision. Cargo maintained that Burroughs used the appointment to placate Senator Chavez. Interview with David F. Cargo, former Governor, Oct. 18, 1973.

232. Burroughs interview, *supra* note 224. By virtue of this action, Burroughs became the state's first governor to cooperate fully with the bar association in the selection of judicial personnel. A letter from the president of the State Bar Association substantiates this cooperation. Letter from Benjamin M. Sherman to John Burroughs, Dec. 16, 1959, in Burroughs Papers, *supra* note 220.

233. Burroughs interview, *supra* note 224.

234. Moise interview, *supra* note 223.

235. Letter from Irwin S. Moise to Waldo H. Rogers, May 31, 1960, in Rogers Papers, *supra* note 142.

The attorney general's opinion was that Noble did not have to seek office until 1962, that being the next general election at which he could properly run for office.

The Court, Justice Carmody delivering the opinion, disagreed. Considering various statutes, it ruled that the Democratic state central committee acted legitimately in certifying Noble as the party's Supreme Court candidate for the other unexpired term. Wrote Carmody, "Certainly, the cause of the vacancy occurred after the primary, and any political party to which the act applies should be entitled under the statute to fill the vacancy."[236] Thus, Noble joined Moise and Chavez in the election of 1960. All three won, Noble and Moise winning two-year terms, Chavez, an eight-year term. All three served with Compton and Carmody for an uninterrupted period that lasted until 1969.

During the course of their tenure on the Supreme Court, these five justices faced election contests, each in his own way. Noble proved to be an active campaigner:

> I have gotten back to work after a somewhat strenuous campaign. I really did not realize how large New Mexico is until I started making every town in the state. I do want to say however, that I met a lot of very fine people.[237]

Moise by his own account was not an active campaigner; he stated that "judges should not have any political aspirations."[238] Noble and Moise easily won full Court terms in 1962, despite opposition in both the primary and general elections.

Chavez, unopposed in 1960, chose not to run for reelection. He served until 1969. Compton, who had been on the court since his appointment in 1947, faced opposition in neither the primary nor the general election in 1964, thereby securing for himself a third eight-year term. Carmody, first elected in 1958, won another full term in 1966, his reelection uncontested. These justices, then, did not have to campaign, even within ethically allowable limits.

The justices interviewed all stressed the benefits of not having to campaign. They noted that all a judicial candidate could promise was to do his impartial best.[239] Proponents of an elected judiciary, among them Governor Burroughs, felt that active campaigning made

236. State ex rel Noble v. Fiorina, 67 N.M. 366, 355 P.2d 497 (1960).

237. Letter from M. E. Noble to Waldo H. Rogers, Dec. 1, 1960, in Rogers Papers, *supra* note 142.

238. Moise interview, *supra* note 223.

239. All the former justices interviewed held this same opinion. Indeed, they favored some kind of non-political selection system for judges, ending altogether the matter of partisan election contests.

judges more sensitive to the human needs of their constituencies. Burroughs said that more than one judge told him that he knew the State and its people better because of his campaign experiences.[240]

This court, the most stable in New Mexico history, made a number of important contributions. First, it began sitting in panels of three, rather than having all five justices sit en banc as it had previously. Each justice heard the same number of cases, which were assigned through a numbering system. All five heard cases involving constitutional questions, first-degree murder, and matters of great public interest, by unwritten rule of the Court.

Second, the Court sent a number of cases to district judges. These judges wrote the opinion in cases assigned to them, a task which saved the high court considerable time. Altogether, the district judges took care of some 30 cases in this way. These two steps helped the Supreme Court catch up on its work load, which had fallen badly behind by 1959, and marked the beginning of an effort toward establishing an intermediate Court of Appeals.[241]

Third, the Court dealt with more civil and criminal questions of constitutional law. An example is the Court's decisions in the field of workmen's compensation. Justice Moise also cited the Court's decisions in highway cases. He dissented in several of these cases before bowing to the will of the majority.[242] The Court could take up such important matters because of the reduction of its workload, especially in number of criminal cases, following the creation of the Court of Appeals in 1966.[243]

