

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, February 28, 1967

Meeting was called to order at 2:45 P.M.

Present: Wooster, Swackhamer, Lowman, Dungan, White, Kean, Hilbrecht

Absent: Torvinen, Schouweiler

SB 155: Permits prior submission of written questions and supplemental voir dire examinations of juror by counsel.

Chief Justice Thompson was present by invitation to speak against the bill.

JUDGE THOMPSON: I was not aware of this bill until Mr. Wooster called and invited me to come and give my views on it.

I would like to make two points on the bill. First, if you pass it, it will be completely ineffectual. In 1951 the legislature invested the Supreme Court with power to make the rules of procedure in Civil Courts. In January of 1953 we adopted the rules of civil procedure. Rule 47 covers the subject of this legislation. From my point of view, the matter of governing rules and practices and procedures is invested in the Supreme Court and is no longer vested in the legislature.

Second, on the merits, the bill is bad. Rule 47A of Nevada rules of procedure provided that attorneys would ask the questions of prospective jurors and that the Court could thereafter supplement examination or could ask questions of its own. Basically, attorneys had always examined the qualifications of prospective jurors.

After much study, we find that one of the time-consuming things in a case is the length of time spent by attorneys in examining jurors. As a general run of things, it would take all morning and oftentimes longer to select a jury. Frequently, as many as seventy people are summoned for a jury panel at the start of a case. From them you select twelve. Because of the time involved, we thought if we left this questioning primarily to the Court much time could be saved. So Rule 47 was changed to provide for the Court to do this. The Court can, if it wants to, allow attorneys to do supplemental questioning.

Judges will tell you uniformly that there has been a noticeable saving in time in the selection of jurors, and this is important when our courts are so crowded. Also, they will tell you that there has been no lessening of the high quality of jurors. This is not a new system. It has been employed by Federal Courts for years and years and years. This was but one of many measures that we had hoped would be effective in order to speed along trials of cases.

Another thing we would like to do is to have a good many juries of six or nine men. This would save a great deal of time and money. We have been reluctant to effectuate this last matter.

To summarize, the bill would not be effectual. The administration of justice is handled more rapidly by the rule as it now stands and the quality of justice has not been diminished in any way.

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I might say, in behalf of Senator Young, that this is a matter that the trial lawyers have been interested in for quite some time. At the Judicial Conference of the judges of the state, we rejected this problem. This seems to us to be a "skirting" process. They could not get this done where it should be done so they are trying this way.

MISS DUNGAN: Does this apply only to civil cases?

JUDGE THOMPSON: Yes. In criminal trials, the attorneys would help select the jury. We have had no complaints from anyone on the selection of juries for a trial case.

SENATOR YOUNG: Do you think it would be better to do it this way in criminal cases also?

JUDGE THOMPSON: Yes, although I understand your side of it, too. I have been there. What we really should be interested in is getting justice. The aim of the Court's interrogation is to do that. The aim of the attorneys is to get a favorable jury.

HILBRECHT: Wasn't there some proposal made for a written form for prospective jurors? An inquiry form that would limit the necessity for voir dire examination? Doesn't this go along with your line of thinking?

JUDGE THOMPSON: I have never heard of such a proposal. That has never been presented to the Judicial Council.

HILBRECHT: Wouldn't such a form be a help?

JUDGE THOMPSON: There is no need for it. Sometimes the judge tells the attorneys to give him a list of questions to ask the prospective juror and he then asks the questions.

HILBRECHT: You haven't answered my question about the printed form.

JUDGE THOMPSON: I used to know all about the prospective jurors long before I went to court. A better method is the court inquiring. Most information is available through other avenues, credit reports and so forth.

SENATOR YOUNG: The Federal Court perhaps has a higher quality of judges because they are appointed for life. We do have some difficulty in this situation. There is no uniformity among the judges as to what we can do. I don't think we save much time. The trials are still usually three days long. Judicial reform among the judges is a little slow in coming. We have not been able to get any response.