Finally, the Court's personnel, given their lengthy tenure, could and did carry their concern for improvement of the judiciary over into the political process. Their activity added to that of attorneys and laymen marked the revival of an effort to reform the judiciary. Prior to the 1960s the reform movement had focused on attempts to change the partisan method of judicial selection. Attempts had peaked in the 1930s and again in the early 1950s. In 1951 reformers placed before the electorate a constitutional amendment providing for merit selection of judges under the Missouri Plan. It was rejected. Judicial selection reform continued to be a major concern in the 1960s, but judicial reform efforts were considerably broader than this issue.

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240. Burroughs interview, *supra* note 224. This same attitude was expressed by the sons of former Justices Zinn, Threet, and Mabry.

241. Moise interview, *supra* note 223. Carmody also discussed these innovations. Carmody interview, *supra* note 217.

242. Moise interview, *supra* note 223; and Watson interview, *supra* note 146.

243. Carmody interview, *supra* note 217; and letter from James V. Noble to Susan Roberts, Aug. 5, 1974.

In 1962, for example, the chairman of the state bar's committee on the judiciary reported to the board of bar commissioners that, among other things, a majority of attorneys responding to a questionnaire favored increasing the size of the Supreme Court.[244] The board also considered the problems of the judiciary at a meeting in early 1963. Justice Moise attended and laid some groundwork for changing the judicial structure itself, saying that the Supreme Court's backlog was a problem needing solution. On the basis of this report the bar commissioners decided to study the possibility of increasing the size of the New Mexico Supreme Court and negating the "majority" decision provision in the state Constitution.[245] They proposed a larger Supreme Court rather than an intermediate court of appeals, as had most lawyers responding to the bar association questionnaire.[246]

To increase public interest in judicial reform, the state bar pushed for a citizens' conference, similar to one held in 1936. Prominent New Mexicans received invitations, and 100 leading citizens met from June 11 to June 13, 1964. At the end of their deliberations they issued a report entitled *The Consensus of the Conference.*

The report opened with a statement that the court system was out of step with modern demands:

> Major weaknesses of the present antiquated system include partisan election of judges, uncertainties of judicial tenure and retirement, no appropriate disciplinary machinery, and a lack of unified organization and administration in the courts of New Mexico.

They recommended implementation of a merit selection plan, a mandatory retirement age for judges, an independent commission to discipline judges, a simplified and unified court system, and more mechanisms for reviewing the performance of court personnel. The conferees set down their priorities for improvement, stressing the need for a more definite program and for continued citizen involve-

244. Minutes of the Meeting of the Board of Bar Commissioners of the State Bar of New Mexico, Dec. 8, 1962, University of New Mexico School of Law, in Judicial Council of New Mexico Files, on file at Judicial Council of New Mexico.

245. Minutes of the Meeting of the Board of Bar Commissioners of the State Bar of New Mexico, Jan. 23, 1963, N.M.E.A. Building, Santa Fe, N.M., in Judicial Council Files, *supra* note 244. Section 5 of the judiciary article of the New Mexico Constitution requires a majority of the justices on the Court to concur in a judgment. This requirement negates the potential influence of an increase in Supreme Court personnel.

246. Letter from Paul W. Robinson, Chairman of State Bar Committee on Judicial Selection, Tenure and Compensation, to Eugene E. Klecan, President, Albuquerque Bar Association, Jan. 11, 1963, in Judicial Council Files, *supra* note 244.

ment. They also commended the constitutional revision committee for its work.[247]

The constitutional revision committee to which they referred was active in both 1963 and 1964. Its function was to find ways to improve the state's constitution, including the article on the judiciary. Its members participated in the citizens' conference. The committee also received assistance from such reform-minded leaders of the bar as Donald Moses, Robert W. Botts, and Justice Carmody.[248] Its work completed, the committee issued an official report that reflected both the input of laymen (the 1964 citizens' conference) and of the legal community (the state bar association).

The judicial article in the constitutional revision committee report began with a call for a unified court structure composed of a Supreme Court, a Court of Appeals, district courts, and magistrate courts. Specifically, it proposed a five- to seven-member Supreme Court and a three-member Court of Appeals, with district and magistrate courts serving as courts of first instance.[249] Eliminated from the structure were justice of the peace courts, the object of much criticism at the citizens' conference. Indeed, the consensus of that conference was that these courts with few exceptions failed "to provide speedy, economical, efficient and impartial justice. . . ."[250]

Next, the proposed judicial article took up the matter of selecting judges. It recommended that the governor appoint Supreme Court, Court of Appeals, and district court judges from a list of three names submitted by a nominating commission. But the proposed nominating commission gave the bar a much greater voice in judicial selection than the citizens' conference had envisioned. There was to be a committee of seven, consisting of the chief justice as chairman, three lawyers, and three laymen. Further strengthening the position of the bar was a provision allowing the chief justice to select the judicial nominee if the governor failed to make an appointment within 60 days of the presentation of the list to him.

Last, the article provided for a method of supervising judges' conduct in addition to impeachment. This was in keeping with the recommendation of the citizens' conference. Under this provision a judge faced discipline or removal for "willful misconduct in office or willful and persistent failure to perform his duties or habitual intem-

247. Consensus of the Conference, report of A Citizens' Conference on New Mexico Courts, University of New Mexico, Albuquerque, June 11-13, 1964, in Judicial Council Files, *supra* note 244.

248. 1964 Report of the Constitutional Revision Commission to Honorable Jack M. Campbell.

249. *Id.* at 23-32.

250. Consensus of the Conference, Judicial Council Files, *supra* note 244.

perance" or retirement for "disability seriously interfering with the performance of his duties. . . ." A special commission to investigate charges and to recommend appropriate action to the Supreme Court was to have the power to order removal, discipline, or retirement. But here, too, the bar would be dominant, for the commission was to consist of more lawyers than laymen.[251] Of course, the Supreme Court had the final say.

Following the reports of both the conference and the revision committee came concerted action for reform in the 1965 state legislature. The resolution introduced was basically the same as the proposed judicial article, differing only in some details. Its two most significant provisions concerned establishing an intermediate Court of Appeals and an appointive method for selecting judges.[252]

The proposal received a favorable report from the Senate committee but received only six votes on the floor. The appointment of judges provision, which undoubtedly caused its defeat, was deleted. Senate passage of the resolution followed. The house judiciary committee further cut the original legislation, eliminating everything except the Court of Appeals provision. In this form the measure passed.[253] Now entitled "A Joint Resolution Proposing an Amendment to Article VI, Section I of the Constitution of New Mexico to Provide for the Establishment of an Intermediate Court of Appeals," it faced approval or rejection by the voters at a September 28, 1965, special election.[254]

Justice Carmody, an active proponent of judicial reform, pushed for voter ratification of the amendment. He spoke in its behalf around the state. He also solicited support from others:

> The whole trouble with this type of constitutional amendment is that there is very little interest generated, and the more we can bring attention to the public at large the better.[255]

He focused on securing the active participation of lawyers in the ratification campaign by personally appealing to members of the bar:

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251. 1964 Report of Revision Commission, 27 et. seq.

252. S. J. Res. No. 5, 27th Legis., (1965).

253. L. Buckingham, B. Crosby, III, and J. Martinez, "Judicial Reform in New Mexico," (unpublished research paper in possession of Dr. Harry P. Stumpf, University of New Mexico).

254. Copies of S. J. Res. No. 5 and its subsequent legislative alterations can be found in the Judicial Council Files, *supra* note 244.