JUDGE THOMPSON: Maybe it would satisfy you if I were to assure you that the Court would sit down and consider it again. The business of controlling the procedures and practices of the courts is really not the business of the legislature. The Courts are in a better position to know what is going on in this field. Do you think it is wise, as a matter of legislative policy, keeping in mind the separation of the three divisions of government, for the legislature to make these judicial decisions? This, it seems to me, is exceeding the unwise. If you have a complaint, come to us and we will kick it around. We will give you time. Maybe we won't agree with you but we will hear you. What you are doing is changing a rule of procedure and the place to change it is with us, not with the legislature. We have 72 rules. This would be opening the door for all of them to be amended. That would be extremely unwise in my judgment, and I think in the legislature's opinion, because they got rid of this responsibility by giving it to us.

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HILBRECHT: It would seem to me desirable to have it adopted as a rule of the Supreme Court.

JUDGE THOMPSON: We won't promise to adopt it, but we will hear you.

SB 68: Provides for summary eviction or exclusion of certain tenants.

Senator Helen Herr, whose bill this is, was present to speak for it.

MR. WOOSTER: I have had some calls on this. It may be desirable to have these people in but I wanted to start out by hearing Senator Herr.

SENATOR HERR: This bill was requested by the Apartment House Owners Association in Clark County. The bill will alleviate a bad situation there concerning people who refuse to pay their rent. In many cases it has taken up to six months to evict a tenant. Any remedies they have now are too expensive and take too long. It has been a big hardship, especially in the last few years, due to the economic factor. I think every apartment house owner in Clark County is in favor of the bill. It compares very favorably with laws of the other states around us. California has a 3 day law.

WHITE: Is there any reason why trailer rentals were excluded?

SENATOR HERR: We felt that they were included.

KEAN: What about office rents? Why are they excluded?

SENATOR HERR: This bill has been asked for by apartment house owners, and we did not go into that field.

MR. HILBRECHT: The whole business of landlord and tenant needs to be overhauled. Did you consider that at all? This is piecemeal legislation this way.

SENATOR HERR: This present situation is so serious that something has to be done about it right away.

MR. KEAN: Would you consider including office rentals?

SENATOR HERR: Isn't there already something in the law on office rentals--that you can put them out in three days? My office space landlord seems to evict tenants without any trouble at all.

MR. HILBRECHT: The whole law involves primarily housing. Did your committee object to including trailers?

SENATOR HERR: It was mentioned but we thought the wording of the bill included trailers.

AB 173: Provides that livestock, produce dealers' bonds may be secured by real property mortgages, deeds of trust.

Mr. Hanna, an attorney for the Minden Milling Company, was present to speak for the bill.

MR. WOOSTER: This is Mr. Jacobsen's bill and he came in previously to talk to the committee about it. However, we had some questions on it that he wanted Mr. Hanna to answer so

we have invited him here to answer these questions.

MR. HANNA: The bill was introduced because of a situation in Minden. This was because of the Minden Milling Company, which is locally owned. It is a feed house which serves the people there, but it is not really active in retailing.

The president asked me if he could secure a bond, using their buildings and so on. It would be something that would require no renewal each year, no cost or expense.

The Deputy Attorney General, who advises the Department of Agriculture, talked with him, and both agreed that the law did not provide for such a thing. We felt it would be adequate and proper if a law were passed, so we presented it to the legislature through Mr. Jacobsen.

A Deed of Trust would be better security and easier to foreclose upon. It is just another way for a company dealing in livestock or agriculture to secure itself.

MR. KEAN: Does the company own the property which they intend to use, or does it belong to one of the principals?

MR. HANNA: It is owned by the Minden Milling Company. It is their property and it is unencumbered. They want to secure their bond by placing a mortgage upon it.

MR. KEAN: Traditionally, where the state requires bonds--first you had to put up a bond, then later you could put up certain other things that were immediately convertible to cash. This would not be easily convertible. It would be quite a deviation.

MR. HANNA: I feel, personally, that a foreclosure of a first deed is easier than attempting to be recompensed by a surety company. I don't think it is a big problem.

MR. KEAN: I see no provision to keep them from encumbering the land after they got their bond.

MR. HANNA: A first trust deed would always come first.