255. Letter from David Carmody to Russell D. Mann, June 16, 1965, in Judicial Council Files, *supra* note 244.

"Please do what you can to assist. Many lawyers are writing to and talking with friends and clients. Won't you?"[256]

The efforts of Carmody and others proved successful, as the voters approved the constitutional amendment providing for a Court of Appeals. The state bar association, which also supported the reform, must have received additional satisfaction from Governor Jack M. Campbell's expressed willingness to cooperate with the association in the selection of the three new judges. Campbell, authorized by law to make the appointments, wrote to the chairman of the judiciary committee of the state bar and asked that this committee suggest names of not more than eight acceptable appointees.[257] The committee responded within a week of this request by submitting a list of nine nominees. Its chairman stressed the qualifications of committee members as well as the impartiality of the group's deliberations and then thanked the governor: "On behalf of the Committee and on behalf of the State Bar Association, I want to express our appreciation of your invitation to participate in the filling of the initial positions on the court.[258]

Advocates of judicial reform also took satisfaction in the ratification of constitutional amendments creating magistrate courts in lieu of justices of the peace in 1966 and the judicial standards commission in 1967. Still, they continued to push for reform. Justice Carmody remained an active advocate of change.[259] The constitutional revision committee reported in 1967, as it had three years previously, the need for a totally new judicial article.[260] But this unfinished work notwithstanding, the state's most historically stable Supreme Court could take much of the credit for the creation of the Court of Appeals. This Supreme Court streamlined appellate procedures and publicized the need for reducing the appellate judge's work load. Its personnel also supported consideration of other judicial reforms.

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256. Form letter from David Carmody to BAR MEMBER, Sept. 17, 1965, in Judicial Council Files, *supra* note 244.

257. Letter from Jack M. Campbell to James E. Sperling, Mar. 3, 1966, in Judicial Council Files, *supra* note 244.

258. Letter from James E. Sperling to Jack M. Campbell, Mar. 9, 1966, in Judicial Council Files, *supra* note 244.

259. Carmody still believes in the need for the Missouri Plan of judicial selection. Carmody interview, *supra* note 217. *See also* his article, *Non-Political Justice,* 2 Western Review 57-58 (1965), in which he advocates adoption of the Missouri Plan.

260. A 1967 report of the constitutional revision committee duplicated almost verbatim the 1964 committee report and S. J. R. No. 5. It thus called for merit selection as well as for a unified court structure, removal procedures to supplement impeachment, and other reforms heretofore mentioned. Report of the Constitutional Revision Commission . . . to Honorable David F. Cargo, 75-99 (1967).

The late 1960's saw a change in court personnel. Chavez retired at the end of his term, and Democrat Paul Tackett, district judge and long-time district attorney, won his seat in 1968. Within a year, Carmody, Noble, and Moise all left the bench. Carmody retired April 30, 1969; Noble died November 13, 1969; and Moise retired March 30, 1970. Of the five justices who served together from 1960 to 1969, only Compton remained. Chavez's retirement also left the court without a Spanish American member for the first time since 1945.

The changes were notable because they resulted in a Republican majority on the high court, for the first time in 40 years. Republican David F. Cargo was governor, and he filled the three vacancies with attorneys from his party. To Carmody's seat he appointed John T. Watson, son of the last elected Republican justice to leave the court; to Noble's seat, he appointed Daniel A. Sisk; for Moise's seat, he chose Thomas F. McKenna.[261]

According to Cargo, his appointments were made in the following way. He contacted the state bar about the vacancy, asking the association to supply him with five names and to specify its three top preferences. Then he met with a committee of ten leading attorneys, later inviting in judges. This committee narrowed the list down to two appointees, men who were interested in sitting on the Court. Finally, he talked to the two informally and subsequently met again with the man selected.[262] His choices were limited primarily to practicing attorneys, for Democrats held most judgeships. His choices were further restricted because any Republican appointee faced almost certain defeat in the next general election. According to Cargo, his two top choices for each of the vacancies were attorneys who felt they could not accept because they were of the wrong political (Republican) and ethnic (Spanish-American) backgrounds.[263]

The three Republicans who accepted appointment did so for a variety of reasons. Watson was nearing the end of his career as a practicing attorney. In his meeting with the governor, Watson told Cargo, "You don't have to appoint me. I won't do a thing for you."

261. Executive Order appointing John T. Watson, May 23, 1969; and Executive Order appointing Daniel A. Sisk, Dec. 30, 1969, in David F. Cargo Papers, on file in New Mexico State Records Center and Archives. McKenna took office on April 6, 1970.

262. Interview with David F. Cargo, *supra* note 231. Cargo did cooperate with the state bar, as shown in two letters from Bar President John J. Wilkinson to Cargo, Apr. 22 and May 6, 1969, in Judicial Council Files, *supra* note 244.

263. Cargo interview, *supra* note 231.

Cargo replied, "Respectability will help." Watson rejoined, "I'll try to be respectable."[264] Sisk, a member of a large Albuquerque law firm, felt that he could accept the appointment and later return to private practice.[265] McKenna had left Santa Fe when the law firm of which he was a member broke up. He was in the process of setting up his office as a single practitioner when contacted about his possible appointment.[266] All three men were in situations that allowed them to accept admittedly temporary places on the Supreme Court. McKenna acknowledged that, "We all knew that we wouldn't win."

Four new justices, Paul Tackett and three Republicans thus sat on the court until the end of 1970. They did not have much time to leave their mark on the history of the bench, but they had definite attitudes concerning the best possible system of justice. Tackett favored an appointive system like the Missouri Plan to get the judiciary out of politics. He stressed voters' usual ignorance of the candidates' relative merits. Judicial candidates themselves, Tackett felt, could campaign only on the issue of being fair and impartial in deciding cases.[267]

The three Republicans interviewed also supported removing judges from politics. Watson expressed preference for any selection method that gave 75 per cent good judges. Once an advocate of nonpartisan election, he came to regard it as the worst possible system. Thus, he leaned toward the Missouri Plan. Sisk stated preference for no specific plan, although he wished for something similar to the Missouri Plan or the federal judicial system. McKenna advocated taking judges off the ballot and establishing a good judicial standards committee to remove not only immoral but also incompetent judges.

These justices also expressed their opinions as to what made a good appellate judge. McKenna stressed humility and compassion. He felt that a judge's intellect must be tempered by humility, and that without humility one could not be a good judge.[268] Sisk said that an appellate judge should have practiced law for a considerable number of years in order to gain the broad practical experience essential to doing a good job. Judicial experience, however, he felt is not a prerequisite. Watson emphasized that a judge must be aware of his prejudices and his opinions. Thus aware, a judge can devote himself to

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264. Watson interview, *supra* note 146.

265. Interview with Daniel A. Sisk, former Supreme Court justice, Sept. 7, 1973.

266. Interview with Thomas F. McKenna, former Supreme Court justice, Aug. 30, 1973.

267. Interview with Paul Tackett, former Supreme Court justice, Aug. 27, 1973.

268. Watson interview, *supra* note 146; Sisk interview, *supra* note 265; and McKenna interview, *supra* note 266.

what Watson called "the ecology of the law," adherence to the rule of law rather than to individual biases.[269]

As an example of what he meant, Watson discussed a case involving Sunday liquor sales, which created great public interest and controversy. It was decided by all five justices. While in conference one judge said, "I like a drink on Sundays." Another responded, "Sunday is the Lord's day. Oh, no, no." Watson maintained that the judges eventually decided the case according to the law, but he sometimes wondered how his feelings came into play as he, too, liked an occasional drink. Watson, joined by Tackett, dissented, contending that the case sought only an advisory opinion and was, consequently, not a justiciable controversy.[270] McKenna, joined by Compton and Sisk, upheld the statutory ban on Sunday liquor sales.[271] Based on interpretations of the law, even though differing, these opinions reflected concern for Watson's "ecology of the law."[272]