Mr. Ray Knisley was present and Mr. Wooster asked if he had come in the interests of any particular bill. Mr. Kean explained that he had reservations about AB 210 and had asked Mr. Knisley to come in on it. Mr. Wooster said AB 210 is now in a subcommittee consisting of Mr. Hilbrecht and Mr. Torvinen and Mr. Knisley is free to get together with the two of them.

AB 131: Provides penalties for wrongful diversion of construction funds.

MR. WOOSTER: Is it possible for us to move on this bill? How about a report from the subcommittee, headed by Mr. Kean?

MR. KEAN: I don't recall if we ever got together on this. My personal feeling is that it is a debtor's prison philosophy. I will be happy to eliminate all but section 3. Suggestion for a possible amendment: "Any person who submits a false voucher or release, or a voucher or release, to obtain construction funds and does not use the funds for the purpose for which the claim or release was submitted is guilty of embezzlement".

MR. HILBRECHT: When I was appointed to this subcommittee, I talked with the construction people in Clark County. They have appointed a political action committee and they were

actually up here, in part on this, and they gave me a great deal of information. Their only objection was a kind of "too little and too late". It did not make any difference to them whether it was \$5,000 or \$10,000. They just thought everything should be punished as embezzlement. I also talked with Mr. Cuno but haven't had a chance to report to the committee. There was conversation but no conclusion.

MR. WOOSTER: How about scheduling this for Monday, March 6th?

MR. HILBRECHT: Some of the people might like to come up and be heard on this. They are in favor of the bill.

SB 155: Permits prior submission of written questions and supplemental voir dire examination of juror by counsel.

MR. HILBRECHT: I would like to say something on Cliff's behalf. Judge Thompson's remarks can cut two ways. I just got a call from Judge Mowbray, who handles about one-half of the trials in the eighth judicial district. He said that as a matter of practice, he allows the attorneys to question prospective jurors. He thinks it has an adverse effect on the jury if the attorney doesn't get to ask his questions. In Cliff's case it has been quite restrictive. The Bar has taken the proper proceedings to have this changed, with no result.

Mr. Swackhamer moved to postpone SB 155 indefinitely

Mr. Kean seconded

The motion carried with Wooster, Swackhamer, White and Kean voting Yes and Hilbrecht, Lowman and Dungan voting No.

SB 68: Provides for summary eviction or exclusion of certain tenants.

MR. WOOSTER: Do you want to have a hearing on this?

MR. HILBRECHT: Let's give them a chance to be heard.

MR. WOOSTER: We will hold it over until Monday, at 2:00 o'clock.

AB 173: Provides that livestock, produce dealers' bonds may be secured by real property mortgages, deeds of trust.

MR. SWACKHAMER: I have two objections to this. 1. Who is going to check and see if this property is worth twice the amount of the bond. 2. I doubt that this has a wide-spread need throughout Nevada. It applies, actually, to one particular firm.

Mr. Hilbrecht moved to postpone AB 173 indefinitely

Mr. Swackhamer seconded

Motion passed unanimously

Mr. Wooster said he had two additional bills he would like to tell the committee a little bit about, to see if they could have committee introductions. One is for Torvinen and one is for Schouweiler. Both were absent so the bills were held over.

AB 338: Provides for automatic revocation of will as to spouse on divorce or annulment.

Mr. Kean moved Do Pass

Mr. Hilbrecht seconded

Motion passed unanimously

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MR. HILBRECHT: Remarriage to another spouse automatically revokes a will. This bill is for the guy who doesn't remarry and forgets to change his will.

AB 339: Provides that residence of nominator does not affect priority of person nominated to receive letters of administration.

Mr. Kean moved Do Pass
Mr. White seconded
Motion passed unanimously

AB 340: Provides for relief of court-appointed attorney for absent and minor heirs from obligation to represent any such heir who retains counsel.

Mr. Hilbrecht moved Do Pass
Mr. Swackhamer seconded
Motion passed unanimously

MR. WOOSTER: Tomorrow we will take up the following Assembly Bills:

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We will also take up for discussion AJR 5.

I will give everyone a list of the bills to be discussed on Thursday. Then, if those of you who will be absent on Thursday will give me a list of the ones you are particularly interested in, I will hold them over until you are back.

The meeting Thursday will be at 1:00 o'clock.

Meeting adjourned at 4:00 o'clock.