Finally, the justices assessed the accomplishments of the Court on which they served. Tackett was proud of his and the Court's ability to keep abreast of the caseload. He completed the cases assigned to him immediately, a fact that contributed to his belief that trial judges were better equipped by their judicial experience for the appellate bench than were former practicing attorneys.[273] Sisk noted that this Court cleared the docket backlog which existed at the time of his appointment, due in part to Justice Noble's ill health during his last year on the Court. Cargo appointees, he said, realized they were not to be there long and set out to make as great a contribution as they could in the time that they had.[274]

This period witnessed one final attempt to revise the state's constitution. Meeting in August and September 1969 a constitutional convention drafted a new document which brought to fruition a movement which began in 1963. The article on the judiciary, like its 1910 counterpart, was hotly debated, but this time the decisions were not made along party lines. Indeed, a Democrat led each of the opposing

269. Watson interview, *supra* note 146, Sisk interview, *supra* note 265, and McKenna interview, *supra* note 266.

270. Watson interview, *supra* note 146.

271. McKenna interview, *supra* note 266. For the decision in this case, see State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970).

272. Watson interview, *supra* note 146.

273. Tackett interview, *supra* note 267.

274. Sisk interview, *supra* note 265. McKenna and Watson similarly referred to the accomplishment of clearing the docket. McKenna said, "We're proud of the work we did." McKenna interview, *supra* note 266. Watson wanted to and did write 50 opinions while on the court. Watson interview, *supra* note 146. Judge Frank B. Zinn also credited these justices with getting their opinions out faster than their predecessors. Zinn interview, *supra* note 149.

factions and each found support both from within and from without his party.

The judiciary committee consisted of nine laymen and five lawyers, the latter group including the two chief antagonists, David W. Carmody and Filo Sedillo.[275] Carmody chaired the committee, and it soon became apparent that the major issue was again to be judicial selection. Consistent with his previous position, the former justice pushed for adoption of the Missouri Plan. Alternatives to be considered were nonpartisan election, appointing only appellate judges, and electing appellate judges from districts.[276]

On September 3 the committee vote on the Missouri Plan split with seven members favoring the plan and seven members favoring not changing the selection method. In debate attorney Robert Poole, a Republican and an advocate of the plan, said, "It seems to me laymen have the impression lawyers are trying to put something over on them." Also in debate Sedillo, leading opponent of the plan, stated, "The appellate courts are the policy-making courts and there's nothing wrong with them going out to meet the people. If we adopt this Missouri Plan we could send this constitution down the drain." Judges with life tenure, he felt, tended to act "like they're little gods."[277]

The committee issued two minority reports because of the tie vote, although by a 9 to 5 consensus it asked the entire convention to consider making only appellate judgeships appointive.[278] But between committee action and convention consideration emerged growing opposition to reform. Most significantly, a coalition of Spanish Americans and conservatives formed in the convention to defeat any change in the selection process. The coalition succeeded, decisively killing the provisions suggesting change. The convention voted 47 to 20 against appointment of appellate judges and 38 to 28 against nonpartisan elections.[279]

The debate on the floor showed once more that the issue was neither partisan nor a matter of profession. Sedillo restated his belief that "this one issue could defeat the constitution." Mary Walters, also an attorney and a Democrat, offered this argument against an appointive method: "Judge Carmody is a magnificent example of what can be obtained by the elective system. No one has ever intimated that his opinions were ever influenced by political considera-

275. Albuquerque Journal, Sept. 3, 1969.
276. Albuquerque Journal, Sept. 2, 1969.
277. Albuquerque Journal, Sept. 4, 1969.
278. Albuquerque Journal, Sept. 13, 1969.
279. Albuquerque Journal, Sept. 20, 1969.

tions." Poole could only demur, saying the plan was "designed to get judges out of the kind of politics we feel degrades the judicial function." By voice vote the delegates retained the partisan election process.[280] They approved a judicial article that proved a compromise between the existing constitution and proposed reforms. The new constitution was rejected by the electorate on December 9, 1969. But by this time the judicial article was no longer an issue.

Then, in November 1970 the Cargo appointees faced election contests. All ran, as they had promised Cargo they would. All were aware that they probably could not win. Yet, each campaigned. Watson, the most experienced campaigner of the group, was the least active, fully expecting to be "a former justice." Sisk tried to run a respectable race, realizing as the election approached that he did not want to lose, although he knew that he would. McKenna campaigned the most and ran the best race of the three. Unable to campaign in the traditional sense, he said the following was his most effective political speech. Attending a dinner in Belen, he was asked to stand and make a few remarks. He told the audience that although there were not enough bathrooms in Santa Fe, that each justice had his own. He invited each of them to use his private bathroom when visiting the state's capital.[281]

The outcome of the 1970 Supreme Court contests was as predictable as the Republican candidates imagined. Watson lost to Donnan Stephenson, a Santa Fe attorney, 113,260 to 149,063; Sisk, to John B. McManus, Jr., a district judge, 118,292 to 148,499; and McKenna, to LaFel Oman, a Court of Appeals judge, 122,360 to 134,237.[282] The Cargo appointees were simply unable to stem the tide of New Mexico political history that last saw a Republican elected to the Supreme Court in 1928. Still, these three justices continued to work hard through the final day of their tenure on the bench.[283]

Taken as a whole, the decade of the 1960s saw tremendous activity in terms of the judicial history of the state. It began and ended with almost entirely new justices sitting on the Supreme Court, most by gubernatorial appointment. The Burroughs appointees remained on the court because they were Democrats. The Cargo appointees tried to remain but failed because they were Republicans. Yet, each of the courts on which they served left its mark,

280. *Id.*

281. Watson interview, *supra* note 146; Sisk interview, *supra* note 265; and McKenna interview, *supra* note 266.

282. Secretary of State, State of New Mexico Official Returns, 1970 Primary and General Returns.

283. McKenna said that very last decision that he wrote was completed at 7 or 8 p.m., Dec. 31, 1970. McKenna interview, *supra* note 266.

the Democratic court in terms of streamlining the court system and deciding matters of constitutional law and the Republican court in terms of contributing hard work in an effort to clear the docket.

With the activities of these two courts came efforts to restructure the state's judicial system. Such efforts were broad-based, involving the state bar, justices of the Supreme Court, and interested citizens from throughout the state. Reform became the topic for consideration at bar association meetings, a citizens' conference, constitutional revision committee deliberations, sessions of the legislature, and a convention called to draft a new state constitution. The movement's primary success was the establishment of a Court of Appeals, an innovation largely attributable to the justices of the stable Supreme Court of the 1960s. Its biggest failure was in the area of judicial selection, repeated attempts to change the system proving unsuccessful.

Finally, the 1960s were significant as an era of transition. Older practitioners of the law gradually gave way to a younger generation of attorneys, men who grew to professional maturity in the period following World War II. The Cargo appointees basically reflected this phenomenon, while the men that since succeeded to the Supreme Court have epitomized it.

THE NEW MEXICO SUPREME COURT EXPERIENCE IN PERSPECTIVE

In retrospect, the decisional tendencies of the New Mexico Supreme Court displayed a basically conservative pattern. This was true from the beginning of the statehood period and has remained true thereafter. Even the party identification of justices made little difference, for the Court advocated judicial self-restraint and avoided real innovation under both Republican and Democratic control of the judiciary. On occasion justices came out for constructive change, but they were usually in the minority. Only in the 1960s did a stable Court take up in a major way constitutional issues, and it did so some 30 years behind the times in some of the more significant areas of the law, for example, in the field of workmen's compensation.

Although an elected judiciary may respond to political pressures, the Supreme Court responded to statewide, rather than local political conditions. District judges like David J. Leahy and Reed Holloman were clearly in tune with local political conditions and, indeed, maintained their connections with predominantly local machines. Supreme Court justices, on the other hand, overruled the likes of Leahy and Holloman on numerous occasions, the Magee case being the most notorious example. These justices were seeking the